



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

Appeal Number: PA/03195/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2019**

**Decision & Reasons Promulgated
On 12 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**T.M.
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Bayati of Counsel instructed by S. Satha & Co.
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Black dismissing the appeal against a decision dated 21 February 2018 refusing protection in the United Kingdom.
2. The Appellant is a national of Sri Lanka currently 36 years of age. His personal details are a matter of record on file but are not set out herein in keeping with the anonymity direction that I make in these proceedings.
3. I am grateful for the helpful discussion it was possible to have with both representatives in respect of the issues raised in the challenge to the

decision of the First-tier Tribunal. In the event Mr Kotas did not seek to resist the Appellant's challenge, and in due course it was common ground between the parties that the decision of Judge Black should be set aside and that the decision in the appeal be remade before the First-tier Tribunal by a different Judge. In such circumstances I do not propose to go into fine detail as to the history and circumstances of the Appellant's case.

4. For present purposes it will suffice to set out the following by way of the factual background.

(i) The Appellant's claim for asylum was based on having been a member of the LTTE from 2004. He claimed that during his membership he had engaged in activities that included the delivery of goods and parcels to LTTE controlled areas and some non-combative frontline duty. He also claimed that he had been involved in intelligence work for the LTTE. The Appellant says that following the end of the conflict between the LTTE and the government he was detained, in October 2011, and held for a period of three years during which he was physically and sexually abused. He states that he was able to secure his release in December 2014 after payment of a bribe. Thereafter arrangements were made for him to come to the United Kingdom, arriving on 14 May 2015. An application for asylum followed.

(ii) The Appellant has asserted that enquiries have been made about his whereabouts in Sri Lanka since he has been in the United Kingdom. He referred to this at his asylum interview, and also produced supporting documents in this context in his appeal. The documents comprised statements or letters from his mother and his wife to the effect that the authorities had visited them, they had moved as a result, and that notwithstanding visits had continued with enquiries being made about the Appellant. This material was further supported by way of a letter from an MP in which it was stated that the Appellant's mother had visited him with complaints as to the enquiries being made about the Appellant, and that he - that it to say the MP - had contacted the officer in charge at the police station who had stated that the Appellant was an escapee and was wanted.

(iii) The Appellant also claimed to have taken part in activities in support of separatism whilst in the United Kingdom.

(iv) It was also pleaded in his appeal that he was a suicide risk to an extent that the UK's obligations under Article 3 of the ECHR were engaged.

5. The First-tier Tribunal Judge accepted significant aspects of the Appellant's account, subject to certain qualifications - which at least in some regards appear to have been unreasoned.

6. The Judge states the following at paragraph 8 of the Decision:

"I am satisfied that his account is broadly consistent internally. I accept the appellant's explanation as to the apparent

*inconsistency as to his activities on the front line. I found that he was not involved in combat but in helping the injured and moving supplies for the LTTE. I found that the appellant was arrested and detained in the past and ill treated while he was in detention. I placed weight on the expert medical evidence which largely corroborated his claim and which was also broadly consistent with the background material at the time. I accept that the Upper Tribunal in **GJ** acknowledged that it was possible to escape from detention after payment of a bribe. I do not, however, accept that he was involved in LTTE intelligence rather I found that he provided transport/delivery services from November 2004 - 2009 during the course of his work as a delivery driver for Pepsi and latterly provided some assistance at the front but was not involved in combat. I have some reservations as to the length of the claimed detention and the frequency of the torture, which I found exaggerated in light of the extent of the scarring. There was no medical corroboration of any sexual abuse.”*

7. Notwithstanding the acceptance of significant elements of the Appellant’s core account the Judge went on to conclude that the Appellant had not demonstrated to the requisite standard that there was a current risk in the event of his return to Sri Lanka. As indicated above, it is common ground before me that in reaching that conclusive evaluation the Judge fell into material error of law.

8. I note in particular the following matters which are not contested by the Respondent as amounting to error.

(i) It may be seen from the quotation of paragraph 8 above that the Judge did not accept that the Appellant was involved in LTTE intelligence. However there is nothing apparent in paragraph 8 or elsewhere in the Decision by way of reasons for such a conclusion.

(ii) At paragraph 9 the Judge refers to the Appellant’s departure from Sri Lanka in these terms:

“The Appellant also left Sri Lanka using his own passport which suggested that he was not of significant interest to the authorities at that time.”

It is common ground between the parties before me that the ability to leave Sri Lanka on your own passport is essentially a neutral factor in evaluating whether or not there is an interest on the part of the authorities: this is pursuant to the levels of corruption at the airport as acknowledged in the country guidance case of **GJ**.

(iii) In respect of the application of **GJ** to the circumstances of the Appellant’s case and the evaluation of future risk, the Judge stated:

“However, even finding his account to be credible as to some past low level involvement in LTTE activities, detention and ill treatment, I have considered the facts in

*the light of **GJ** and conclude that at present he faces no real risk on return to Sri Lanka. The arrest and detention occurred at a time when the government's stance was entirely different from the current position as held in **GJ**. The appellant has failed to discharge the burden to show that he faces a real risk on return."* (Paragraph 9)

It is accepted by Mr Kotas that the Judge was in error in this regard. **GJ** dealt necessarily with the post-conflict situation in Sri Lanka. However it was exactly in that post-conflict context that the Appellant was arrested and detained - he was detained and held during a period when the focus of the authorities in Sri Lanka was perceived to be on those seeking to destabilise the integrity of the country. The Judge was in error in seeking to distinguish the Appellant's case from the scope of **GJ** on the basis that his accepted arrest and detention had taken place in a circumstance that was "*entirely different from the current position*".

9. Criticisms have also been raised in the challenge to the Judge's evaluation of the Appellant's diaspora activities. It seems to me that on the facts of this particular case an evaluation of such activities, and any risk that might arise from them, must encompass an 'in the round' consideration of the circumstances in which the Appellant was detained in Sri Lanka, and whether such circumstances lend weight to the notion that the Appellant was previously perceived as a person who might threaten or work towards destabilising the integrity of the country. The Judge's analysis is lacking in this regard.
10. In my judgement the errors of the First-tier Tribunal mean that the consequent scope of the matters to be considered in remaking the decision in the appeal do not permit of the preservation of any of the findings of the First-tier Tribunal Judge - favourable to the Appellant or otherwise. In this context I note that it seems to me that in addition to the matters outlined above a more detailed and careful consideration than hitherto will be required in respect of: the circumstances of the Appellant's claimed release from detention being irregular such that he might be perceived as a person who was not released following completion of enquiries; and the evidence that there was a continuing interest in the Appellant (which in my judgement was not adequately addressed in the Decision of the First-tier Tribunal).
11. It will be for the next judicial decision maker to revisit such matters anew. Nonetheless it may be that Respondent's representative will wish to bear in mind that the nature and quality of the Appellant's evidence in respect of his arrest and detention was such as to persuade Judge Black to accept the broad credibility of the Appellant's account, and therefore to focus on the issue of consequent continuing risk in the event of return. However, that is a matter in the first instance for the Respondent, and ultimately a matter for the next Judge.

Notice of Decision

12. The decision of the First-tier Tribunal contained a material error of law and is set aside.
13. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Black with all issues at large.

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:

Date: 11 March 2019

Deputy Upper Tribunal Judge I A Lewis