



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

Appeal Number: PA/11785/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> October 2018**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> October 2018**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**S M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr N Paramjorthy (instructed by A & P Solicitors)  
For the Respondent: Mr T Melvin (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal, with permission, by the Appellant who had sought asylum in the United Kingdom on the basis that he would be at risk on return to Sri Lanka due to his links with the LTTE.
2. The First-tier Tribunal set out the detail of the Appellant's claim and noted that there was a medical report dealing with the Appellant's scarring. The Judge concluded, based on that report, that at some point prior to April 2017 the Appellant had received beatings which had led to injuries. It was not possible to say, based on the scarring, whether these happened during the 2009-2013 period of claimed torture or the 2016 period.

3. The Judge noted that before the Tribunal was the determination, dated 2nd February 2016 dealing with the Appellant's brother's claim for asylum. The First-tier Tribunal concluded that he had been a member of LTTE, his account was accepted by the Judge but the Judge concluded that that, even taken together with his attendance at a Heroes Day celebration in the UK, would not come to the attention of the authorities. However, he was at risk on return because he had escaped detention in 2013 and accordingly his release was illegitimate and he would not be recorded as being of no further interest on return.
4. The Judge noted that there was no mention in the brother's evidence of the current Appellant and his claimed problems and found it highly implausible that, if the present Appellant had been detained as he claimed and fled to India, this would not have been mentioned by his brother, particularly as he relied on the family's LTTE connections.
5. In terms of this Appellant the Judge found he had been inconsistent and vague in his account regarding the time he spent in India and subsequent travel to Hungary and claim for asylum there.
6. The Judge found the Appellant had made no attempt to claim asylum in Hungary because he wanted to come to the UK for economic reasons. The Judge found him not credible in his evidence about his arrest when he returned to Sri Lanka from Hungary in 2016.
7. The Judge also found the Appellant had been dishonest in parts of his evidence where he had claimed not to have discussed his claim for asylum with his brother Whereas in contrast his brother said that he had explained his own case to the Appellant and had given him the determination to read.
8. At paragraph 89 the First-tier Tribunal Judge concluded that the Appellant was reasonably likely to have been a member of the LTTE at some period during the war in Sri Lanka before 2009. The Judge did so based on the Appellant's family background, as established by his brother's determination. That evidence, combined with the findings of the medical report indicating that he had sustained injuries at some point, led the Judge to conclude that it was reasonably likely that for a period the Appellant had fought with the LTTE and sustained beatings and that it was reasonably likely that those were at the hands of the authorities.
9. It was found in the brother's case, that his membership of the LTTE, being arrested subsequently in Sri Lanka and having family LTTE affiliations was not sufficient to secure asylum. The Judge concluded that this Appellant therefore, having been aware of that sought to contrive an account of interest in him by the authorities which post-dated the end of the war. The Judge concluded at paragraph 93 that the Appellant was an economic migrant to the UK who arrived here having been unsuccessful in establishing himself economically in either India or Hungary. She did not

find it reasonably likely that he had suffered a long period of detention and release.

10. Having so found the Judge then went on to consider the Appellant's activities in the UK since his arrival. She noted that in his asylum interview, conducted on 12th October 2017, he indicated he had attended only two events in the UK, was not working for the LTTE in the UK and was involved with no Tamil organisations or groups. He did not attend meetings in the UK. He had attended a Martyrs' Day Commemoration in November 2017 but the Judge found this to be an attempt to bolster his asylum claim. The Judge noted he had produced a letter from the TGTE dated 11th December 2017 which simply said that he is an activist. The letter however contained no details of any role carried out by him and contained much generic information about the aims of TGTE which had no direct relevance to the Appellant. The Judge attached little weight to that document and dismissed the appeal.

### **The Error of Law**

11. The grounds upon which permission to appeal to the Upper Tribunal was granted asserted that the Judge had erred in failing to consider a document from the ICPPG which indicated that the Appellant had given evidence under oath to be submitted to the UN. It was also asserted that in assessing the extent of the Appellant's activities in the UK and whether they would put him at risk the First-tier Tribunal had erred in failing to have regard to evidence before, her including his Tamil Eelam ID card issued by the TGTE and the photographic evidence submitted when assessing the extent of his activities in the UK and how these would be perceived. It is asserted that this was particularly relevant as the TGTE is a proscribed organisation in Sri Lanka.
12. The matter first came before me in May 2018 when I was tasked with deciding whether the First-tier Tribunal had made an error of law and if so whether and to what extent the Decision and Reasons should be set aside.
13. I did not find the Judge's failure to consider the letter from ICPPG to be a material error because the letter did not support the Appellant's case. It did not indicate that he had given a statement that had in fact been submitted to the UN.
14. I did however find that the First-tier Tribunal had erred in the assessment of risk to the Appellant as result of his membership of and activities with TGTE in the UK and in particular in failing to consider that TGTE is a proscribed organisation and whether his membership and activities for that organisation, taken together with his links to the LTTE would put him at risk on return.
15. I preserved the remaining findings of the First-tier Tribunal's decision and adjourned the matter to a resumed hearing to consider that single issue, namely whether his membership of and activities with the TGTE in the UK,

taken together with his former links to the LTTE, would put him at risk on return. I directed the Appellant's representatives to file and serve a complete bundle of all the evidence relied upon dealing with that issue by 10th July 2018.

16. The matter next came before me on 17<sup>th</sup> July 2018 when Mr Paramjorthy confessed to not having notified his instructing solicitors as to what occurred on the last occasion and the need to collate and file evidence. That failure was compounded by the Tribunal having listed the matter, not as a resumed hearing but as an initial hearing thus not raising alarm bells with the representatives. The matter was thus adjourned by consent to 14th August 2018.
17. On 14th August 2018 the matter had to be adjourned once again because the bundle had not been served in accordance with directions and in fact was only received by the Home Office on the morning of the hearing. Additionally, there was a suggestion the Upper Tribunal was about to hear a country guidance case dealing with the TGTE and enquiries needed to be made with regard to that.
18. The matter finally came before me for a resumed hearing on 15th October 2018. By that time, I had established that, although there is a country guidance case in the system, it is unlikely to be heard for at least nine months. On that basis both representatives agreed that I should proceed to deal with the case.

### **The New Evidence**

19. As mentioned above the Appellant had filed a supplementary bundle of evidence concerning his TGTE activities in the UK.
20. The evidence included a letter dated 17th July 2018 from the Office of the Prime Minister of the Transnational Government of Tamil Eelam (TGTE). That letter indicates that it is the TGTE's policy to validate volunteer activists' involvement with the TGTE only if that involvement is for periods longer than three months.
21. The letter also indicates that it is TGTE policy not to authorise any elected members, Ministers of Cabinet or Deputy Ministers to provide oral testimony in courts or Tribunal's. They do not believe that such persons are qualified to provide an expert opinion on the nature of the risks to be faced by activists upon return to Sri Lanka.
22. There is a further letter from the Member of Parliament (UK section) TGTE dated 15th July 2018 referring to the Appellant. That letter confirms that he has been working as an activist for TGTE since September 2017. It states that he was one of the victims of war crimes in Sri Lanka and joined as a volunteer in the TGTE in support of creating a free Tamil Eelam in Sri Lanka. It states that the Appellant has attended many meetings and many events and public demonstrations organised by TGTE.

It states that he is part of the media team. It lists the following events that have been organised by the TGTE to which he has contributed his time, namely Mullivaical Remembrance Day as cycling coordinator, participating in the Great Plastic Pickup by TGTE, protesting in front of Downing Street organised by TGTE, Harvest Festival and Sports, a Women's Day Rally and Human Rights Day.

23. It goes on to say that he contributes to the campaign against the ongoing genocide in Sri Lanka and that he expresses his political aspirations publicly. It also confirms that most of the photographs that are taken at public events organised by the TGTE are published in the media such as websites, Sri Lankan newspapers and television.
24. There is then a copy of the TGTE's Pongal Festival brochure which contains the Appellant's name as part of the organising team. There are then letters from Andrew Selous MP, addressed to the Appellant in response to points raised by the Appellant regarding human rights in Sri Lanka and enclosing the response of the Minister of State for Asia and the Pacific. That response indicates the U.K.'s support of the UN Human Rights Council which is working with Sri Lanka to improve human rights and also indicates that the United Kingdom has made a long-term commitment to improving human rights in Sri Lanka and is dedicated to supporting the rebuilding of the country after three decades of civil conflict and sets out steps that have been taken. What that letter does not indicate is particular concerns over ongoing human rights abuses; rather it indicates that matters are improving.
25. There is then a copy of the Appellant's TGTE card indicating that he is a member of the TGTE Ministry of Sports and Community Health section.
26. There are then a number of photographs showing the Appellant at a number of events. The first is it a Pongal Day festival celebrated on 20th January 2018, one at a protest against Sri Lanka's Independence Day in front of 10 Downing Street on 4th February 2018, another at a protest demanding that the British government should arrest a war criminal, organised by the TGTE on 9th February 2018. There is a photograph of the Appellant at International Women's Day rally in Trafalgar Square, London in March 2018 wearing a high visibility vest indicating membership of TGTE. There are photographs of a demonstration in support of the release of Tamil prisoners of war in front of 10 Downing Street on 1st April 2018. There are photographs of the Appellant attending a cycle rally. There is a photograph of a TGTE MP with the Appellant presenting Andrew Selous MP with a petition to the Foreign & Commonwealth Office. There is a photograph of the Appellant at Black Tiger Day at the TGTE office on 8th July 2018 and at various other events including the launch of TGTE's TV on 22nd July 2018.

## **Submissions**

27. Mr Melvin submitted that the identity card shown in the bundle indicated that the Appellant was involved only with the Ministry of Sports Community Health, not related to political activities but rather involved only in the organisation of sporting events. He has been a member only for the last 12 months. Although the Appellant claims his family have been threatened on account of his diaspora activities, that evidence was found to be not credible in the First-tier Tribunal. He submitted there was little evidence of any key role in TGTE, no evidence of fundraising or any suggestion of separatist activities. Mr Melvin submitted there was no family history of LTTE links and no evidence of past persecution for the Appellant. He submitted there was no evidence of media activities or any suggestion that the Appellant had addressed any of the rallies. He argued the Appellant had simply used those occasions as photo opportunities in order to bolster his asylum claim. He also pointed out there was no attendance by anyone at the hearing from TGTE who could support the Appellant's role.
28. He submitted, given what is known about the sophisticated surveillance techniques operated by the Sri Lankan government, they would be aware of the Appellant's role which was non-political. He submitted the letters from the TGTE gave little evidence about the Appellant's activities and the demonstrations that he has attended relate to historic matters concerning Tamils in Sri Lanka rather than diaspora separatist activities.
29. He submitted that the Appellant is nothing more than a low-level member of the TGTE and the photographs do not put him in a risk category.
30. Mr Paramjorthy, acknowledging that there are not many positive credibility findings in the first Tribunal's Decision and Reasons, did point out that the Judge had found it reasonably likely the Appellant had been a member of the LTTE and fought during the war. He argued that if the Appellant had formerly been an LTTE member he was clearly committed to a separate Tamil state and pointed to the Appellant's attendance at various TGTE events in the UK.
31. With regard to the Appellant's ID card that Mr Melvin had referred to, he pointed to the other ID card, contained in the original bundle, which was the full TGTE membership card clearly indicating commitment to a separate Tamil state. The sports card is additional to that.
32. He submitted that the decision to be made is what would happen to the Appellant at the airport on return. It is the case that there is family affiliation to the LTTE; his brother has refugee status on that basis and the Appellant himself has been found to have been a member in the past. The evidence before the Upper Tribunal in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) indicates that Appellants are questioned upon return about what they have been doing in the United Kingdom. The Appellant cannot be expected to lie and so would have to reveal his membership of a proscribed organisation. The Appellant in this case has family affiliations with the LTTE in terms of one brother being a

recognised refugee and his own membership and added to that he is a member of TGTE which is a proscribed organisation.

33. The country guidance case does not assist as to the likely fate of members of TGTE in Sri Lanka.
34. At this point Mr Melvin referred to the fact that, notwithstanding the family history with the LTTE , the Appellant had returned without difficulties in 2016.

### **My Findings**

35. As to the latter point made by Mr Melvin, the Appellant's TGTE activities arose only in late 2017; after his return to Sri Lanka. It is true that the Appellant has clearly organised and attended a great many events that have nothing to do with separatist activities and are sporting or social events. However, that is not the whole picture. The photograph of his handing a petition to an MP is clearly political. Further he stands out from others attending events by wearing a blue vest with the TGTE logo, suggesting he has an official role and is not simply an attendee.
36. The two ID cards show him to be a full member of the TGTE.
37. My findings, based on the evidence in the original bundle and the supplementary bundle and the submissions of both representatives are that the Appellant has indeed involved himself with the TGTE for no reason other than to add weight to what is otherwise a hopeless asylum claim. However, it is now trite law that a person's motivation for sur place activity does not detract from the risk that those activities might cause for an Appellant on return. The Appellant's former LTTE membership, and his family connections to the LTTE would not place him at risk on return. However, when those matters are added to his activities, and very public activities, with the TGTE, a proscribed organisation, I am unable to be satisfied that he would be safe from persecution on return. I bear in mind the low standard of proof in protection cases and if I am unable to find that he would be safe on return as a member of a proscribed organisation as well as a former LTTE fighter then it follows that it is reasonably likely that he would be at risk of persecution on return. The appeal to the Tribunal is allowed.

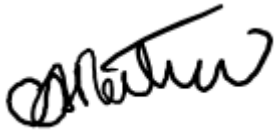
### **Notice of Decision**

The appeal to the Upper Tribunal is allowed on protection grounds

### **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 their 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.

A handwritten signature in black ink, appearing to read 'Martin', written in a cursive style.

Signed  
2018

Date 16th October

Upper Tribunal Judge Martin