



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/06293/2014
AA/06291/2014
AA/06295/2014

THE IMMIGRATION ACTS

Heard at Field House
On 14th May 2019

Decision & Reasons Promulgated
On: 15th July 2019

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

SP + 2

AS

PS

(anonymity order made)

Appellants

And

Secretary of State for the Home Department

Respondent

For the Appellant:
For the Respondent:

Mr Malik, Counsel instructed by Vasuki Solicitors
Mr Melvin, Senior Home Office Presenting Officer

DECISION and REASONS

1. The lead Appellant SP is a national of Sri Lanka born in 1976. His dependents are two of his minor children. The second Appellant AS is his wife born in 1983, and the third, PS, is his minor child born in 2008. They appeal with permission the

decision of the First-tier Tribunal (Judge Garbett) to dismiss their linked protection appeals.

2. The First-tier Tribunal dismissed the appeal because it did not accept that the (lead) Appellant currently faced a well-founded fear of persecution in Sri Lanka. The Appellant appealed on various grounds, amongst them criticisms of the Tribunal's approach to the facts, and to its assessment of his *sur place* political activity. The Appellant was refused permission to appeal by the First-tier Tribunal, then by the Upper Tribunal. He applied to *Cart* judicially review the latter decision; permission to do so was refused by Mrs Justice Cheema-Grubb on the 7th March 2016. The Appellant persisted and on the 27th May 2016 Lord Justice Irwin granted him permission, upon renewed application, to judicially review the decision of the Upper Tribunal. The matter was settled by consent before the Court of Appeal, with an order being sealed by Master Meacher on the 1st May 2018. The 'Statement of Reasons' makes clear that Lord Justice Irwin granted permission on limited grounds relating to one issue: the Appellant's claimed involvement with banned Tamil diaspora organisation the 'Transnational Government of Tamil Eelam' (TGTE).
3. The First-tier Tribunal had heard evidence to the effect that since he came to live in this country the lead Appellant had become involved with the activities of this group. Paragraph 37 of the decision reads as follows:

"As regards the appellant's 'sur place' activities, these are limited. I accept that he has become involved in the LGTE (Transnational Government of Tamil Eelam), which is a political organisation formed to win the freedom of the Tamil people, with the aim of creating Tamil Eelam, a state in the North and East provinces of Sri Lanka. The appellant's evidence is that he attends their meetings; has attended one demonstration on 18 May 2014 and attended the Martyrs Day celebration in London on 27 November 2014. He has also distributed leaflets in Coventry on two occasions. He has not supplied any photographs of his attendance at these events; details of other attendees or meeting agendas. He has provided no evidence of media or internet coverage or evidence that these activities would have come to the attention of the Sri Lankan authorities. I find that any 'sur place' activities that the appellant has been involved in are low level and not at a level that would put the appellant at risk on return to Sri Lanka"
4. Nothing arises from the First-tier Tribunal's description of the group as the 'LGTE': it is accepted that this is a typing error and that the determination was here referring to the TGTE. The Tribunal goes on from this point in the determination to find no risk arising, having applied the risk categories in the extant country guidance of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).
5. The point identified in the grounds was that this risk assessment was conducted in the absence of the relevant country background information. In granting permission Lord Justice Irwin found it possible that information in the public

domain about how the TGTE are perceived by the Sri Lankan authorities might have made a difference to the outcome of this appeal. Specifically, the Respondent failed to provide the Tribunal with evidence indicating that the TGTE are a proscribed organisation: UB (Sri Lanka) v Secretary of State for the Home Department [2017] EWCA Civ 65.

Error of Law

6. At a hearing before me on the 18th March 2019 Mr Melvin submitted that the findings were qualified, the Tribunal having noted, for instance, a lack of corroborative evidence about the Appellant having attended protests etc. Whilst I would agree that the Tribunal does appear to draw some negative inference from the absence of such evidence it is plain from the second sentence of the paragraph that the *sur place* activity is accepted: that is clearly how the Court of Appeal read those findings. Mr Melvin further submitted that it was open to the Tribunal to conclude that these limited activities were not capable of creating a risk. In the final analysis that may well be correct, but the point made – and accepted – in the Court of Appeal is that without the relevant country background material this risk assessment was incomplete. It must therefore be remade.
7. I was however not persuaded that it is open to me to revisit the remaining grounds originally pleaded. That is because of the limited terms in which Lord Justice Irwin granted permission on judicial review application.

The Re-Made Decision

8. At the resumed hearing on the 14th May 2019 I heard live evidence from the Appellant. He was called in order to update the evidence on his involvement in the TGTE. That was because the evidence before the First-tier Tribunal had been based on a witness statement prepared and signed in 2014. Therein the Appellant stated that he has been a volunteer for the TGTE since October 2013, attending monthly meetings, annual ‘Martyr’s day’ rallies on the 27th November and in 2014 he had also attended a protest outside Downing St.
9. It was the Appellant’s evidence that this level of involvement has continued to date. He has attended Martyr’s Day meetings every year in November at the Excel Exhibition hall in Stratford, London. There are normally about 200 people at these events. He confirmed that there is usually a media presence at these rallies. He knows this because he can see cameras, TV crews etc. He therefore assumes that the events are reported on, but he has not seen the coverage himself. The Appellant stated that he does not simply attend these events. He goes to the hall beforehand and helps set out the chairs and anything else that needs doing. He travels from Coventry with about 50-60 other attendees. When the TGTE held its

elections in April of this year the Appellant participated by voting, and shortly before the election distributed leaflets in Coventry. This was the first thing he had done for a while because the TGTE were going through some internal issues and so had not been very active for a few years.

10. In response to Mr Melvin's questions the Appellant confirmed that he is a member of the TGTE. He stated that to his knowledge they are involved in organising the events he has described but he could not explain how he knows that to be the case. Asked about his attendance at the various meetings the Appellant was unable to point to any evidence that he had been there, such as agendas, minutes, or photos. Nor were there any witnesses in attendance who would be able to confirm that he had been there.
11. The Appellant stated that the TGTE are not in Sri Lanka because it is too dangerous for them there. If he were to be returned to Sri Lanka he would carry on supporting them but he could not do so publicly. He would maintain his commitment by staying in contact with the organisation here.
12. Mr Malik began his submissions by pointing to the Respondent's own Country Policy and Information Note on Sri Lankan Tamils: the June 2017 publication *Tamil Separatism*. At paragraph 6.3.1 this CPIN states that eight organisations 'remain proscribed' by the Government of Sri Lanka. A hyperlink to the Sri Lankan government gazette shows that since the 25th February 2014 the Transnational Government of Tamil Eelam has been banned, for "terrorism related activities and financing terrorism". This was of course the information that sufficiently concerned the Court of Appeal to remit UB's case (UB v Secretary of State for the Home Department [2017] EWCA Civ 85) to the Upper Tribunal. That, and the British High Commission letter that was at that time appended to the current version of the guidance:

"Proscribed Terrorist Groups

On 1 April 2014, the government of Sri Lanka announced the designation of 16 Tamil Diaspora organisations and 424 individuals under the UN Security Council resolution 1373 on counter-terrorism. The order was issued by the Secretary of Defence. The government asserts that this action has been taken to stop attempts to revive the LTTE. The BHC [i.e. British High Commission] has asked the government of Sri Lanka to provide evidence to support this decision.

Among the organisations proscribed are the Transnational Government of Tamil Eelam (TGTE) and the UK-based Global Tamil Forum (GTF) and British Tamil Forum (BTF). When making the announcement on 1 April, Brigadier Ruwan Wanigasooriya said that individuals belonging to these organisations would face arrest under anti-terrorism laws ... [T]o date, there have been no known arrests based on membership of one of the newly proscribed groups."

13. Mr Malik submitted that nothing had changed since the decision in UB. The TGTE remained banned. There was nothing to indicate that Brigadier Wanigasooriya, nor anyone else in the Sri Lankan security apparatus, had changed their minds. The Appellant has been involved with this group since 2013. He has attended public events and he has shown his commitment to their cause, which is, ultimately, an independent Tamil State. Given that this is the goal, it is hard to see how the Sri Lankan authorities could do otherwise than pursue members of the TGTE: in the language of GJ they are concerned with undermining the unitary integrity of the state of Sri Lanka.
14. Mr Melvin asked me to look with anxious scrutiny at the evidence in this case. Although the First-tier Tribunal had accepted that there was some *sur place* activity it is clear that it is of the lowest level. It had to be assessed in the context of the Tribunal's other, preserved findings that the historical claim of support for the LTTE was devoid of credibility. At its highest the Appellant's evidence is that he has been to some public meetings. He has had no particular involvement in them, and unlike UB he has not appeared in photographs online holding banners etc. There is not even any evidence that these events have any connection to the TGTE. Whilst it is true that the Government of Sri Lanka have sophisticated intelligence networks operating in the diaspora there is absolutely nothing in the behaviour of this man that might give them reason to think he is actually committed to the cause of Tamil separatism. Nor is there any reason to believe that he would be asked any questions about his support for the TGTE upon return to Sri Lanka. On that basis the Secretary of State invited me to dismiss the appeal.
15. I start with recording some findings of fact:
 - i) The Appellant is accepted to be a Tamil, originally from Jaffna. He lived there from his birth in 1976 to 1991 when his family moved to India;
 - ii) The Appellant returned to Sri Lanka to work from 2003 to 2005 and until he came as a student to the United Kingdom in 2011 he was back living in India;
 - iii) He has therefore spent long periods away from Sri Lanka;
 - iv) The Appellant claimed to have had some association with the LTTE whilst living in India and to have been imprisoned upon return to Sri Lanka as a result. Judge Garbett's undisturbed finding was that this was all untrue;
 - v) Judge Garbett accepted that the Appellant has, since 2013, undertaken some low-level political activism in that he has attended meetings organised by the TGTE in the United Kingdom. I find that assessment to be consistent with the evidence before me which was that he attends approximately two events per year;
 - vi) Whilst I am prepared to accept that as a Tamil the Appellant is likely to have some sympathy towards the Tamil cause, there was nothing before me to indicate that such sympathy has evolved into a political opinion held with any real conviction. The Appellant was, for instance, unable to give any

explanation as to why the TGTE has been – in his words – “not very active for 3 years”, beyond saying “I don’t know exactly – internal matters”. He did not express, either in written or oral evidence any detailed explanation as to why he wishes to support the TGTE. He produced no literature, and did not call any witnesses who could corroborate his claim to hold a political opinion antithetical to the unity of the state of Sri Lanka.

16. I now consider those facts against the country background material. In GJ the Tribunal identified a number of groups still at risk of harm in post-conflict Sri Lanka. For the purpose of this appeal the relevant country guidance remains:

“(1) This determination replaces all existing country guidance on Sri Lanka.

(2) 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.

(3) 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.

(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.

(7) 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.*

(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.*

(9) *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. It was Mr Malik's case that it was reasonably likely that the Appellant fell within the fourth 'risk category' identified at paragraph 7 of the headnote:

"(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."

18. The Appellant has not demonstrated, with reference to his 'historical' account, that there are any extant court orders or arrest warrants out against him. Applying the guidance in GJ it is therefore difficult to see how or why his name would appear

on a 'watch' or 'stop' list. I must however consider whether it is reasonably likely that his name would have been placed on such a list as a result of his attendance at TGTE events in this country.

19. The Appellant has, by his own admission, played a very minor role in the TGTE. He has attended approximately two events per year. He is not aware that his presence, or image, have been recorded. Given that he has had no previous involvement with Tamil politics there is no reason to believe that the Sri Lankan security services have connected him to any separatist activity. If there were informants at such meetings it is not reasonably likely that they would know his name, or identify him as an active participant, given that he had no involvement beyond setting out chairs and being one of approximately 200 attendees. I am accordingly not satisfied that there is a real risk that he has been so identified, or that his name would as a result have been placed on any 'list'.
20. I must consider a third possibility. In UB the Court of Appeal were concerned with the potential risk arising from questioning on arrival at the airport in Colombo. The letter from the British High Commission stated that people being deported "will always be questioned about their overseas activities, including whether they have been involved in one of the proscribed organisations". That being the advice of the British High Commission, I see no reason to reject it. I accept that the Appellant is reasonably likely to be questioned on arrival in Colombo, itself a likelihood in this case given his long history of absence from Sri Lanka. It is course trite asylum law that the Appellant cannot be expected to lie: HJ (Iran) (FC) v Secretary of State for the Home Department [2010] UKSC 31, RT (Zimbabwe) v Secretary of State for the Home Department [2012] UKSC 38. He would have to tell the officer asking the questions that he has indeed since 2013 been a supporter of the TGTE, attending events in London and elsewhere in the United Kingdom. The question is whether that officer would, as a result, be reasonably likely to transfer the Appellant to detention, where, it is accepted, there is a real risk of ill-treatment.
21. This is a finely balanced case. If the Appellant is telling the truth he could tell the officer that he is not particularly interested in politics, or in the TGTE. His involvement has been minimal, and in the main confined to marking Martyr's Day, in common with many tens of thousands of Tamils worldwide. Given that the Sri Lankan security operation is now "intelligence led" that might be sufficient to persuade the officer that this man is no threat to the unitary integrity of the state of Sri Lanka, and the Appellant would be allowed to go on his way. That is certainly a possibility. I remind myself however that the standard of proof is low, and it is low for a reason. The consequences for the Appellant, if he is exposed to harm at the hands of the Sri Lankan security services, would be grave. The question is whether there is a real risk that the Appellant's own disclosure of his attendance at TGTE events in the United Kingdom would give rise to a real risk of detention.

22. Given the objective evidence before me I must conclude that it does. The TGTE are a proscribed organisation, considered by the Government of Sri Lanka to be terrorists. The Tribunal has long since accepted, including in GJ, that in Sri Lanka detention on suspicion of terrorism is likely to bring with it a real risk of torture. It follows that the appeal must be allowed.

Anonymity Order

23. This appeal concerns a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“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 to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

Decisions

24. For the reasons set out above I am satisfied that the decision of the First-tier Tribunal contains material errors of law. It is set aside to the extent identified by the Court of Appeal.
25. I remake the decision in the appeal by allowing the appeal on protection grounds.
26. There is an order for anonymity.

Upper Tribunal Judge Bruce
8th July 2019