



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/05542/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 20 October 2017 and 9 February 2018

Decision and reasons Promulgated  
On 6 March 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

RAMANAN [S]  
(no anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the appellant: Ms Azani of Counsel  
For the respondent: M S Walker, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant in this appeal is the Secretary of State for the Home Department. The respondent is a national of Sri Lanka born on [ ] 1981. However, for the sake of convenience, I shall continue to refer to the parties as they were referred to before the proceedings in the First-tier Tribunal.
2. The respondent appeals to the Upper Tribunal against the decision of First-tier Judge Thomas promulgated on 4 May 2017 allowing the appellant's appeal against the

decision of the respondent dated 13 March 2015 refusing him asylum and humanitarian protection and to remove him from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999.

3. This appeal had been initially dismissed by the First-tier Tribunal on 17 July 2015. The appellant's appeal to the Upper Tribunal against that decision was allowed and the matter was remitted to the First-tier Tribunal to be heard *de novo*. It next came before First-tier Tribunal Judge Thomas on 21 March 2015 at Sheldon Court in Birmingham, who allowed the appellant's appeal on refugee grounds.
4. Permission to appeal by the respondent was granted by First-tier Tribunal Judge Pullig on 31 May 2017 stating that it was arguable that the First-tier Judge failed to give adequate reasons by not identifying a risk category into which the appellant fell in line with the case of CJ and others (post-- Civil War returnees) Sri Lanka CG [2013] 00319 (IAC).
5. The Judge in his decision accepted the appellant's past persecution in Sri Lanka and found him to be generally credible in relation to that evidence and stated that some of the challenges to the appellant's evidence by the respondent are not so significant such as to undermine the appellant's general overall credibility in the appeal.
6. The Judge accepted that the appellant was a member of the LTTE as claimed and that his sister was a member in the commando section. He accepted that the appellant was detained and beaten by the Sri Lankan army in April 2012 due to his perceived activities with the LTTE. At paragraph 40, the Judge found that "taking the evidence in its totality, and given all findings, I find that the appellant has discharged the lower burden of proof that his detention and mistreatment by the Sri Lankan authorities in April 2012 was because of actual or perceived activities with the LTTE and amounted to persecution".
7. Having found the appellant credible about his past persecution in Sri Lanka, the Judge then considered CJ at paragraph 41 as whether there is any future risk to the appellant if returned to Sri Lanka. The Judge stated in the decision that the appellant was "detained and mistreated when he returned to Sri Lanka in 2012 after being out of the country for three years. He found that even if the appellant's name was not on a watch list, given the events of 2012, which both stated the end of the conflict in 2009, he is a person who, there is a real risk, the authorities are or would become interested in after his arrival and identity is verified in his home area. The appellant's history will be relevant, as it was in 2012, when he was detained and therefore perceived by the Sri Lanka authorities to be a risk to the state or the government. The appellant's involvement in LTTE events in the United Kingdom is likely to be known to the sophisticated intelligence service of Sri Lanka. This is an assistant involvement with the group, will more likely than not, aggravated circumstances. Taking all matters into account, I find that there is nothing to suggest that the risk to the appellant now, would be any different to that he faced in 2012, and which resulted in persecution. I therefore find that the appellant is at risk on return of the person who the authorities in Sri Lanka perceived as a threat in 2012 and given the history and is

continuing support of the LTTE in the diaspora, means that the risk remains prevalent. As a person at real risk from the Sri Lankan forces, internal relocation is not an option for this appellant. I therefore find that the appellant is a risk of persecution or serious harm in Sri Lanka under the qualification regulations and is entitled to international protection”.

8. This was in the last paragraph of a 10-page decision and the entirety of the Judge’s reasoning as to the appellant’s future risk is noted in this one paragraph. The rest of the decision is focused on finding whether the appellant’s evidence is credible as to his past persecution.
9. The Judge’s reasons for why the appellant poses a risk to the Sri Lankan authorities is materially deficient. The appellant’s evidence has not been properly reasoned against all the risk factors set out in CJ. The Judge failed to give cogent reasons for why the appellant would be perceived as posing a risk to the unitary Sri Lanka State which is the main requirement to assess risk on return. The Judge relied too heavily on the appellant’s credibility as to his past persecution and while in most asylum cases past persecution can be an indicator of future persecution, in the case of Sri Lanka.
10. It was eloquently argued on behalf of the appellant that when the entirety of the decision is read, the various risk factors have been identified in the decision even if they do not appear in one paragraph. I cannot agree with this submission because it is incumbent on the Judge to clearly set out which of the appellant’s actions would be perceived by the authorities as posing a risk to the Government and be regarded as posing a current threat to the integrity of Sri Lanka as a single State.
11. In CJ the Tribunal held that the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are: (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka. (b) Journalists whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government. (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses. (d) A person whose name appears on a computerised “stop” list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a “stop” list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

12. The Judge made a material error by not identifying the appellant's evidence which go to the specific risk factors and giving reasons and had this be done, the decision might have come to a different conclusion.
13. I therefore direct that the appeal be placed before the Upper Tribunal for submissions to be heard as to whether the appellant fits into any of the risk categories in CJ. The First-tier Tribunal Judge's findings of fact as to the appellant's past persecution in Sri Lanka are not to be disturbed. The only issue to be decided is whether the appellant can be returned safely to Sri Lanka when his evidence is taken against the risk factors set out in the country guidance case of CJ.

### **Rehearing on 9 February 2018**

14. The appeal came before me on 9 February 2018. I heard submissions from both parties as to whether the appellant can be safely returned to Sri Lanka. I have considered all the background evidence and the written submissions in reaching my decision.
15. The appellant claims that his past activities with the LTTE, his previous detention and his diaspora activities in the United Kingdom will bring him within the risk categories set out in GJ.
16. In GJ the Tribunal held that (i) this determination replaces all existing country guidance on Sri Lanka; (ii) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war; (iii) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka; (iv) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection; (v) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport; (vi) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days; (vii) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are: (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka. (b) Journalists whether in print or other media) or human rights activists, who, in either case, have criticised the Sri

Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government. (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses. (d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant. (viii) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government. (ix) The authorities maintain a computerised intelligence-led "watch" list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

17. In MP (Sri Lanka) and NT (Sri Lanka) v SSHD [2014] EWCA Civ 829, 18 June 2014 the CA upheld the CG case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and found that there was no legal error in the in the UT's country guidance on Sri Lanka despite the fact that it had narrowed the risk categories from those in the Eligibility Guidelines of the United Nations High Commissioner for Refugees. It was stated however that the UT had not prescribed "that diaspora activism is the only basis on which a returning Tamil might be regarded as posing" a future threat and thus of being at risk on return. "There may, though untypically, be other cases where the evidence shows particular grounds for concluding that the Government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism".
18. It is accepted that the appellant was a member of the LTTE as claimed and that his sister was a member in the commando section. It has also been accepted that the appellant was detained and beaten by the Sri Lankan army in April 2012 due to his perceived activities with the LTTE. Therefore, the appellant has been persecuted in the past and Sri Lanka. Past persecution is relevant and can be an indicium of future

persecution, but past persecution does not automatically mean that the appellant will be invariably of adverse interest of the authorities on his return given the Sri Lankan authorities interest is in only those who pose a current risk to the unitary Sri Lankan State or the Sri Lankan Government.

19. In **PP (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ** it was found that the UT had assumed that the change in circumstances identified in **GJ**, namely the defeat of the LTTE and subsequent realignment of the political situation would have a similar effect on the ground in the Tamil territories in the north and east of Sri Lanka. In terms of intelligence capacity, it was known from **GJ** that the Sri Lankan government's method of identifying LTTE sympathisers was much more sophisticated and technically based than it had previously been. But it did not follow that similar changes would have occurred in the Tamil areas which remained militarised zones with high proportions of soldiers to civilians. So, the position on the ground for that purpose had not significantly changed. The high level of militarisation might have been such as to put vulnerable individuals, such as those in the Claimant's position (a raped woman), at risk.
20. The question therefore is does the appellant pose a risk to the Sri Lankan authorities now because he will be perceived by them as someone who can and can progress the cause of the unitary State and pose a genuine risk to the authorities in that regard. The Sri Lankan government now has a much more sophisticated and technically based system to identify those who pose a risk.
21. The First-tier Tribunal Judge found that the appellant while studying in 2003-2009 distributed leaflets, watched and reported on army positions and offered food and accommodation to the LTTE. In the United Kingdom the appellant has attended Tamil martyr's commemorative day in 2011, 2013, 2015 and in 2010 protested in Hyde Park. The appellant was detained for 10 days in Sri Lanka and ill-treated and on April 2012 he was released on the payment of a bribe. His parents were asked about his whereabouts by the authorities. The appellant left the airport with his own passport and there is no arrest warrant against him in Sri Lanka. The appellant was a student in Sri Lanka prior to him coming to the United Kingdom.
22. The appellant's activities for the LTTE are as follows. He joined them in July 2003 while he was studying for his A-levels after the LTTE pressurised him and told him that every person should help if they want to live in Sri Lanka. The appellant said at question 43 of his asylum interview that when they continuously spoke and talked to him and they eventually convinced him. The appellant therefore had to be convinced to join the LTTE which demonstrates to me that he did not subscribe to their ideology at that time.
23. The appellant was then trained for four months with the LTTE and at the same time continued with his studies. The appellant's evidence is that his training consisted of tuition lessons about the police and importance of LTTE and training about an AK-47 rifle. He said that he was trained "to use a grenade and how to disguise himself and in self-defence". The LTTE told the appellant to inform them if he had any suspicions

about the army or LTTE members, all those who have connection with the army. He was given parcels to deliver to some people and asked to do odd jobs. He also said that he would distribute leaflets, invite people to attend the LTTE program and would go to each home to invite them. He said that he would also arrange accommodation for civilian people who travelled from Vanni and provide them with food and vehicle arrangements. The packages that he delivered for the LTTE which was on 5 to 6 occasions mainly consisted of letters. He said that while he was in Colombo, he continued studying and would receive instructions from senior LTTE members to arrange accommodation for LTTE and to pass the information about ministers' movements. He also continued to deliver letters and parcels for the LTTE. These are the activities that the appellant says that he performed for the LTTE while in Sri Lanka.

24. I find that these activities are that of an ordinary member of the LTTE. The appellant was not in a senior position but would take orders and deliver letters from senior members. These activities would not be considered significant enough to bring the appellant into the risk category of someone who wants to violate the territorial integrity of Sri Lanka.
25. The appellant has a sister who is also a member of the LTTE, but I find that his sister's involvement would not bring the appellant to the adverse attention of the authorities because he is of no interest to the authorities. It was found in CJ that everyone in the northern province had some level of involvement with the LTTE during the Civil War. The appellant's sister's involvement would not bring the appellant to the adverse attention of the authorities for that reason.
26. The appellant was released on a payment of a bribe. In GJ there was evidence before the tribunal from Professor Good that release on payment of a bribe was extremely common. The Tribunal effectively accepted that assertion at paragraph 262. It appears to have related, however, to the up to date position as at that time. These cases are left in as they may assist on credibility points but they must now be read in line with GJ. In VS (Risk-LTTE-escape) Sri Lanka (2003) UKIAT0003 (formerly a CG case but removed from the list 8.8.07) the Tribunal stated that the situation in Sri Lanka at that time had improved and to succeed a case had to be exceptional. The Tribunal followed PT (Risk-Bribery-Release) Sri Lanka (2002) UKIAT 03444 (formerly a CG case) . In PT the appellant in that case claimed to have been detained by the authorities and released on payment of a bribe. The Tribunal observed: "When someone has been in custody for a significant period of time it is reasonable to presume that some record was made of the detention and this record may still exist and be available for inspection by the authorities. If the record does still exist one may also reasonably presume that it includes a reference to the individual's current status. By this we mean whether he is currently wanted by the authorities, or whether his release concluded the authorities' adverse interest in him. These presumptions are supported by the statement from the CID superintendent, set out above, that their computer only holds the name and address and age of wanted people. We also note in passing that this record kept by the CID does not include people who failed to comply with reporting restrictions after a release. It is then

frequently argued on behalf of Appellants that the payment of a bribe means even in relatively routine cases there was an assisted escape rather than a release and this will mean that the escapee is on the wanted list". The Tribunal went on to endorse the view of a previous Tribunal that "it is highly improbable to say the least that a police officer, releasing a man on payment of a bribe, would record it as an escape. There is certainly no need to do so. If the police wanted to keep an interest in him all that was necessary was to note that he might be of interest in the future. Normally if someone is released on payment of a bribe or otherwise it is indeed because the authorities take the view that there is no good reason to detain him even if there is some involvement with the LTTE at a very level ". The Tribunal in **PT** concluded that "bribery related releases, especially from army custody, would not, in the absence of some special and credible reason, be likely to be treated as escapes " .

27. Given this guidance, the fact that the appellant was released on a bribe will not bring him to the adverse attention of the authorities. There is no warrant of arrest for the appellant and therefore his name will not be on the stop list at the airport. He left through the airport with his own passport which would not have been able to do if he was of interest to the authorities. The appellant will not be perceived to be someone who would pose a risk to the Sri Lankan authorities because the fact of the matter is he does not pose a risk.
28. The appellant first entered the United Kingdom with a student visa on 14 September 2009. On 22 January 2011 he applied for further leave to remain as a student which was subsequently granted until 31 October 2012. The appellant returned to Sri Lanka on 28 March 2012 and returned to the United Kingdom on 18 April 2012. He claimed asylum on 19 July 2012. At his screening interview at question 4.1 the appellant stated that he came to this country to save his life because he was arrested by the Sri Lankan army on 26 April 2012 and detained for 10 days because he was accused of helping the LTTE. Therefore, it was when the appellant returned to Sri Lanka from the United Kingdom on 28 March 2012 that he was arrested a month later, on 26 April 2012. The appellant must have been aware that his activities with the LTTE might bring him to the attention of the authorities on his return. Nevertheless, he returned to Sri Lanka because he knew that he was of no adverse interest to the authorities. If he had been afraid of the authorities he would not have returned to Sri Lanka.
29. This conclusion is strengthened by his answer at question 162 of his asylum interview when he was asked why he decided to come to the United Kingdom. The appellant said "after the end of the war in 2009, the army were looking for people in Colombo. If someone wants to stay in Colombo, either a student or working person. I was continuing doing a course; otherwise they would be stopped on the way and arrested. The question was repeated to the appellant and he said "fear, avoid arrest, I was even advised by my family to come to the United Kingdom". This shows that the appellant who was advised to leave the country nevertheless returned to Sri Lanka to marry. This also demonstrates to me that the appellant knew that his activities with the LTTE were not of sufficient significance to bring him to the adverse interests of the authorities.



30. I do not accept the appellant's explanation at question 166 of his asylum interview for why he returned to Sri Lanka. He said that it was because "three years had gone I was told that the Ex-LTTE members were given rehabilitation and problems were solved. My father called me and one of my cousins proposed for my marriage and I came and get married." If the appellant knew that his work for the LTTE was of such significance, he would not have returned because he had not been rehabilitated as he was in the United Kingdom.
31. The appellant was able to leave the airport after his detention. He said at question 175 of his asylum interview that he did not have any problems at the airport. The appellant claims that he was asked whether he was going to re-establish the LTTE by the army while in detention. Therefore, if the authorities thought that he was going to re-establish the LTTE, he would not have been released and nor would he have been able to leave the country through the airport without any problems. The fact that they released the appellant demonstrates that they had no further interest in him.
32. The European Court of Human Rights judgement of **I v Sweden - Chamber Judgement [2013] ECHR 813** stated "This leads to the crucial question of whether the isolated fact that the person who has been subject to torture suffices to demonstrate that he or she, if deported to the country where the ill-treatment took place, will face a real risk of being treatment contrary to Article 3. Moreover, as stated where the Court's established caselaw is that in principle it is for the person to be expelled to adduce evidence capable of proving that there are as any substantial grounds for believing that if the measure complained of were to be implemented he or she would be exposed to a real risk of being subjected to treatment contrary to Article 3.... The court considers that where an asylum seeker, that the first applicant, evokes that he or she has previously been subjected to ill-treatment, whether undisputed or supported by evidence, it may nevertheless be expected that he or she indicates that there are substantial and concrete grounds for believing that upon return to the home country he or she would be exposed to a risk of such treatment again. For example, because of the asylum seekers political activities, membership of a group in respect of which reliable sources confirm a continuing pattern of ill-treatment on the part of the authorities, appending arrest warrant or other concrete difficulties with the authorities concerned.
33. Taking into account all the risk factors set out in **CJ** and the country guidance, I find that the appellant will not be ill-treated or exposed to a risk of such treatment again because of the authorities his past interest in him in Sri Lanka. I find on the evidence that the appellant will not be exposed to ill-treatment on his return to Sri Lanka.
34. In respect of the appellant's role in the diaspora activities in the United Kingdom, this will not bring him to the adverse attention of the authorities because I find that his activities in this country are not of such significance such as to bring him within the risk category. The background evidence states that the Sri Lankan authorities have considerably opened up because journalists, media professionals and human rights activists are able to express themselves more freely and communicate publicly.

The change in government policy therefore demonstrates the Sri Lankan authorities are allowing human rights activists to report human rights abuses.

35. The CPIN of June 2017 policy as formulated by the United Kingdom states that the LTTE in Sri Lanka has not held any military power or political authority since the end of the Civil War in 2009. It states that a person being of Tamil ethnicity would not in itself warrant international protection. It states that neither, in general, but a person who evidence is past membership or connection to the LTTE, unless they have or are perceived to have had a significant role in it; or if they are, or are perceived to be active, and post conflict Tamil separatism and thus the threat to the state. Further it states that participating in diaspora activities such as attending demonstrations, is not in itself evidence that the person will attract adverse attention on return to Sri Lanka.
36. The war ended in 2009 and we are now in 2018 which is some nine years ago. Considering all the evidence in the round, I find that the appellant would not be at risk on his return to Sri Lanka. He can be safely returned.

Signed by,

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Ms S Chana  
A Deputy Judge of the Upper Tribunal

Dated this 4<sup>th</sup> day of March 2018