



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

Appeal Number: AA/00331/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 1 May 2014**

**Determination
Promulgated
On 12 May 2014**

Before

UPPER TRIBUNAL JUDGE MOULDEN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JM

(Anonymity Direction Made)

Respondent

Representation:

For the Appellant: Mr G Jack a Senior Home Office Presenting Officer
For the Respondent: Mr E Waheed of counsel instructed by Soma &

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DETERMINATION AND REASONS

1. The appellant is the Secretary of State for the Home Department. I will refer to her as the Secretary of State. The respondent is a Tamil citizen of Sri Lanka who was born on 5 July 1983. I will refer to him

as the claimant. The Secretary of State has been given permission to appeal the determination of First-Tier Tribunal Judge Canavan (“the FTTJ”) who allowed the claimant’s appeal against the Secretary of State’s decision of 7 January 2014 to give directions for his removal from the UK following the refusal of asylum.

2. The claimant is a Tamil from Colombo who is in this country with his wife and two children. They are his dependants for the purpose of this appeal. He used to work with his father in the family stationary business. A friend worked with him and that friend asked him to photocopy documents relating to the LTTE which included instructions on how to assemble and use weapons. In January 2007 the claimant accompanied his friend when they delivered the documents to an address in Colombo. Soon after the claimant received a telephone call from the police who said that his name had been given to them by his friend. He had to attend a police station. He did so and was arrested and detained. In custody he was interrogated, beaten and accused of being involved with the LTTE, which he denied. He suffered serious torture and abuse.
3. The claimant was held for three months and subjected to a mock execution. After that he was held for another 10 months, suffering regular abuse. Eventually, his father was able to bribe an officer to assist him to escape. He went to a rehabilitation centre where he remained, keeping a low profile and contacting his family only about once a month. During that period the authorities repeatedly visited the family home looking for him.
4. In July 2009 the appellant and the woman who later became his wife applied for student visas. Hers was granted but his was not. She came to the UK in September 2009. She returned to Sri Lanka in July 2010 and they were married in August 2010. In October 2010, when his mother became ill, the claimant took the risk of returning home to see her. Whilst he was there the police came to their home and arrested him. He was held for six days and tortured each day. He was released later in October 2011 after a bribe was paid. He returned to the rehabilitation centre while arrangements were made for his departure. He applied for entry clearance in November 2010 and was able to leave Sri Lanka in December 2010. The claimant said that the authorities had continued to look for him since he left Sri Lanka, going to his father’s office and the family home. He claimed that if he returned he would be subjected to further detention and ill-treatment as a suspected LTTE member.
5. The Secretary of State accepted the claimant’s account of events in Sri Lanka including both periods of detention and the very serious ill-treatment he had suffered. Whilst the refusal letter referred to his failure to claim asylum at the earliest opportunity the FTTJ concluded from an overall reading of the letter that the claimant’s account was nevertheless found credible.

6. Whilst accepting his account of events the Secretary of State concluded that the claimant would not be of any adverse interest the authorities in Sri Lanka were he to return.
7. The FTTJ heard the appeal on 14 February 2014. Both parties were represented, the claimant by Mr Waheed who appears before me. Because the Secretary of State had accepted the claimant's credibility he was not called to give evidence. The FTTJ addressed the country guidance case of GJ and others (Sri Lanka) [2013] UKUT 00319. She concluded that the claimant would be at risk on return and allowed the appeal on Refugee Convention grounds.
8. The Secretary of State applied for and was granted permission to appeal arguing that the FTTJ erred in law by failing to give adequate reasons, making material factual errors and departing from the guidance contained in GJ. It is submitted that, notwithstanding the appeal to the Court of Appeal and the directions given by the Court of Appeal the FTTJ was still bound to follow GJ. The factual errors were in relation to whether the claimant escaped or was released following a bribe and whether he had played a significant role in post-conflict Tamil separatism in the UK.
9. The claimant's representatives have lodged a Rule 24 response to the Secretary of State's grounds of appeal and I have a skeleton argument from Mr Waheed.
10. Mr Jack relied on the grounds of appeal and said that the Secretary of State had accepted the claimant's account of events. The FTTJ should have followed the guidance contained in GJ but in a number of important respects had not done so. In effect she was criticising the findings of the Tribunal in GJ without any evidence to support this. Notwithstanding the directions given by the Court of Appeal the FTTJ should have followed GJ. Paragraph 266 of GJ made it clear that attending protests in the UK was not enough to put an individual at risk. The claimant had played no part in separatist activities in the UK. Past involvement with the LTTE was not on its own enough to put him at risk.
11. Mr Jack directed my attention to the findings in relation to the individual appellants in GJ and submitted that the facts of the claimant's case were very similar to those of the second appellant in GJ whose appeal had been dismissed. He asked me to find that the FTTJ had erred in law and to set aside her decision which could be remade without the need to hear further evidence. However, it might be prudent to await the judgement of the Court of Appeal.
12. In reply to my question Mr Jack said that the Secretary of State continued to rely on all the grounds of appeal, including that relating to the question of whether the appellant had been released on payment of a bribe or had escaped from custody.

13. Mr Waheed relied on the Rule 24 response and his skeleton argument. He emphasised the FTTJ's findings in paragraph 15 which, he argued, properly applied paragraph 339K of the Immigration Rules. The claimant was a person who had been subjected to persecution and serious harm which was a serious indication of his well-founded fear of persecution or real risk of suffering serious harm. The FTTJ had proper regard to the directions given by the Court of Appeal and the caveat which these contained.
14. Mr Waheed submitted that the claimant fell squarely within the GJ guidance as to those who would be at risk. The relevant categories were those set out by the FTTJ in paragraph 18 of the determination. He fell within 7 (a) as an individual who would be perceived by the authorities to be a threat to the integrity of Sri Lanka as a single state and he had a significant role in relation to post-conflict Tamil separatism because of his pre-conflict activities and the authorities perception of these activities when they arrested, detained and seriously ill treated him after the end of the conflict.
15. He also fell within paragraph 7 (d) because there was likely to be an outstanding warrant for his arrest because, although he was released on payment of a bribe, he was told that the records would show that he had escaped. In these circumstances his name was likely to be on the computerised stop list at the airport which would result in his being stopped and handed over to the authorities.
16. Mr Waheed also submitted that if there were any errors these were not material. The reasons for refusal letter did not raise any point in relation to the question of whether the claimant would be regarded as having escaped except in paragraph 42, which said no more than that there had been an inconsistency in his evidence which he had not been given the opportunity to explain during his asylum interview. In paragraph 47 the Secretary of State accepted that the claimant had been released on both occasions through payment of a bribe.
17. Mr Waheed submitted that there was no error of law and invited me to uphold the determination. If I was against him on this he asked that I adjourn the redetermination of the appeal until the forthcoming judgement of the Court of Appeal.
18. In his reply Mr Jack drew my attention to paragraph 66 of the refusal letter in which the Secretary of State had concluded that the claimant would not appear on any stop list and would not be at risk of detention at the airport. He made further reference to the circumstances of the second appellant in GJ and emphasised that the authorities in Sri Lanka now acted on high-quality intelligence. There was no evidence to show that an arrest warrant had been issued for the arrest of the claimant. Whilst the FTTJ did not err in

applying paragraph 339K the effect of this was diminished by the changed situation in Sri Lanka.

19. I reserved my determination. In this jurisdiction Tribunal judges should as a general rule follow country guidance cases unless there is evidence to show that conditions in that country have changed. However, country guidance is not a precision tool to be applied inflexibly. Lists of factors relevant to the question of risk on return are more than a checklist to be ticked or not.
20. I can find no merit in the ground of appeal which submits that the FTTJ made a factual error when she concluded that the appellant was re-arrested in October 2010 because the authorities considered that he had escaped from the first period of detention. The Secretary of State accepted the claimant's account of events and this ground of appeal ignores the passage in his witness statement dated 9 July 2012 in which he said that although he was released on payment of a bribe he was told that the records would show him as having escaped.
21. I find that on the evidence it was open to the FTTJ to find that the claimant's profile was likely to place him at risk on return. The factors which she set out in paragraph 23 of the determination are not precisely those contained in paragraphs 7 (a) and (d) of the summary to GJ but include sufficient significant elements to justify the conclusion. The second occasion on which the claimant was arrested was after the end of the conflict and he was still of sufficient adverse interest for them to arrest, detain and torture him. This is an indication that he was still regarded as a threat. I do not read paragraph 7 (a) as limited to individuals who pose a threat only because of activities outside Sri Lanka. If the claimant was of sufficient adverse interest for the authorities to want to arrest him in 2010 this provides support for the view that he would be of similar adverse interest were he to return now. Whilst I accept that there is no documentary or independent evidence of the existence of a warrant for the claimant's arrest his evidence, which has not been contested, that the authorities continue to visit his home and his father's business looking for him, combined with the advance notice which they are likely to receive of his return from the documentation process at the High Commission in this country and the fact that they were still looking for him in 2010 after the end of the conflict support the FTTJ's conclusion that they are likely to still wish to detain him and that he will be on a stop list at the airport or a "watch" list. The significance of the claimant to the authorities does not depend upon the true extent of his activities but their perception of them.
22. I have found little help from comparing the claimant's circumstances with those of any of the appellants in GJ. It is more instructive to address the criteria rather than similarities with or differences between the circumstances of individuals.

23. I find that it was open to the FTTJ to conclude that the claimant had established a risk profile which brought him within the guidance of GJ and that he would be at risk of persecution on return.
24. The directions given by the Court of Appeal in granting permission to appeal in GJ, set out by the FTTJ in paragraph 19, that “individuals who fall outside the said risk categories should not for that reason alone have their claims for asylum rejected, whether by the Respondent or on appeal to the First-Tier Tribunal or the Upper Tribunal” lead me to the conclusion that even if I had concluded that it was not open to the FTTJ to find that the claimant had established a risk profile which brought him within the guidance of GJ the Tribunal would be in no position to re-determine the appeal without awaiting the judgement of the Court of Appeal.
25. The FTTJ made an anonymity direction which will continue in force.
26. I find that the FTTJ did not err in law and I uphold her determination.

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Signed
Upper Tribunal Judge Moulden

Date 2 May 2014