



IAC-FH-CK-V1

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

Appeal Number: AA/00577/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16<sup>th</sup> December 2015**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

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

Appellant

**and**

**M S**

**(ANONYMITY DIRECTION MADE)**

Claimant

**Representation:**

For the Appellant: Mr S Kandola (Home Office Presenting Officer)

For the Claimant: Ms Manjit Dogra (Counsel instructed by M & S Solicitors)

**DECISION following resumed hearing**

1. The appellant in this matter is the Secretary of State and I shall refer to the parties as the Secretary of State and the Claimant. The Claimant was born on 21 June 1989 and is a citizen of Sri Lanka.
2. In a decision and reasons promulgated on 6<sup>th</sup> November 2015, to which I refer, the Tribunal found an error of law by the First-tier Tribunal (Judge Abebrese) (FtT) promulgated on 27 May 2015. Specifically it concluded that the FtT failed properly to consider the risk factors in **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**

and to give reasons for finding that the appellant came within those categories.

3. The findings of fact in the FtT decision were preserved and are set out from [17 - 25]. In summary the FtT found that the appellant provided financial assistance for the LTTE between 2007 - 2008 and from 2010 he was involved in assisting LTTE members to leave Sri Lanka. He left the country using his own passport with a student visa and came to the UK to study in 2011. He returned to Sri Lanka in February 2012 and was there for a period of 10 months without difficulties. He was reported as someone who had assisted the LTTE and he was arrested, detained and ill treated. He was released after payment of a bribe, he was not the subject of any warrant or court order, but was charged. The contents of a medical report were accepted as reliable evidence of torture. His explanation for his late claim for asylum was found to be credible.
4. At the resumed hearing Ms Dogra produced a skeleton argument in which the risk categories from paragraph 356 of **GJ** are set out at paragraph 3 of the skeleton argument. Ms Dogra submitted that the appellant came within the categories at 7(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 have been perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or renewal of hostilities within Sri Lanka". And (d) "A person whose name appears on a computerized stop list is accessible at the airport, comprising a list 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."
5. Both representatives made oral submissions, the details of which are set out in the record of proceedings and which I have taken into account in reaching my decision.

### **Discussion and decision**

6. I find that the FtT failed adequately to consider the country guidance case of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. It was submitted by Mr Kandola that the Claimant did not meet any of the identified risk categories, and I agree. Notwithstanding that the appellant was found to be credible as to his claim of having assisted the LTTE, been arrested, detained and ill treated, I am satisfied that the evidence fails to show he faces any risk on return to Sri Lanka.
7. Ms Dogra placed significance on the chronology of events and argued that because the appellant was of interest to the authorities post conflict in 2012, this indicated that the interest was based on sophisticated intelligence, and therefore he remains at risk on that basis.
8. I find no evidence to support that submission. The evidence before the FtT was that the appellant came to the attention of the authorities because

someone reported his past involvement assisting the LTTE. The appellant was not a member of the LTTE and had no significant profile or political involvement. The evidence was that he had been somewhat reluctant to provide help and in any event his role was limited to the period in 2007 - 2010.

9. I find no evidence that the appellant was or would be perceived as a threat to the integrity of the state nor that he has any significant role in relation to post conflict Tamil separatism. His activities were limited in extent and in time to 2007 to 2010 and there was nothing to link him with any post conflict activity to indicate that he was or could be perceived as involved in renewing hostilities or as presenting a destabilising risk.
10. I find no evidence that the appellant was on a stop list and as submitted by Mr Kandola at its highest the evidence could possibly place him on a watch list, but this did not amount to a real risk of ill treatment.
11. Although the appellant has established past persecution, I am nevertheless satisfied that he fails to meet any of the **GJ** risk criteria and that he is a person who would be seen as having had past LTTE involvement of little significance given the current concerns are now focused on potential destabilisation of the state.

### **Decision**

12. I allow the appeal of the Secretary of State and set aside the First tier Tribunal decision.
13. I substitute my decision and I dismiss the appeal on asylum, humanitarian protection and human rights 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 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 16.12.2015

Deputy Upper Tribunal Judge G A Black

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

The appeal is dismissed and therefore there can be no fee award.

Signed

Date 16.12.2015

Deputy Upper Tribunal Judge G A Black