



IAC-HX-MC/12-V1

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

Appeal Number: AA/00605/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 19th January 2016**

**Decision & Reasons Promulgated
On 17th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**A M
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Matthew Sowerby, Counsel, for S Satha & Co Solicitors
London

For the Respondent: Ms Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

- 1.** The Appellant is a citizen of Sri Lanka born on 8th January 1985. He appealed against the Respondent's decision made on 10th January 2013 refusing his claim for asylum and his claims on humanitarian protection ground, under the immigration Rules and under ECHR. His appeal was heard by Judge of the First-tier Tribunal S J Walker on 25th June 2015. He dismissed the appeal in a decision promulgated on 4th August 2015.

2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Simpson on 16th September 2015. The grounds state that the judge erred in his consideration of the evidence about continuing interest in the Appellant post his departure from Sri Lanka and he failed to take into account evidence and/or materially erred in fact, by stating that the Appellant had not claimed that any attempt to find him was made until May 2011 as the Appellant's evidence was that in the summer of 2010 his mother had told him someone was asking about him. They state that the judge also failed to consider the Court of Appeal's view, expressed in **MP (Sri Lanka) and Another [2014] EWCA Civ 829**. The permission states that the judge found the Appellant to be a credible witness and that his injuries were consistent with his account of being tortured. He also accepted that the Appellant had given assistance to the LTTE as described but when assessing risk on return the permission states that it is arguable that the judge made factual errors on the evidence of the authorities' continuing interest in the appellant and relating to his relationship with his cousin [RA], who was in charge of intelligence for the LTTE. The permission states that it is arguable that the judge erred in his assessment of risk on return and did not properly apply the country guidance case of **GJ and Others (Sri Lanka) [2013] UKUT 00319**.
3. There is a Rule 24 response which states that the First-tier Tribunal Judge directed himself appropriately. Although the grounds state that the Appellant referred to his cousin in his asylum interview it is clear from paragraph 59 of the decision that the First-tier Judge was aware that the Appellant did not mention his cousin in his screening interview or his witness statements and so he found that the Appellant did not remain consistent as to why he thought he was being sought by the authorities. The response states that at paragraph 58 the judge refers to the Appellant's evidence that an arrest warrant was not issued for him and so when the judge followed **GJ and Others** it was open for the judge to find that the Appellant would not be on a "stop" list and that the authorities would not be interested in the Appellant. The response states that the judge fully engaged with **GJ and Others** at paragraphs 69 to 81 and assessed whether the Appellant would be at risk on return and it was open to the judge, based on the assessment of the evidence, to find that the Appellant would not be at risk on return.

The Hearing

4. Counsel for the Appellant referred me to the Appellant's supplementary statement about the demonstrations he attended in the United Kingdom. I was referred to the case of **YB (Eritrea) [2008] EWCA Civ 360** in this connection.
5. Counsel submitted that the judge found the Appellant's account to be credible relating to his detention, torture, confession and his release on a bribe. He submitted that the judge misdirected himself as people were looking for the Appellant as early as 2010. With regard to the Appellant's

cousin [RA], the appellant referred to this cousin in his asylum interview and the judge misdirected himself when he found that the Appellant would not be at risk because of his *sur place* activities.

6. I was referred to the Appellant's statement in which he states he was told by his mother that someone was looking for him in 2010 so the judge's finding that there was no attempt to find the Appellant until 2011 is not correct. When his interview record is considered Counsel submitted that the authorities went to his house after he escaped from detention. Counsel submitted that this is an important factual error and the judge found the Appellant to be credible, so this point should not have gone against his credibility.
7. With regard to the Appellant's cousin, Counsel submitted that in the Appellant's asylum interview he gave details of his cousin [RA] and he adopted the interview record as part of his evidence before the First-tier Tribunal Judge. Counsel submitted that the judge erred in his findings about this cousin and this is an important error and is a misdirection by the judge and this should not go against his credibility. He submitted that this cousin of the Appellant held an important position in the LTTE which could be a reason for the authorities being interested in the Appellant on return. Counsel also submitted that the fact that the Appellant had escaped from detention and is known to the authorities in Sri Lanka would put him at risk. He submitted that because this cousin was in charge of intelligence in the LTTE the appellant's *sur place* activities are likely to be a problem for the Appellant.
8. I was referred to the said case of **GJ and Others** which refer to people who are on a "stop" list having to give an address in Sri Lanka and then being visited by the authorities. Counsel submitted that if the Appellant is on a "stop" list he could well be detained after his background is looked into. He submitted that this claim is similar to the case of **GJ** and I was referred to paragraph 397 of that case. Counsel submitted that the authorities know about the Appellant's LTTE activities and about his *sur place* activities in the United Kingdom and so the authorities in Sri Lanka are likely to find that this Appellant had a significant role when he was in Sri Lanka so his *sur place* activities are likely to be taken into account along with his adverse profile in Sri Lanka, putting him at risk on return.
9. I was referred to the said case of **YB (Eritrea)**. Counsel submitted that based on this, the film and the photographs of the Appellant demonstrating in the United Kingdom have to be given weight. The case of **GJ** indicates that the authorities will know about the Appellant's activities and because of his adverse history he will be at risk on return to Sri Lanka. I was asked to find that there is a material error of law in the First-tier Judge's decision.
10. The Presenting Officer submitted that the decision in this case is well set out and refers to the Appellant's evidence and the authorities' actions in Sri Lanka.

- 11.** With regard to the first ground and the Appellant being sought before May 2011, I was referred to the Appellant's witness statement at paragraph 28 when he states that he stopped studying gradually in the summer of 2010 because somebody was asking about him and he was worried about his family. She submitted that his statement does not indicate that the authorities were seeking the Appellant in 2010, just that someone was looking for him. She submitted that no-one was looking for him when he escaped in 2009 and the year's gap from the date when he escaped until 2010 is significant as there is no explanation about why there is this gap. She submitted that the evidence in the Appellant's statement is different from the evidence in his asylum interview. In his interview he was asked when he first knew the authorities were going to his house looking for him and he said "September 2011 by post. Even before that they were coming home looking for me but she did not tell me." The Presenting Officer submitted that this is contradictory evidence.
- 12.** I was referred to paragraph 59 of the decision, in which the judge compares what the Appellant said in his two statements and in his asylum interview and screening interview. The judge points out that there is nothing in the Appellant's witness statements about the arrest of his uncle's son and nothing to explain why this is a reason for the authorities being interested in him. There is no mention in the Appellant's screening interview that he was being sought because of what his uncle's son had told the authorities about him. At question 187 of his substantive interview the Appellant is asked why the Sri Lankan authorities would suddenly be interested in him since his last arrest in 2008 and he said that "after he was set free from detention in 2009 they went to his house to look for him and then after his uncle's son, who is in the LTTE, was arrested, they started looking for him again." She submitted that there is no reference to 2010 in this answer and then on 5th May 2011 the Appellant states that his cousin was arrested. I was referred to paragraph 60 of the decision which refers to the undated letter from the Appellant's sister. The judge points out that there is no indication when the visits from the CID officers to the family home occurred. He also refers to the letter from the Appellant's mother which states that she has lost her elder son as a result of the Appellant's problems but again there is no date on this letter. There is then reference made by the judge to the letter from the priest and the Presenting Officer submitted that there is no mention of visits by the authorities to the Appellant's home address or of his brother's arrest in this letter. The letter from the priest was written a year after the Appellant states his brother was arrested. The Presenting Officer submitted that when all of this is considered the judge was entitled to find that the Appellant's evidence is not credible. At paragraph 63 the judge states that no attempts were made to find the Appellant until May 2011 and this was two years after the Appellant had escaped and the Presenting Officer submitted that the judge was entitled to reach this finding based on what was before him and the differences in the statements, the interviews and the letters which were before him. She submitted that

when these are all taken together they do not support the Appellant's claim.

- 13.** With regard to the Appellant's cousin, the Presenting Officer submitted that the Appellant's representative is trying to re-argue the case. The judge in his decision finds it significant that there is no mention of the Appellant's cousin in the witness statement. The judge accepts that he is mentioned in the asylum interview but he also points out that there was no oral evidence given about the cousin at the hearing. She referred to paragraph 59 in which the judge points out that there is very little detail given in the interview and very little detail given in the appellant's statements. She submitted that in the screening interview there was no mention of the Appellant being sought because his cousin was arrested. In the screening interview the appellant states he cannot go back to Sri Lanka because his brother has been arrested. She submitted that the judge also noted that the Appellant said he would supply evidence about his cousin and did not do so. Although we now have a death certificate it was not before the judge. At paragraph 65 of the decision the judge states that there is no evidence to show the family connection between the Appellant and [RA], the said cousin. She submitted that if this is an important issue surely evidence could have been produced about the cousin's involvement with the LTTE.
- 14.** The Presenting Officer submitted that there is an absence of an arrest warrant, (paragraph 58.) Then at paragraph 62 the judge states that he does not accept that the Appellant's account of continuing interest in him is credible. He refers to the Appellant's account and the activities he took part in, not being particularly significant. Again reference is made to there being no arrest warrant. The judge draws a conclusion from that, which is that the Appellant is of no significant interest to the authorities in Sri Lanka.
- 15.** The Presenting Officer referred to paragraph 66 of the decision which explains why the judge does not accept the Appellant's evidence about his cousin or the Appellant's relationship with him and refers to a nine month delay before the Appellant's brother was supposedly arrested as a hostage, for information about the Appellant. The judge finds that this delay goes against the Appellant's credibility.
- 16.** I was referred to the case of **GJ and Others** and the question of a "watch" list if the Appellant flies back to Sri Lanka. At paragraph 77 of the decision the Presenting Officer submitted that because there is no arrest warrant and no evidence of any extant court order the country guidance is that the Appellant's name will not be on a "watch" list so he will not be stopped at the airport.
- 17.** The Presenting Officer submitted that the Appellant admits that he has not now been keeping up politically with the situation in Sri Lanka.

- 18.** She submitted that even if the Appellant is credible this does not mean that there is continuing interest in him on return, or that he will be at risk on return, as there is nothing to indicate that he is in any way involved in destabilising the unified state of Sri Lanka. She submitted that based on the objective evidence and the terms of the country guidance case of **GJ and Others** the appellant can return safely to Sri Lanka.
- 19.** The Presenting Officer referred me to paragraph 78 of the decision. This deals with the question of whether the Appellant would be perceived to be a threat to the integrity of Sri Lanka as a single state. The judge accepts that as per **GJ and Others** past LTTE activities are relevant but only if they indicate a present risk. The judge finds that the Appellant's perceived past activities are of a relatively low order and although he has attended some demonstrations and has managed to be photographed this is the sum total of his diaspora activities. The judge finds that the Appellant will not be regarded as a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. The case of **GJ and Others** states that attendance at demonstrations is not evidence of a person being a Tamil activist and each case has to be decided on its own facts.
- 20.** Counsel for the Appellant submitted that the Appellant's account up to the date of his departure is credible. He submitted that if it is accepted that enquiries were being made about the Appellant before 2011 this should be given weight as this was after the war ended. He submitted that the Appellant's relationship with his cousin was instrumental to the Appellant being arrested in 2008 and so if the Appellant is found to be credible his cousin's activities must be accepted as well. He submitted that the judge found the Appellant to be entirely credible but he failed to give weight to these two matters. He submitted that these are significant errors and must form a material error of law in the judge's decision.
- 21.** With regard to the fact that there is no arrest warrant I was referred to the COI Report in which it states that an arrest warrant will not be produced as arrest warrants are not served on individuals they are kept on file. He submitted that no weight can be given to the fact that no arrest warrant is available.
- 22.** I was asked to find that there are material errors of law in the judge's decision.

Decision and Reasons

- 23.** The judge found the Appellant to be credible up to the date when he left Sri Lanka. His story is backed up by the objective evidence. What happened to the Appellant is what happened to many young Tamil men before the war ended. This does not single the Appellant out. With regard to whether the Appellant was being sought before May 2011 is dealt with adequately in the judge's decision. As pointed out by the Presenting Officer his mother apparently told the Appellant that someone was looking for him but she does not mention the authorities. The judge refers to

there being no arrest warrant for the Appellant. I have noted the COI Report about this but the Appellant's evidence is that there is no arrest warrant against him. The judge points out that the Appellant's last arrest was in 2008 and if he was being sought by the authorities in 2010 there is no explanation of the 2 year delay. At paragraph 59 the judge deals properly with the Appellant's evidence of when he was arrested and when he was being sought. The judge refers to there being no mention of the arrest of his cousin as his cousin is only mentioned once in his interview and he then points out that the letters supporting the Appellant's account, from his mother, sister and his priest are undated and the letter from the priest makes no mention of the Appellant's brother being arrested and disappearing. All of these matters go against the Appellant's credibility. The judge believes the Appellant up to the time he left Sri Lanka but he clearly finds there are credibility issues in his evidence since he came to the United Kingdom. He finds that, in any case, based on the Appellant's account, his activities in Sri Lanka were not significant. He was not an active fighter and he did not play a significant role in the LTTE. The judge admits that during the civil war he might have been of interest to the authorities but since the war ended he finds that he is of no interest. His findings are based on the evidence before him.

24. The judge points out the lack of any evidence of the relationship between the Appellant and his cousin and the lack of any evidence of his cousin's role in the LTTE. Corroboration is not required in an asylum case but if it is possible to get evidence which would help an Appellant's case he should do so and the appellant has not done so. At paragraph 69 onwards the judge considers whether the Appellant is at risk on return to Sri Lanka now and refers in particular to the said case of **GJ and Others**. At paragraph 72 he refers to the change in the situation in Sri Lanka since the end of the war and at paragraph 74 he accepts the Appellant's evidence of his post-diaspora activities but as these amount to nothing more than attendance at pro-Tamil demonstrations he does not find that these put him in any danger. He notes that the Appellant was no way involved in organising these demonstrations and finds that he was not a member of any pro-Tamil organisation based on his oral evidence. He finds that on return the appellant will not be perceived to be a Tamil activist involved in destabilising the unified state of Sri Lanka.
25. The judge at paragraph 78 finds the Appellant's name will not be on a "watch" list. Proper reasons are given for this.
26. Based on what was before the judge he was entitled to reach the conclusion he did. All the grounds of application were dealt with adequately by him in his decision.
27. Any factual errors made by the judge are not material.

Notice of Decision

I find that there is no material error of law in the judge's decision. His decision promulgated on 4th August 2015 dismissing the Appellant's appeal on all grounds must stand.

Anonymity has been directed.

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 their 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

Deputy Upper Tribunal Judge I A M Murray