



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

Appeal Number: PA/06980/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On May 13, 2018**

**Decision & Reasons Promulgated  
On 17 May, 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**M R C A L  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss C Harris, Counsel, instructed by Nag Law Solicitors  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, a Sri Lankan national, arrived in the United Kingdom as a student on October 19, 2010 and his leave was subsequently extended as a Tier 4 (General) Student on August 21, 2013, giving him leave to remain in that category until September 18, 2014. A subsequent application to

extend that stay was rejected on April 9, 2015, as was an application for leave to remain on family and private life grounds.

2. On November 23, 2017 the appellant applied for asylum but this was refused by the respondent on May 23, 2018 under paragraph 339A HC 395.
3. The appellant appealed that decision under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 on June 4, 2018. His appeal came before Judge of the First-tier Tribunal Higgins who in a decision dated February 1, 2019 dismissed the appellant's appeal on all grounds. In doing so the Judge accepted the appellant's account of events in Sri Lanka but concluded in paragraph [92] that he would no longer be of interest to the Sri Lankan authorities were he to return.
4. Permission to appeal was granted by Upper Tribunal Judge Kamara on April 9, 2019 on the basis that having accepted the appellant's version of events it was arguable the Judge had erred in his assessment of a risk on return based on GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

5. 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.

**SUBMISSIONS ON ERROR OF LAW**

6. Miss Harris adopted the grounds of appeal and submitted that the area of appeal was a narrow issue and ultimately centred upon what was considered a war crime. She submitted that the appellant's account to the LLRC about his friend's abduction was an account of a war crime as this was a type of issue the Commission was investigating. She submitted that the Judge's conclusion at paragraph [92] of his decision that the appellant did not fall into a risk category was an error in law and the Tribunal failed to have regard to resolution 47/133 (December 18, 1992). She referred the Tribunal to category 7(c) of the head note of GJ which stated:

“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.”.

7. She submitted that the appellant would be known to the authorities as the First-tier Judge had accepted that he had provided such evidence. The Tribunal in GJ stated at paragraph 2 that the Sri Lankan Government had established the Commission and mandated it to prepare a report on matters that may have taken place between February 2002 and May 2009. She submitted therefore that the appellant's evidence fell within this category.
8. There was an additional issue raised that the Judge had failed to consider what would happen to him on return to Sri Lanka, bearing in mind country evidence suggested a forced returnee could be expected to be asked about his own and his family's LTTE connections and sympathies and he was not expected to lie.
9. Mr Tarlow opposed the application and submitted that the Judge's finding at paragraph [92] of the decision was sustainable. It was wrong to suggest that every general crime was a war crime and the fact that ten years had elapsed since the incident he argued the Judge was entitled to find the appellant would no longer be of any interest to the authorities.

#### **FINDINGS ON MATERIAL ERROR OF LAW**

10. This is an appeal brought on a narrow issue, namely the First-tier Judge's approach to the risk categories set out by the Upper Tribunal in GJ.
11. The Judge effectively accepted the appellant's account of what occurred in Sri Lanka and at paragraph [92] of his decision the Judge had to assess whether or not returning the appellant would place him in a risk category or not.
12. Both representatives addressed me on the issue of whether the appellant's actions amounted to a war crime, namely whether what he reported to the Commission amounted to a war crime. There is no specific definition contained within GJ of what a war crime is or was, but what is clear is that there is a difference between a report to perhaps the authorities and a report to the LLRC. It is argued that the actions taken by the police authorities in Sri Lanka amounted to a war crime.
13. The type of behaviour described by the witness to the Judge was clearly a common occurrence in Sri Lanka at that time. This and other issues similar were matters that the Commission had to consider. Having accepted the reliability and credibility of the evidence the Judge had to make findings on whether this appellant fell within a risk category, and in particular the category set out in head note 7(c).
14. Mr Tarlow argued that the passage of time effectively was a lacuna not properly considered by the Tribunal. I find the Tribunal's findings in GJ are quite specific. The head note, and in particular paragraph 7 sets out those categories of persons who are likely to be at risk were they to be returned.

Most of those categories do not concern this Tribunal today, but the relevant one is the category set out at 7(c).

15. There is no dispute that this appellant gave evidence to the LLRC and that that evidence implicated the Sri Lankan security forces, armed forces or the Sri Lankan authorities. The type of behaviour being investigated was exactly this type of behaviour and I disagree with Mr Tarlow's submission that the type of behaviour described would not have been considered as a war crime by the Commission. GJ does not distinguish set time limits especially because the Tribunal was looking back at matters that had occurred many years ago when providing its advice.
16. In conclusion, I find that having established that the First-tier Tribunal Judge had accepted the appellant's account in its entirety, the conclusion that the evidence did not amount to an alleged war crime has no real substance. The statement he provided was the type of behaviour being investigated by the Commission and obviously thereafter being considered by Tribunals such as the Upper Tribunal in GJ. The fact that nothing came of the threats made to him is not the issue in this case.
17. It is the fact that he would be identified as someone who had made a report to the authorities and in particular to the LLRC. It is this distinguishing factor which places him in a risk category.
18. I therefore find that there was an error in law in this matter. Mr Tarlow agreed that if there was an error in law then the only possible outcome would be to allow the appeal.

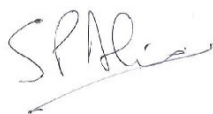
### **NOTICE OF DECISION**

19. I therefore find there was an error in law and I set aside the original decision and I grant the appeal on the grounds of protection.

Signed

Date

16 May 2019



Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT**  
**FEE AWARD**

Although a fee was paid I do not make a fee award because the appeal has been allowed based on findings made and not on material before the respondent when the decision was taken.

Signed

Date

16 May 2019

A handwritten signature in blue ink that reads "SPARIS". The signature is written in a cursive style with a long horizontal stroke at the bottom.

Deputy Upper Tribunal Judge Alis