



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

Appeal Number: AA/11650/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 25 May 2016**

**Decision & Reasons
Promulgated
On 18 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SS

(Anonymity Direction Made)

Respondent

Representation:

For the Appellant: Mr Duffy, Senior Presenting Officer

For the Respondent: Mr Lewis, Counsel instructed by Theva Solicitors

DECISION AND REASONS

1. This matter comes before me pursuant to permission having been granted by Upper Tribunal Judge Grubb dated 11 April 2016. The appeal relates to a decision by First-tier Tribunal Judge Hendry promulgated on 10 March 2016. The Judge had allowed the asylum claim. The appeal before me is that of the Secretary of State, but to ease following this decision I shall

continue to refer to the claimant as the Appellant and the Secretary of State as the Respondent.

2. The Respondent's grounds of appeal seeking permission to appeal had contended that the Judge had misdirected himself in law because:
 - (1)The Judge had failed to identify why the Appellant would be of interest to the Sri Lankan authorities post 2009 given his lack of profile as an activist;
 - (2)The Country Guidance case of **GJ and others (post-civil war: returnees) Sri Lanka CG** [2013] UKUT 319 (IAC) set out the risk categories but this Appellant did not fit into the same;
 - (3)There was no basis for the Judge's presumption that the Appellant had been placed on a stop or watch list;
 - (4)In any event the Appellant himself had said that he had, "put his freedom fighting days behind him".
3. Mr Duffy was commendably brief when he amplified those grounds at the hearing before me. He said that the Appellant was outside of the stop list. There was no arrest warrant. Given the Appellant's intentions it meant that he was not at risk. It was the Appellant's own evidence and it won't lead to anything. The Judge did not adequately reason his decision. I was invited to set aside the decision and to remake it and to dismiss the appeal.
4. Mr Lewis said that there had been a very experienced Presenting Officer before the Judge. Mr Lewis said he was also at that hearing. The case stood or fell on the credibility of the Appellant, i.e. whether or not there was a continued interest in the Appellant. It was not proper for the Secretary of State to now go behind what was recorded by the Secretary of State and therefore there was no challenge to the credibility findings by the Judge.
5. The evidence of the Appellant was that the authorities had raided his home. They had accused him of the incident with the LTTE and such was the interest that not only did they search his house, they also got his father to report and therefore there is continued interest in the Appellant. That finding had not been challenged said Mr Lewis.
6. Mr Lewis referred to the Country Guidance decision in **GJ** and he referred to the headnote at 7a and to paragraph 168 of the decision. He said it was on that basis that there was this concession. Mr Lewis referred to paragraphs 55 and 56 of the Judge's decision and to 7d of the decision in **GJ**. The stop list has never been published and therefore whether or not someone will be stopped or not has to be inferred from the evidence.
7. Mr Lewis said that in respect of the "no arrest warrant" I should look at paragraph 12.19 at page 95 of the Country of Information Report. It was

clear that if the Appellant did produce an arrest warrant then he would not be credible. Therefore it was not right to ask him for an arrest warrant.

8. Mr Lewis said that there was no challenge to the findings and therefore on the basis of **GJ** it has to be presumed he will be tortured. It was recorded as a case which relied on the credibility of the Appellant I was invited to uphold the decision of the Judge.
9. Mr Duffy said he had nothing further to add in reply.
10. I had reserved my decision.
11. Having considered the decision of the Judge again in some detail and reflecting on the parties respective submissions I conclude that there is no material error of law in the Judge's decision.
12. I have come to this decision for the following reasons.
13. Firstly, Mr Lewis was at the hearing before the Judge and I accept his submission that there were certain concessions made by the experienced Presenting Officer there as to how the case was being put. Indeed I note that it is specifically stated at paragraph 47 at the first bullet point that the Judge recorded the following about the Presenting Officer's submissions, "Unusually, he did not rely heavily on the refusal letter, because he did not share the conclusion in the letter that there was a serious discrepancy in the appellant's description of LTTE training, and the objective evidence of such training".
14. The Judge went on to record that the Presenting Officer did not necessarily accept that the Appellant was a member of the LTTE, "but he could not absolutely say he was not a member". The Judge also recorded that the Presenting Officer did indeed say as Mr Lewis submitted before me, that if the Judge accepted the Appellant's evidence that he was a member of the LTTE then he may be at risk. In addition at paragraph 48 the Judge noted Mr Lewis had said that the appeal succeeded or fell on the credibility of the Appellant.
15. It was therefore against that background that the Judge was looking at this case and considering the risks and thereby applying the decision in **GJ**.
16. Secondly, the Judge made careful and proper findings about the Appellant's credibility. He explained in sufficient detail why he found the Appellant to be a credible witness. There is no appeal against those findings. Therefore when taken together with the way in which the appeal was argued by both parties before the Judge, it is clear that there is no material error of law. The Presenting Officer left it to the Judge to decide the credibility issues. If the Appellant was found to be a credible witness then it was conceded that appeal was to succeed. Therefore because the Judge found the Appellant to be a credible witness, he followed the route

suggested to him by the Presenting Officer and allowed the appeal. There is no error in approach or substantively.

17. Thirdly, in any event the Judge accepted that the Appellant's father had been visited by the military and that the Appellant's father had to report to them on a regular basis. This too showed continued interest in the Appellant and indeed a recent continued interest in the Appellant. As a consequence there was no error in law in respect of the Judge's application of the Country Guidance decision in **GJ**.
18. Therefore in my judgment the decision of the shows no material error of law.

Notice of Decision

The decision of the First tier Tribunal Judge did not involve the making of a material error of law and stands.

An anonymity direction is made.

Signed

Date: 1 June 2016

Deputy Upper Tribunal Judge Mahmood