



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06893/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22 March 2018**

**Decision & Reasons Promulgated
On 26 March 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**R P
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan, Counsel instructed by Kanaga Solicitors

For the Respondent: Mr, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1.** The appellant is a Sri Lanka national of Tamil ethnicity who claims to be in fear of the authorities because of his brother's activities with the LTTE, his own past detention and torture and his activities with the TGTE in the UK. His appeal was previously allowed by First-tier Tribunal Judge Higgins on 21 August 2017 but that determination was set aside by way of this Tribunal's determination of 8 January 2018

following an oral hearing on 4 January 2018. I now hear the matter afresh in order to re-make the determination.

2. Certain findings of the First-tier Tribunal were, however, preserved. These were that:

- (i) the appellant's brother was a member of the LTTE for 14 years and that he collected intelligence;
- (ii) the appellant joined the LTTE shortly before its defeat and helped with delivering supplies;
- (iii) he had no involvement in fighting;
- (iv) he suffers from PTSD;
- (v) he was detained and tortured (although there is confusion in the number of detentions referred to in paragraph 89);
- (vi) he travelled to the UK with the help of an agent using false documents.

3. I found that the judge failed to make clear findings on what activities the appellant had been involved with in the UK, how this could be reconciled with the evidence that he was frightened to become involved, why the authorities would continue to be interested in him given the finding at paragraph 93 and why his brother was found to be a senior LTTE member given that this was not referred to in the interview record or his evidence at the hearing. Additionally, no finding was made on whether the CID had visited the family home and made enquiries about him, and the finding that he would fall into a G category was not properly reasoned.

4. The Hearing

5. The appellant attended the hearing and was simply tendered for cross examination, there being no evidence Mr Nathan wished to call. He had the use of a Tamil interpreter whom he confirmed he understood. The proceedings were explained to him and he was informed that he should let the Tribunal know if he felt uncomfortable at any stage and required a break.

6. Mr Walker cross-examined the appellant. The appellant said that he had been living with a friend of the family (referred to as uncle) since his arrival in the UK. He confirmed he had been diagnosed with PTSD and was receiving treatment although he did not know what. He said he took tablets to help him sleep. He recently had an X-ray at Lewisham Hospital for chest pains. He had never worked in the UK. When he was asked whether he had worked at the Chicken Express, he said that the shop keeper was a friend and he sometimes helped out in the evenings in return for food. The appellant said that he had spoken to his family 2-3 times when he had been in Bolivia. They told him that the CID had come to look for him and his brother.

- 7.** The appellant was referred to his interview whenever he had claimed never to have been photographed or finger printed before coming to the UK. He said he had been photographed by the authorities in Sri Lanka. When asked why he had given different information to the British authorities, he said the question had not been clear.
- 8.** The appellant confirmed that he had obtained a passport in order to leave Sri Lanka. He agreed it was his first passport. He did not have to produce a birth certificate in order to obtain it but a man had taken his photographs and ID card and obtained it on his behalf. The appellant did not have to sign anything. He did not recall when it expired or whether it contained any visas.
- 9.** The appellant agreed he had been frightened to attend demonstrations in the UK. He then said that at the time he had not known that the TGTE existed. His 'uncle' then suggested he should go along and talk to someone as it might be helpful and bring him some relief. He was then no longer frightened. He took part in protests, helped arrange sports events and made tea for Sunday meetings. He also took part in a campaign for a petition on genocide and distributed leaflets to nearby shops. The appellant confirmed he had provided photographs of himself at demonstrations. He was asked how he would be identified by the authorities. he replied that when he surrendered the authorities knew who he was.
- 10.** The appellant said he had not seen his brother since they surrendered themselves to the authorities in 2009. They were not together in detention.
- 11.** The appellant said he had been detained for three years when he surrendered in 2009. Following that he was detained twice in 2014. He was released the first time in 2014 but on the second occasion a bribe was paid for his release. This was arranged by his father. That completed cross examination. There was no re-examination.
- 12.** I then asked some questions for clarification. I asked the appellant whether he had followed his 'uncle's' advice and spoken to someone in the TGTE. He said he had spoken to a minister about the genocide. He told him about his experiences and that he had lost his brother, Rathan. He disclosed this information as he was told they could obtain information about his brother. The appellant had a sister who was in Switzerland. He was first detained in 2009.
- 13.** I asked the appellant what he meant when he claimed to have gone for registration (A4:2.5). He said when he went for registration, he was told that everyone from the LTTE should stand aside. I repeated

the question. The appellant said he was afraid he would be hit. The question was put again. The appellant said he did not go to register. He was told that even if he had worked for one day for the LTTE he should stand to the side. I asked where he went. He said he had been questioned and tortured.

- 14.** I asked the appellant about the photographs he had submitted. He said they had been taken at 4-5 demos but he could not remember when. He did not why they were taken. He got some of them off the website and some were group photographs.
- 15.** Mr Walker had no questions arising.
- 16.** Mr Nathan sought to clarify the evidence about the 'registration'. The appellant said he was leaving with others at the end of the war. He was with his brother and most of the LTTE members. When asked whether he was with the authorities at that stage, he replied that he had gone to surrender. He was with his parents and many others including his brother and brother-in-law. His parents 'went out'.
- 17.** I then heard evidence from Mithilan Paransothey. He was asked why he believed the appellant's brother had been a senior member in the second or third rank of the LTTE. He said it was because he had been there so long and because he had a pistol. He did not know how to describe a pistol but he wore a big belt which would be given to those of that rank.
- 18.** In cross examination the witness said he had last seen the appellant in Sri Lanka in March 2009. They met again in the UK and the appellant told him what had happened to him.
- 19.** There was no re-examination.
- 20.** In response to my questions, the witness said the belt was wide and bely and the pistol hung from it. I asked whether members who were not in the second or third rank had weapons. He replied they did not. I asked whether all fighters were then in the second or third rank. He then said that all LTTE members except for those in the political wing had guns. He said the soldiers carried them. The senior officers had belts. I asked what rank soldiers were. The witness said that ranks were not known until after death. I asked who was in the first rank. The witness said the leader. Brigadiers were in the second rank but ranks were only known after death. I asked for clarification given that seniority of rank was known by the wearing of a belt. The witness could not give a clear response. He said one would know a lieutenant

colonel. He said there were nine ranks in total. The appellant's brother wore a belt and was in charge of a camp so he knew he held a position of seniority.

- 21.** Mr Walker asked the witness how he knew the appellant's brother's rank when he was alive. The witness said it was because of his experience, his belt and his position. He was asked whether all ranks received training in weapons. He replied they did. He was asked how long the training lasted. He said he did not know. He was asked whether he had received weapons training. He replied that he had. He was asked how it was then that he did not know the duration of the training. He replied he had been trained for 45 days.
- 22.** Mr Nathan asked the witness what weapon he carried. He replied he had had an AK47 rifle. He was asked whether anyone outside the first three ranks was issued with a pistol. He said they were not. He confirmed that anyone with a pistol was known to be in the first three ranks. He was asked how one knew who could give orders if ranks were not known. He stated that orders were given by those in charge. One would know who was in charge even if their rank was not known. That completed the oral evidence.
- 23.** I then heard submissions. For the respondent, Mr Walker relied on the decision letter. He submitted that the appellant's involvement with the LTTE was of a very low level. He had not undergone weapons training, he had given inconsistent evidence about that and he was not involved in any armed section of the LTTE. Whilst he claimed he would be at risk because of his brother's position, he had not seen his brother since 2009. It was very unclear how the ranking system worked if ranks were not revealed until death. The appellant had given contradictory evidence about whether he had been photographed in Sri Lanka. Whilst various detentions are claimed, there was no outstanding arrest warrant and he was able to obtain a passport in his own identity in order to leave. Although claiming he was fearful, he had become involved with the TGTE albeit at a very low level. He would not be identified from the photographs at demonstrations if the authorities did not have pictures of him. He did not fall into any of the categories of GJK. He had never been charged. His support for the LTTE was at a low level and he had not had any contact with his brother since 2009. There would be no interest in him by the authorities.
- 24.** Mr Nathan relied on an internet article which indicated that there was no formal ranking system within the LTTE and that titles were only given after death. He relied on the skeleton argument and the findings of the First-tier Tribunal. He submitted there had been no challenge to the appellant's evidence of involvement with the TGTE

and the only submission on that had been that the support was of a low level. Even if that were so, it would still be known to the authorities.

- 25.** Mr Nathan submitted that the issue over fingerprinting and photographing was a red herring. The appellant would be returned with an emergency travel document and checks on him would be conducted and his photograph would need to be provided. The High Commission was known to monitor anti regime demonstrations and officials would compare his photograph to their collection of photographs of activists. The appellant would be expected to tell the truth on return. He would therefore have to disclose his involvement with the LTTE and the TGTE. The latter was a proscribed organisation. Reliance was placed on the judgment in UB [2017] EWCA Civ 85 in so far as it addressed the issue of the questioning of returnees about their activities. The appellant's background and the letter from the MP had not been challenged. The MP confirmed that the appellant had already been identified. The evidence pointed to the appellant being detained for questioning on return. Once his past activities and his support for the TGTE came to light, he would be in trouble.
- 26.** Mr Nathan referred me to passages in the COIS report. He also argued that the appellant's exit would be viewed as suspicious because he no longer had a passport to show his legal exit.
- 27.** Mr Nathan submitted that the appellant's brother was a senior ranking member. He argued that it was unusual for some one of a low level to be detained for such a long time and that suggested that his brother's rank had caused the problem. The appellant was not aware of the significance of the belt but the witness had explained this. it was not correct that the appellant had received no weapons training. In the final period of the war, the LTTE were grabbing anyone and providing minimal training. That tied in with the appellant's evidence or a short period of training.
- 28.** Mr Nathan then turned to the appellant's mental ill health. He submitted that it had been accepted that he suffered from PTSD. It should lead to a grant of leave on article 3 grounds.
- 29.** At the conclusion of the hearing I reserved my determination which I now give with reasons.
- 30. Conclusions**

- 31.** As indicated at the start of this determination, certain findings of the First-tier Tribunal have been preserved. I therefore proceed on the basis that the appellant had been involved with the LTTE to the extent that he helped to deliver supplies, that he had been previously detained and tortured, that his brother had been a member for some 14 years and had been involved in gathering intelligence, that the appellant suffered from PTSD and had travelled here on a false document.
- 32.** Whilst there was no reliance by Mr Nathan on the Presidential Guidance on Vulnerable Witnesses, I bore the medical report in mind during the course of the hearing and advised the appellant at the start that he should asked for a break if he felt uncomfortable at any point. I was also aware that the appellant's concentration may be impaired and that he might not be able to express himself coherently. I have full regard to the lower standard of proof applicable in protection appeals.
- 33.** I heard oral evidence from the appellant and his friend and fellow LTTE member Mr Paransothy. No challenge to the evidence was mounted by Mr Walker; his submissions focused on the argument that the appellant's activities for the TGTE were of a low level and that his support for the LTTE in Sri Lanka had not involved fighting and was of a basic nature. Mr Walker did, however, make submissions on the matter of the appellant's brother's rank based on the evidence of the witness. I shall deal with this matter later.
- 34.** On the basis of the evidence before me including the submissions made, I find the following. The appellant gave a detailed account of his experiences in Sri Lanka at his asylum interview and in his witness statement, and the more limited evidence he gave at his screening interview was largely consistent with that. I accept his account of how he came to be involved with the LTTE in 2008, what he did for them and that he was subjected to long periods of detention and ill treatment between 2009 and 2012 and twice in 2014. I find that the medical evidence lends weight to the claim of torture. I accept he underwent ten days of training of which two days were spent on weapons training. I accept there is some confusion about the duration of the training in the evidence but attribute this to the appellant's failure to clearly explain how the training was divided up. I place no weight on the appellant's inability to name the parts of a rifle or the oil used to clean it given the relatively short period of training and the passage of time since it was undertaken. I also accept his brother, Rathan, born in 1975 joined the LTTE around 1995 and was involved in intelligence gathering. I accept that the appellant surrendered to the authorities in May 2009 along with his brother and brother-in-law and that the appellant has not seen his brother since that day. I find that the appellant's sister is in Switzerland with her husband and has

been granted asylum there. I have seen no evidence which explains how the appellant's brother-in-law got there following his detention in 2009. I find that the appellant's parents remain in Sri Lanka. I find that there is no warrant for the appellant's arrest and that he is not on a stop list; indeed, the appellant himself has never made such a claim. I place no weight on the fact that the appellant was able to leave Sri Lanka on his own passport. Bribery and corruption are pervasive and his ability to obtain a passport and to leave using it are not indicators of a lack of interest in him. I find that the appellant's evidence as to events in Sri Lanka is broadly consistent and credible.

- 35.** The same is not the case for the evidence as to what happened after the appellant left Sri Lanka; there are inconsistencies with that part of the claim. At his asylum interview (which took place in June 2016) he claimed that he had spoken to his father after his arrival in the UK and had been told that the CID had been to the house twice asking about *his* whereabouts but that they had since stopped coming. He confirmed again later in the interview that they had *only asked about him and not about his brother*. In his witness statement, however, he claimed he spoke to them once or twice a month during his stay in Bolivia (for most of 2015) and was told the CID had been to the house making enquiries about him *and his brother*. At the hearing before the First-tier Tribunal in June 2017, he confirmed the two visits took place between December 2015 and June 2016 and that the visits had since increased in frequency. He referred only to enquiries being made about *his* whereabouts. In oral evidence the appellant claimed that he had spoken to his parents about two or three times whilst in Bolivia and that he had been told that the CID had come in search of him *and his brother*. These inconsistencies have not been explained. They should have been plain to Counsel from the evidence, and indeed the issue of CID visits to the family home was a matter flagged up in my earlier decision, but there were no attempts to resolve them. There are discrepancies between when the visits occurred, whether they began before he arrived in the UK and whilst he was in Bolivia or whether they commenced after he left and whether the authorities were interested just in him or him and his brother. I have regard to the appellant's state of mind and possible lack of concentration but these were accounts given at different times and there is no reason why he should get his account so muddled on this more recent matter and yet remain consistent about events which occurred much earlier on. I am, therefore, not satisfied that there have been visits to his home by the CID since he left Sri Lanka.
- 36.** I now turn to the evidence of the witness. I accept that he knew the appellant and his family in Sri Lanka and that they last saw each other there in March 2009. The witness claims that he joined the LTTE in 2007 and worked mainly in the kitchens. In his witness statement he claimed to have undergone two months of training whilst in oral evidence he claimed to have had 45 days of training. This

inconsistency has not been explained. Nor is it clear to me why such lengthy training, whether it be 45 days or 60 days, would be required for a person assigned kitchen duties. However, that is not crucial to the appellant's case.

- 37.** The purpose of the witness' evidence was to support a claim that the appellant's brother held a senior rank in the LTTE. This appears to have been premised on Rathan's lengthy membership; certainly, that is what was claimed in the witness statement and in oral evidence before the First-tier Tribunal. At the hearing before me, the witness claimed for the first time that he knew Rathan to be a senior member because he wore a 'big belt' and had a pistol, which only members of a higher rank were given, and also because he was in charge of a camp. He does not explain why he never mentioned these three, far more significant, matters before. Nor was it explained why he would have been aware of these matters, given that he did not work with Rathan, when the appellant was not, despite the fact that Rathan was his brother and that they had worked together in the same camp.
- 38.** I accept the evidence regarding the secrecy of the LTTE ranking system, however, this does not explain why the appellant never gave evidence at any stage of these lengthy proceedings that his brother was in charge of a camp. It is difficult to understand how the appellant would not know this given the evidence of the witness that one knew who gave the orders and who was in charge. Further, Mr Nathan's submission that the issue of senior officials wearing 'big belts' was well known only serves to reinforce my concern. If it is a matter that is so well known, then surely the appellant could be expected to know it too and, at some point, whether at his interview, in his witness statement or at one the two hearings, put it forward as part of his claim. For these reasons, I do not accept it has been established that the appellant's brother was a senior official of the LTTE.
- 39.** I have had regard to the letter from Sockalingam Yogalingam, the Deputy Minister of Sports and Community Health of the TGTE, dated 30 May 2017. This confirms that the appellant joined as a volunteer (although no date is given), attends meetings and takes an active role in organising events and public demonstrations. At the hearing before the First-tier Tribunal, the appellant maintained he had joined the TGTE in May 2016.
- 40.** There are a few difficulties with this evidence. First, the evidence about when his activities begun conflicts with that given at his asylum interview when he stated (in June 2016) that he had not been involved in any anti-government activities. Indeed, at the hearing before me, the appellant stated that he did not even know of the

existence of the TGTE at that time. I am therefore left with no reliable evidence as to when the appellant commenced his activities. Second, the evidence of Mr Yogalingam contradicts that given by the appellant. When questioned about his activities at the hearing before me, he did not claim that he organised public demonstrations. The evidence he provided was that he made tea at meetings where he also helped to organise the hall, helped with sports events, distributed leaflets and attended demonstrations.

- 41.** I have had regard to the photographs submitted by the appellant in support of the claim that he attended demonstrations. The appellant claimed these photographs covered 4-5 demonstrations however the pictures where the appellant is visible were all were plainly taken at the same event. The appellant is dressed the same way in all as are those beside him.
- 42.** This leads me to the following conclusions. I accept that there is some recent support for the TGTE but not as involved or as long term as claimed. I accept that the appellant attends and has helped out at some Sunday gatherings and sports events, that he has attended at least one demonstration and that he has participated in a campaign against genocide. I accept that although he expressed a fear of any such involvement to begin with, that he then changed his mind and found it therapeutic (as per Dr Dhumad's report).
- 43.** The only background evidence I was referred to is the respondent's Country Policy and Information Note on Sri Lanka of March 2017. No further country material was submitted for this hearing. I have had regard to the sections cited. I have also had regard to the guidance in GJ (post civil war : returnees) Sri Lanka CG [2013] UKUT 00319.
- 44.** I make the findings set out above only after having considered all the evidence before me in the round, including that which I have not specifically cited in the determination, and bearing in mind the lower standard of proof. The findings are not made in any order of priority. Based on my findings, I conclude that although there are elements of the appellant's claim and evidence that I find have been embellished and perhaps even fabricated, there is enough to satisfy me that the appellant is a person who faces a real risk of being of interest to the authorities on return.
- 45.** The unchallenged evidence is that he is from a family of LTTE supporters/members and that he himself has also been an LTTE member, albeit for a limited period. Given his three detentions, the first of which was for a three- year period, there will be a record of him and probably of his family members and their detentions. The

appellant would be returned on an emergency travel document. That will flag him up as a person of interest on return and questioning would seem inevitable. Even if his activities here for the TGTE have been exaggerated, he would be disclosing some support when giving a truthful account of his activities here. Given that the TGTE is a proscribed organisation, and given his previous lengthy detentions and his unofficial release from the last detention, I find that he would arouse interest and that detention and subsequent ill treatment would be a real risk on return. I consider that he falls into the GJ category of a person who may pose a threat to the unity of Sri Lanka. The respondent's report provides support for my conclusions (at 6.2.1, 6.3, 12.2.10 and 12.2.12). It follows that the appellant succeeds on asylum and article 3 grounds. In the circumstances, I have not considered it necessary to consider humanitarian protection or the submission that the appellant's medical conditions would of itself justify a grant of discretionary leave.

46. Decision

47. The appeal is allowed on asylum and article 3 grounds.

48. Anonymity

49. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 23 March 2018