



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/10984/2016

Appeal Number:

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19<sup>th</sup> September 2018**

**Decision and Reasons  
Promulgated  
On 22<sup>nd</sup> October 2018**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**WKARDC  
(Anonymity Direction Made)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Hayward, instructed by Montecristo LLP  
Solicitors

For the Respondent: Mr P Deller, Senior Home Office Presenting  
Officer

**DECISION AND REASONS**

1. The appellant is a national of Sri Lanka born on 9<sup>th</sup> December 1986, and he was granted permission to appeal against a decision of First-tier Tribunal Judge R L Walker, promulgated on 16<sup>th</sup> May 2018, dismissing the appellant's appeal against the decision of the Secretary of State dated 23<sup>rd</sup> September 2018

refusing his asylum, humanitarian protection and human rights (ECHR) claim.

2. The appellant is Sinhalese and he entered the United Kingdom as a student on 8<sup>th</sup> October 2007. He applied for further leave in October 2010 which was granted but his further application was refused, and he became appeal rights exhausted on the 7<sup>th</sup> August 2015. He made a further application on the basis of his family and private life, which was refused.
3. On 15<sup>th</sup> January 2016 he claimed asylum. He asserted his problems in Sri Lanka stemmed from an imputed political opinion and he feared the Sri Lankan government because his stepfather was accused of working for the LTTE while working as an intelligence officer for the Sri Lankan police. The stepfather was used to infiltrate the LTTE and whilst doing so defected. The appellant claimed he was at risk from the Sri Lankan authorities because of his association with his stepfather.
4. The respondent did not accept that he was the son of his stepfather and his mother, or related as claimed or his parents were wanted by the Sri Lanka authorities.
5. The appeal against the respondent's decision was refused by the first-tier Tribunal Judge but nonetheless, he made the following findings
  - (i) the DNA report showed a mother (wife of the stepfather) and son (appellant) relationship.
  - (ii) a previous first-tier Tribunal judge's decision on the stepfather's appeal hearing on 27 April 2011 found that the appellant's stepfather was the subject of arrest and detention on suspicion of involvement with the LTTE. The judge stated

*'I also accept that the Sri Lankan authorities would have a very special interest in the appellant's stepfather as he was a Sinhalese police officer working in intelligence and therefore with a very detailed knowledge of the working procedures and a person who would be capable of providing very damaging information to the enemies of that state. As well as being considered a traitor, I accept that the Sri Lankan authorities would be very interested in deed to trace him or any member of his family'*
  - (iii) the appellant's account of being detained tortured and taken to the church was rejected. It was not accepted that the attackers would be deterred by local residents who were said to have forced the abductors to flee from the church which enabled the appellant to escape. No information about the priest said to have helped him had been provided and this undermined the appellant's account.

(iv) the delay in claiming asylum and the failure to claim in his appeal hearing of 2015 damaged the appellant's credibility. He had been living with his stepfather and his mother's 2007 and would have been aware of how to claim asylum.

(v) it was strange that the step-father and mother had no contact with their children in Sri Lanka, likewise the appellant had no contact with his siblings.

(vi) the judge refused to accept the appellant's claim of the inconsistencies in the VAF in 2007 because it was undertaken by an agent.

(vii) that the appellant was able to leave Sri Lanka via the international airport and without experiencing any problems damaged his claim.

(viii) because the appellant was not found credible, no weight should be attached to the country expert report from Dr Gil Daryn

6. On these findings, the judge dismissed the appeal because he found the appellant did not fall within the categories identified in **GJ and others (post-civil war: returnees) Sri Lanka CG** [2013] UKUT 00319 (IAC) as being at risk.

### **Application for Permission to Appeal**

7. The application for permission to appeal contended that the determination contained material errors of law specifically
  - (i) the judge irrationally relied upon the rejection of the appellant's account of abduction and escape to apparently resile from his own conclusions that the relatives of the appellant's step father were at risk in Sri Lanka.
  - (ii) in the alternative the judge irrationally failed to have regard to his own clear finding that the appellant would be at risk of special interest to the Sri Lankan authorities on return.
8. Permission to appeal was granted by Judge Landes who stated that although the judge found against the appellant on a number of credibility issues that did not explain why the appellant might not be at risk if the authorities wanted to trace the step father's family. There was either an inconsistency or the judge had failed to explain adequately the circumstances that would make the appellant not to be at risk.

### **The Hearing**

9. At the hearing, Mr Haywood identified the unusual factors in the case, not least, that the appellant was Sinhalese, the First-tier Tribunal had promulgated a decision in relation to the stepfather granting him article 3 status owing to his position as a senior police officer in the Sri Lankan government and his

defection. He was excluded from protection under the Refugee Convention because of his activities in Sri Lanka.

- 10.** I was handed **MP v SSHD** [2014] EWCA Civ 829 and **ME v SSHD** [2018] EWCA Civ 1486 on which Mr Haywood relied. There was an undischarged interest in the father who would be considered a traitor and that fact, the first-tier Tribunal judge, in this appeal, accepted. That the judge did not accept an incident of abduction or the history of the contact with the family over time or the delay in the claim, did not alter the findings of the judge in relation to the authorities' interest family members of the stepfather. The judge's approach was inconsistent with his findings or alternatively, he failed to explain adequately why the appellant would not be at risk on return.
- 11.** I was also taken to the Country Policy and Information Note on Sri Lanka dated March 2017 specifically section 12 which dealt with returns of failed asylum seekers to Sri Lanka. This highlighted the 'stop' and 'watch' lists maintained by the Sri Lankan authorities and the treatment on arrival.
- 12.** Mr Deller very candidly accepted that there was an error of law the decision. He also noted that the decision also appeared to be contrary to **Mibanga** [2005] EWCA Civ 367, because the judge had failed to assess credibility in the round with the assistance of the expert report. He accepted that in view of the findings of the judge, and which were not challenged by the Secretary of State, it would be difficult to find against the appellant.

### **Conclusions**

- 13.** The grounds of challenge to the determination are made out. There is an error of law as conceded by Mr Deller, in the decision. The judge did not heed his own findings set out at 4(i) and (ii) above, and, proceeded without explaining why the appellant would not be at risk, bearing in mind the findings of the previous tribunal that the father was a former intelligence officer who had defected. As the judge found, that would be considered traitorous.
- 14.** The criticisms of the appellant's credibility go no way to diminishing the finding in relation to the risk to the stepfather and his relations of which the appellant was clearly an immediate one. In relation to the abduction, it would appear that the stepfather's experience (he came to the UK in 2004) pre-dated the appellant's claimed abduction in 2007 but this is not referenced in the decision of the first-tier Tribunal judge. The judge proceeded to make his findings without any reference to this.

**15. GJ and others (post-civil war: returnees) Sri Lanka CG**

[2013] UKUT 00319 (IAC) and confirmed by the Court of Appeal in **MP**, accepts at (4) of the head note that if a person is detained by the Sri Lankan security services, there remains a real risk of ill-treatment or harm as follows:

*(4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.*

*(5) 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.*

*(6) 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.*

**16.** At 7 of the head note, the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka whether in detention or otherwise include

(7)

*'(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'.*

...

*(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.*

**17.** The sophistication of surveillance and the relevance of past history (which for these purposes will include the step father) are expanded at head note 8:

*(8) 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.*

- 18.** What is of concern to the government is where a person is considered to be involved in a possible resurgence of the LTTE or contacting the active diaspora. **GJ** is quite clear that it is a question of fact in each case. From paragraph 237 and 290 of GJ it was accepted that UNHCR guidelines might be taken into account and those *'with more elaborate links to the LTTE'* can vary but may include *'persons with family links who are dependent on or otherwise closely related to persons with the above profiles'*.
- 19.** The profile of someone who has defected to the LTTE, particularly with the profile of the appellant stepfather a former intelligence officer, is clearly likely to be of interest. Therefore, as a starting point, I accept that the appellant has links, as the stepson of a former Sri Lankan police officer who it was accepted by the First-tier Tribunal may well be considered a traitor, and these links may be classified as *"more elaborate"* on an objective basis.
- 20.** The report of Dr Gil Daryn dated 23<sup>rd</sup> April 2018 confirmed at paragraph that *'People who are suspected of treason and cooperation with the LTTE were, and probably still are expected to be punished in Sri Lanka. She recorded that 'it may be plausible to expect that he still remains on the list of wanted people (be it stop list or any other) from the time of the conflict'. She further considered that 'it may well be expected that those who have defected and betrayed their country (as the appellant's step father appears to be suspected by the authorities), are not yet forgiven'. She added that the although the human rights record had improved it was 'still tainted by serious human right[s] violations, particularly towards those who are suspected of any past association with the LTTE. This certainly makes the scenario in which the appellant will be persecuted in lieu of his stepfather, plausible', (paragraph 18). The expert added that a recent UN report observed that returnees who had been refused asylum in other countries faced increased security surveillance, harassment and detention.*
- 21.** As indicated in the Country Policy and Information Note: Sri Lanka: Tamil Separatism at 12.2.7 and 12.2.10 the appellant was likely to be questioned because *'most Sri Lankan returnees... are questioned (usually at the airport) upon return'*. Rather, the Immigration and Refugee Board of Canada reported in February 2015 that: *'Sources report that individuals returning from abroad are particularly subject to screening'*. The appellant would not be expected to lie under any such interrogation.

- 22.** The appellant will be returning from London and has a stepfather living in the United Kingdom with whom he has lived for some years who has been granted refugee status and who has been accepted as of '*active interest to the authorities*' and there is nothing to conclude that this interest has diminished. In **ME**, as Mr Hayward submitted, the appellant's claim was allowed despite the detention taken place long after the cessation of hostilities. The stepfather's role is particularly important. I can appreciate that the interest in someone with a lesser position may have abated but that is not what was accepted or found by the First-tier Tribunal. As the judge found, the interest would extend to the appellant.
- 23.** Despite the separate credibility findings, the discrete finding with regard to the stepfather and the relationship, which I preserve, is sufficient, to confirm that the father is at real risk of serious harm should he return. That the appellant was the son of the woman married to the former police officer and whom had been granted refugee status was not disputed by the Secretary of State in the hearing before me.
- 24.** Given the close connection that the appellant has with his stepfather with whom he has lived in the United Kingdom some years, and from whence he will return, I consider there does remain a real risk that he would be of interest on return. I accept he has no previous role within the LTTE, but owing to his links and connections, I find he would be at real risk and return of detention. This places him in accordance with **GJ** squarely at risk of ill-treatment on return. I repeat nothing in the findings of the judge undermine those particular findings. The appellant's case was that he assisted in his removal by an agent. Certainly, the findings of not accepting one incident of a claimed abduction and criticism of delay in the claim, do not undermine the force of the emphatic and discrete findings in relation to the stepfather and family members. The relevance of contact between the step father and mother and children/siblings in Sri Lanka do not touch on the fundamental point and far from being not 'natural' may even enhance it
- 25.** I therefore allow the appeal on asylum grounds and under article 3. As I have allowed his appeal in relation to asylum I do not consider humanitarian protection relevant.
- 26.** In view of the very significant difficulties the appellant would experience and return to Sri Lanka I found that it would be disproportionate to remove him, and I therefore also allow the appeal on article 8 grounds.
- 27.** The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007), save for the

preserved findings 4(i) and (ii) and remake the decision under section 12(2) (b) (ii) of the TCE 2007. For the reasons given above I allow the appellant's appeal.

**Order**

I allow the appeal under the Refugee Convention

I allow the appeal on human rights grounds (Article 3 and Article 8).

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Helen Rimington

Date: 12<sup>th</sup> October 2018

Upper Tribunal Judge Rimington