



IAC-TH-WYL-V1

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

Appeal Number: AA/11568/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20th January 2016**

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

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SN

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Avery, Home Office Presenting Officer

For the Respondent: Miss Amanda Walker, Counsel, for S Satha & Co Solicitors, London

DECISION AND REASONS

1. The Appellant in these proceedings is the Secretary of State. However for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Sri Lanka born on 13th April 1990. He appealed the Respondent's decision of 10th December 2014 refusing him asylum in the United Kingdom and refusing his application on humanitarian protection issues and on human rights grounds. The

application was also refused under the Immigration Rules. His appeal was heard by Judge of the First-tier Tribunal Andonian on 16th October 2015. He allowed the asylum appeal in a decision promulgated on 27th October 2015.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Heynes on 12th November 2015. The permission refers to the grounds of application which state that the judge mis-applied paragraph 356(9) of **GJ and Others (Sri Lanka) [2013] UKUT 319 (IAC)**. The permission states that the First-tier Judge may have failed to give adequate reasons for finding that the Appellant would be considered a threat to the integrity of Sri Lanka and may have erred when he gave minimum weight to Section 8 issues. Reference is made in the grounds to a computerised intelligence led “watch list” and the grounds state that there is no reason to conclude that the Appellant would be at risk for simply being on the “watch list”. The grounds state that in any case the First-tier Judge has failed to identify why he believes the Appellant would be on the “watch list” in the first instance and has then failed to explain why; even if he is on the “watch list”, any checks would bring the Appellant to the adverse interest of the authorities. The grounds refer to the judge finding that the Appellant will be perceived as a threat to the integrity of his country as a single state but there is no evidence of his involvement in any diaspora activities and no evidence that he has played any part in the renewal of hostilities in Sri Lanka. The grounds state that the judge failed to explain why he found that the time the Appellant spent in France before travelling to the United Kingdom should be accorded little weight and why he attached minimum weight to section 8. The Appellant claimed asylum the day after he arrived in the United Kingdom. No explanation was given as to why he did not do this in France.
4. There is a Rule 24 response which states that the grounds fail to identify any material errors of law in the decision. It states that the judge has set out adequate reasons for his findings of fact and has properly identified why the Appellant would be at risk on return. With regard to his Section 8 findings, the response states that at paragraph 8 the First-tier Judge gives his reasons for attaching little weight to Section 8 in his overall assessment of credibility. The response refers to **SM (Iran) [2005] UKAIT 00116** and states that the First-tier Judge attached weight to the fact that the Appellant made the journey with an agent and claimed asylum immediately on arrival in the United Kingdom. The response then deals with the assessment of risk on return and the application of paragraph 356 of **GJ and Others**. The judge states that the Appellant comes under paragraph 356(7)(a) and would be at risk on return as someone who would be perceived as a threat to the integrity of his country. The response states that the judge accepted as credible the material facts of the claim and was entitled to conclude that the Appellant’s profile was that of someone who had been, prior to his departure, perceived as a threat to the integrity of Sri Lanka as a single state. The response goes on to state that a lack of consideration of

diaspora activities does not render the First-tier Judge's decision as unlawful. Each case has to be assessed in its individual facts.

5. A skeleton argument was produced by Counsel for the Appellant.

The Hearing

6. The Presenting Officer submitted that the judge's approach to the said case of **GJ and Others** is wrong. He submitted that at paragraph 16 of the decision the judge states:-

"It is my view that the Appellant would be perceived as being a threat to the integrity of his country as a single state or will be perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities in Sri Lanka."

The Presenting Officer submitted that there is no explanation of how the judge reaches this decision. This Appellant has had no part in post-conflict Tamil separatism within the diaspora. There is no reason given of why he would be of continuing interest to the Sri Lankan authorities.

7. He submitted that not only is there a lack of reasoning on this finding, the judge has not properly considered Section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. The Appellant was in France for 11 days on his way to the United Kingdom and did not seek asylum but the judge has found this to be unimportant.
8. The Presenting Officer submitted that the Appellant was forcibly recruited by the LTTE in 2008 which was a very common occurrence at this time and does not set the Appellant apart from other young Tamil men. He was not at the attention of the authorities at this time.
9. The Presenting Officer referred to the Appellant's mental health. He submitted that his mental health issues may have nothing to do with what happened to him in Sri Lanka. He submitted that the judge did not deal with this properly anywhere in his decision. There is no reasoning in the First-tier Judge's decision and he has not engaged with the evidence before him. I was asked to consider the asylum interview at C9 of the Respondent's bundle. He submitted that the questions and answers in this interview make it clear that the Appellant would be of no interest to the authorities on return.
10. I was asked to find that these points, when taken together, amount to a material error of law in the First-tier Tribunal Judge's decision.
11. Counsel for the Appellant made her submissions submitting that one of the adverse credibility issue relates to Section 8. She submitted that the Appellant was in France for eleven days but he was under the control of an agent and the judge dealt with this in his decision, gave proper reasons for giving minimal weight to Section 8 and also noted that the Appellant claimed asylum as soon as he arrived in the United Kingdom. She submitted that the judge was entitled to come to the conclusion he did

about this. The decision makes it clear that he knows the Appellant has spent time in France (paragraph 2) and clearly took this into account when dealing with Section 8. She submitted that in his decision the judge states that he considered all matters before him and she submitted that he did not require to set out specific details of why he has given minimum weight to Section 8. This is not an error.

12. Counsel submitted that the judge finds that the Appellant's account is consistent with the objective evidence. The judge refers to this at paragraphs 10 and 11 of the decision.
13. Counsel then referred to the strong medical evidence and the psychiatric report on file. She submitted that when risk on return is considered this has to be taken into account. She submitted that the judge's reasoning is adequate and he was entitled to reach the decision he did. She submitted that if I find there to be a material error in the decision I should preserve the credibility findings.
14. I asked Counsel why this Appellant would be perceived as a threat to the integrity of Sri Lanka on return. I was referred to the skeleton argument on file under the heading "Risk on Return". She submitted that when **GJ and Others** is taken into account the Appellant only has to be "perceived" to be a threat to the integrity of Sri Lanka as a single state and only has to be "perceived" to have a significant role in relation to post-conflict Tamil separatism within the diaspora. He does not have to have carried out diaspora activities. She referred me to the case of **MP and NT [2014] EWCA Civ 829** and emphasised that it is perception which is the issue. She submitted that if the Appellant's account is credible, which the judge found it was, he will be at risk on return, as someone who is perceived to be a threat to the integrity of Sri Lanka as a single state. This Appellant was an LTTE fighter who at the end of the war surrendered to the authorities and was detained for two years. She submitted that as he was only released because of a bribe he will be of significant adverse interest and as he was still in detention two and a half years after the end of the war, this shows that he was seen to be a threat.
15. She submitted that this Appellant, because of his mental health issues, would be unable to withstand any questioning on return. I was asked to give considerable weight to the psychiatric expert report of Dr Lawrence supported by the observations of Dr Lomond.
16. Counsel submitted that the judge did not say that the Appellant would be on a "watch list" but he may be and if he is he will be questioned on return and because of his mental health issues that will be a problem. I was referred to the said case of **GJ and Others** paragraph 125 which states that every detention in Sri Lanka results in a record being raised with a government list on the computer. I was asked to consider the decision in the round.

17. I was asked to uphold the judge's findings on risk on return and find that there is no material error of law in the decision.
18. The Presenting Officer submitted that the grounds of application should be given weight. He submitted that the skeleton argument produced is necessary for the judge's findings in his decision to make sense, as the risk findings are not clear from the decision. He submitted that when the Appellant was young he was recruited by the LTTE as were many Tamils. He was detained post-conflict but he submitted, there is nothing to show that he would now be of interest to the authorities and he submitted that the decision is inadequately reasoned by the judge and I was asked to set it aside.

Decision and Reasons

19. I have to decide if there is a material error of law in the First-tier Judge's decision. The grounds refer to the judge's mis-application of paragraph 356(9) of the said case of **Gj and Others** and refer to him failing to give adequate reasons for finding that the Appellant would be considered a threat to the integrity of Sri Lanka. They also refer to the judge's statement that he is giving minimum weight to Section 8 issues.
20. I shall deal with Section 8 first of all. The judge correctly states that the Appellant claimed asylum the day after he arrived in the United Kingdom. This does not mean that Section 8 does not apply. It is clear that the judge knows that the appellant spent eleven days in France before coming to the United Kingdom (paragraph 2) and that he was with an agent. The judge has not made reference to this when considering Section 8. Counsel states that the Appellant could do nothing because he was with an agent but Section 8 has to be considered when credibility is assessed and to state, as the judge does at paragraph 7, that he was asked to attach minimum weight to any Section 8 findings when assessing the credibility of the claim and he does so accordingly, must be an error of law. It is necessary in all cases to consider Section 8. Although it in itself is not determinative it must be taken into account when credibility is assessed.
21. The judge states that he accepts the Appellant's evidence that he was forcibly recruited into the LTTE in 2008 and when the war ended he surrendered to the Sri Lankan Army. This is a very common story. This does not single out the Appellant. His evidence is that he started to attend LTTE meetings in 2002 and his father started to help the LTTE. When the appellant surrendered in 2009 at the end of the war, he was detained until he was set free on a bribe. Based on this the judge found that on return to Sri Lanka "It is more than reasonably likely that the Appellant's name would be on a "watch list" so he would be closely monitored and checks would be made on him on return." He then found the Appellant "would be perceived as being a threat to the integrity of his country as a single state or would be perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and in connection with the renewal of hostilities within Sri Lanka." The judge has

made these statements but has not reasoned them. Based on the evidence before him he was not entitled to come to these conclusions. The war in Sri Lanka ended in 2009 and this Appellant's history is the history of many young Tamil men in Sri Lanka and is consistent with the objective evidence but these men are not perceived as being a threat to Sri Lanka as a single state. This Appellant does not fall into one of the risk categories.

22. I accept that the judge has given considerable weight to the appellant's mental health issues but the case of **GJ and Others** had not been followed.
23. The judge has not considered the claim on human rights issues, based on the appellant's mental health problems.
24. There are errors of law in the judge's decision. Based on what was before him he was not entitled to reach his decision. He has not considered adequately, Section 8 or the country guidance or the background evidence relating to Sri Lanka.

Notice of Decision

1. There are material errors of law in the First-tier Judge's decision and the decision promulgated on 27th October 2015 must be set aside.
2. No findings of the First-tier Tribunal can stand. Under s.12 (2) (b) (i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Andonian.
3. 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