



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/12712/2015**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Centre City Tower,
Birmingham
On 11 September 2017**

**Decision & Reasons
Promulgated
On 16 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**NR (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel instructed by Linga & Co
For the Respondent: Mr C Bates, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Devittie sitting at Taylor House on 6 April 2017) dismissing his appeal against the refusal of his protection claim. The First-tier Tribunal made an anonymity direction in favour of the appellant, and I consider that it is appropriate for this direction to be maintained for these proceedings in the Upper Tribunal.

Relevant Background

2. The appellant is a national of Sri Lanka, whose date of birth is 25 July 1990. His case was that he was a fisherman in Sri Lanka, as was his father, until his father joined the United National Party in 2004 and

subsequently became a Tamil Member of Parliament. The appellant produced a newspaper article dated 24 April (2006 apparently) which reported the resignation of KR, a member of the Muslim Congress, from the post of membership of the North Western Provincial Council following a threat from high officials who had contact with the Government. It was claimed that KR had recently crossed over from the ruling Party to the opposition Party, "*hence the threat.*" He was a businessman in fishery and had been elected to the North Western Provision Council to represent the area of Kateitty. Due to the threat to his life, his close circle revealed that he might go abroad with his family.

3. The appellant produced official correspondence from the Belgian authorities showing that KR had first been interviewed as a refugee by the Commissioner General for Refugees and Stateless Persons in Belgium on 26 November 2006, and had subsequently been granted asylum on 29 May 2009. The appellant said that the trigger for the departure of his father and step-mother from Sri Lanka had been on an occasion when some people had come to the family home and thrown a hand grenade which had injured his step-mother in her leg. She had left Sri Lanka after she had received treatment in hospital.
4. Towards the end of 2008 the appellant had been approached by 4 or 5 members of the LTTE when he was in his fisherman's hut. He was coerced into agreeing to provide them with assistance. They asked him to transport food and water in his fishing boat (Q&A 99). They would accompany him on these trips, which took place around once a month.
5. In February 2009 he arrived with a party of uniformed LTTE soldiers at "Sala Sea" and began to unload the provisions which were in his fishing boat. Members of the Sri Lankan Army arrived, and they rounded them all up and arrested them. The appellant was taken in a van to Colombo, where he was detained. Initially, he said that he was not questioned until he reached Colombo. Later in the interview (Q&A 131) he said that when he first encountered the army, they asked him what he was doing. They pointed a gun to his head and they asked him why he was here. He told them that he had come here for fishing. They asked about his father, and asked what his father was doing. He said that he told them that his father was a District MP. It was at that point that they put him in the van.
6. He was asked if he knew the names of the members of the LTTE who had enlisted his help and accompanied him on the trips which he had undertaken for the LTTE. He said that he did not know their names (Q&A 94). It was put to him that he had given three names of Sea Tigers in his screening interview. He said that he had over-heard a member of a Sri Lankan Army talking to someone on his 'walky-talky' and so he had heard the army announce that they had arrested these three people, and so he knew that they were the leaders of the LTTE. When he was asked to clarify whether these three people were the same as the people who were on the boat with him, he said that they were not (Q&A 95-98).
7. Returning to Colombo took 9 hours. On arrival in Colombo, the appellant

was taken to the fourth floor. He was kept there for one day, and then was taken on a 4-hour journey to Poosa Camp. He was detained in this camp for 4 years, during which he was interrogated about his father's involvement with the LTTE and the Tamil political Party, and also questioned about his father's whereabouts. He was beaten with a baton. In April 2013 he was visited by two foreign people who were white. They spoke to him and said that they would come back in two weeks. He told these foreign people what had happened to him. After they left, the army asked him what he had said to these people. The appellant told them, and the army beat him up so severely that he had to be taken to hospital. He was under guard, but on an occasion when he went to the lavatory, he saw someone who knew his uncle. He told this person to inform his uncle that he was in the hospital. This uncle told his father, who spoke to a Minister who arranged for his release. About three days later, a person came and told him that a Minister had arranged everything and he was going to be released. The person who took him in the van away from the hospital said that he should not stay in the country.

8. He stayed at someone's house for 7 days, and then his uncle came and told him that his passport was ready for him to go abroad. He had left Sri Lanka on 9 May 2013, and had flown to Bahrain. From there, he travelled to France on 10 May 2013, and he had arrived in the UK on 14 May 2013.
9. On 21 September 2015 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee, or as otherwise requiring international human rights protection. He had admitted that his only involvement with the LTTE was to transport food and water and to transport members of the LTTE. He had not been involved in any politics in the UK. He stated that he did not wish to join the LTTE and only joined because he was forced to do so. It was not considered credible that he was currently considered a threat by the Sri Lankan Government due to the fact that he had, in the past, completed compulsory LTTE-related activities.
10. Also, his account was internally inconsistent. On another version of events, given in his asylum interview, his fellow fisherman (T) was already working for the LTTE, and he was not forced to help them, but did so willingly. He claimed that his father was always talking about helping the LTTE, but he also claimed that he did not know that the Government was anti-LTTE (Q&A 106). He initially claimed that he was not questioned before being placed in the van, but he later claimed that he had been questioned before he got into the van. He claimed that he was detained and tortured for 4 years at Poosa Camp, but despite this, he was incredibly vague about the questions which had been asked during his detention. He had been unable to describe the camp in detail.
11. He had claimed not to have spoken to any of the inmates for 4 years. It is significant that he had initially only mentioned questions about his father, and had changed his account when prompted about whether he had been questioned about the act which he was caught doing. It was simply not credible that was arrested in the process of undertaking LTTE activities,

yet he failed to mention being questioned about this.

12. He said that he had never been charged with anything whilst in detention, despite being caught in the act of helping the LTTE members. It simply was not credible that despite being caught in the act of doing something counter to the Government in Sri Lanka, he had not been charged. His account of his escape was also not credible. It was not credible that he would be able to recognise someone who knew his uncle, despite having been in detention for 4 years, and it was also not credible that - having been kept under tight security for 4 years - security was suddenly dropped so as to enable him to escape.

The Hearing Before, and the Decision of, the First-tier Tribunal

13. Both parties were legally represented before Judge Devittie. Mr Lingajorthy of Counsel appeared on behalf of the appellant, and he relied on a skeleton argument which is in my file. In the skeleton argument, he referred to the medico-legal report of Dr Bernadette Gregory, dated 14 December 2015. Her conclusion was that the appellant had "*significant physical and psychological evidence*" of the ill-treatment he described in detention in Sri Lanka. Mr Lingajorthy submitted that the torture which he had suffered had had the most profound impact upon him, including affecting his memory. On the issue of risk on return, Mr Lingajorthy set out the headline guidance given by the Tribunal in **GJ & Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. He submitted that, as the appellant was already known to the authorities - since he had been detained and tortured "*on previous occasions*" - it was not unreasonable to believe that the Sri Lankan authorities would still have a record of his alleged involvement with the LTTE. As such, it remained highly likely that the appellant would be on the Sri Lankan Government's computerised stop list, as he was an individual against whom there would be an outstanding Court order or arrest warrant. Alternatively, the appellant would be on a watch list, and even if he was allowed to leave the airport, it is highly likely that he would be arrested shortly afterwards. That placed him at real risk that he would be treated as a person with significant LTTE links to "*rekindle the organisation*".
14. In his decision, the Judge set out the appellant's case as it stood prior to the appeal hearing at paragraph [2]. At paragraph 3, the Judge set out the evidence which the appellant had "*added*" through the adoption of his witness statement for the appeal hearing.
15. At paragraphs [6]-[7], the Judge addressed the expert evidence of Dr Gregory. It was agreed that the medical evidence tended to support his claim of having been tortured, and hence the credibility of his claim that he was detained for 4 years because of his LTTE activity: "*I would nonetheless point out that the medical expert is not able to provide a precise date when the injuries were caused*".
16. At paragraph [8], the Judge said that in the final analysis, in determining the appellant's credibility, the medical evidence and its probative value

had to be considered not in isolation but in the round and in the context and totality of the evidence. In this regard there were, in his view, a number of unsatisfactory features in the appellant's evidence that, in his opinion, had a bearing on his assessment of the appellant's credibility. The Judge went on to discuss these features of the evidence in subparagraphs (i)-(iii) of paragraph [8].

17. At paragraph [9], the Judge said: *"The medical report states an inconsistency and the lack of coherence in the appellant's account could be attributable to brain injury that he sustained during his period of torture. The appellant did not, however, undergo an examination of his brain to confirm that he sustained any brain injury. Moreover, my observation is that the appellant's lapse of memory seems to be very convenient, because there are aspects of his evidence that are extremely detailed - for example, how he came to escape; what was said in the van; and indeed his account of his escape, in his interview, is entirely coherent and detailed."*
18. At paragraph [10], the Judge said: *"The unsatisfactory features I have identified, namely his failure to give a coherent account of the persons he met in prison and the identity, and more importantly, the lack of coherence of his account of the questions put to him during detention, are significant features that go to undermine his credibility. I am not satisfied, weighing all the evidence in the round, that the appellant's account of having been detained for a period as much as four years is reasonably likely to be true."*
19. At paragraph [11], the Judge made the following findings: (a) he found that the appellant was detained by the authorities and subjected to ill-treatment; (b) he found that the appellant's father fled the country for the reasons that the appellant claimed; (c) he did not accept that the appellant was kept in custody for a period of 4 years after the end of the civil war in May 2009, as he was a relatively low-profile activist and he had extreme difficulty in understanding why the authorities would have seemed fit to detain this appellant for such a significant period of time after all hostilities had ended in May 2009; (d) he did not consider that the appellant's father's political activities would have been a cause for such a degree of adverse interest in the appellant, as the appellant's father was not an LTTE member - he was a member of a legal, political Party, albeit a Party that was aligned to the Tamil cause - and it was not the contention of the appellant's father that he was at any time detained in Sri Lanka; (e) He accepted that the appellant was involved in selling goods to the LTTE and that this was the cause of his arrest.
20. The Judge went on, in paragraph [12], to set out the same headline guidance from **GJ** as was set out by Mr Lingajorthy in his skeleton argument.
21. At paragraph [13], the Judge said that he did not accept that the appellant, having been detained towards the close of the civil war with several other persons - for a period much shorter than the 4-year period he claimed -

would be at risk in Sri Lanka on return for reasons of imputed or actual political opinion. There was absolutely nothing in the profile of the appellant's father that supported the contention that there was continuing adverse interest in him, since his flight from Sri Lanka was almost a decade ago.

22. At paragraph [12], the Judge said that the appellant was a low-profile activist who last took part in such low-profile activities in 2008. He did not have a profile which fell within the risk categories defined in **GJ**. He did not accept that the authorities had any reason to continue to have any adverse interest in the appellant's father, and still less to impute the appellant a political opinion to an extent that would trigger the appellant's persecution upon his return.

The Reasons for Grant of Permission to Appeal to the Upper Tribunal

23. Ms Jegarajah substantially re-cast the grounds of appeal to the Upper Tribunal, following the refusal of permission to appeal by the First-tier Tribunal. She pleaded that the Judge had failed to consider the asylum interview. Although the appellant was likely to have learning difficulties compounded by PTSD, he had provided detailed answers in the asylum interview to the questions he had asked. The Judge failed to take account of: (i) the fact that the appellant had been arrested while transporting goods with LTTE members from India to Sri Lanka in the final stages of the civil war; (ii) that he was told that he was detained specifically to procure his father's return to Sri Lanka; (iii) that he had disclosed that he was tortured to two members of an NGO (possibly a UN investigator); (iv) he was warned by the authorities not to disclose this torture "*to the West*"; (v) that he was taken to the 4th floor of the CID Headquarters in Colombo, and then transferred to a high security prison; (vi) that one of the witnesses in **GJ**, a Security Consultant for the GOSL, stated that LTTE members who were of lesser interest were rehabilitated, and those believed to be high-level members were prosecuted - whereas the appellant was not rehabilitated.
24. Had the Judge read the appellant's answers in interview, it would have been apparent to him that the reasons for the appellant's prolonged detention were clear, and could not be said to be inconsistent with the country evidence; and he ought thereby to have allowed the appellant's appeal.
25. On 10 July 2017, Upper Tribunal Judge Pitt granted permission to appeal for the following reasons:

The FTTJ found substantial parts of the appellant's claim made out, including detention, significant ill-treatment and his father fleeing Sri Lanka for political reasons. It is arguable that even if the claim to have been released in 2013 was not accepted, the FtTJ did not assess the appellant's profile correctly

against the Country Guidance case of **GJ** and Country Evidence on Sri Lanka.

The Hearing in the Upper Tribunal

26. At the hearing before me to determine whether an error of law was made out, Ms Jegarajah developed the case which she had advancing the grounds of appeal, by reference *inter alia* to **UP (Sri Lanka) [2017] EWCA Civ 85**. She directed my attention to various passages in the asylum interview upon which she relied. Mr Bates, in reply, adhered to the Rule 24 response opposing the appeal which had been settled by a colleague. In essence, the challenge amounted to mere disagreement.

Discussion

27. The factual premise which underlies the error of law challenge does not stand up to scrutiny. Firstly, it is not the case that the Judge did not take into account what the appellant had said in his asylum interview. The Judge's summary of the appellant's case prior to the appeal hearing, in paragraph [2] of his decision, is taken from the summary in the refusal letter, which in turn is almost entirely derived from the appellant's questions and answers in the asylum interview. Secondly, the argument that the appellant gave a clear explanation in the asylum interview as to why he had been subjected to a prolonged detention of 4 years, and as to why there was at least a real risk of him continuing to be of adverse interest to the Sri Lankan authorities, pre-supposes that the account given in the asylum interview was clear, consistent and internally coherent. But it was not so, for the reasons identified by the respondent in the refusal letter. This was not disputed by Mr Lingajorthy. His line was that the discrepancies were reasonably explained by the appellant's PTSD, which had impaired his memory, and thus he was not a reliable historian on points of detail. As is noted in the Rule 24 response, the Judge addressed that argument in paragraph [9] of his decision, finding that the appellant's lapse of memory seems to have been very convenient, as there were aspects of his evidence that were extremely detailed. The Judge further observed that the appellant had not undergone an examination of his brain to confirm if he sustained any brain injury. It is not suggested that the Judge's crucial finding in paragraph [9] is erroneous in law, and I do not find that it is. It is a sustainable finding, which has profound ramifications for the overall credibility assessment.

28. As previously noted, in paragraph [8] the Judge identified a number of unsatisfactory features in the evidence of the appellant which, in his opinion, had a bearing on the assessment of the appellant's credibility. The first was that, in his interview, the appellant was unable to give a clear account of the persons he had met in prison during a period of 4 years in incarceration, and was also unable to give a coherent account of the questions which were put to him during his interrogation. The Judge observed that he had, after all, been arrested on specific allegations: he found it entirely unsatisfactory that he was unable to give an account of his interrogation, "*consistent with allegations that he claims led to his arrest.*"

29. It was open to the Judge to make this adverse credibility finding for the reasons which he gave. Although, on his account, the appellant had been caught red-handed transporting uniformed LTTE soldiers carrying guns, as well as provisions, he did not initially claim that he was interrogated about this. Instead, he claimed to have been interrogated about his father, although he had not been arrested because of his father. He said he had volunteered to the army that his father was a District MP, when in fact his father was no longer a District MP, but had left the country in September 2008.
30. The second adverse credibility finding made by the Judge was that the alleged delay in the appellant's release until 2013 was not consistent, in the Judge's view, with the background evidence, which indicated that the civil war ended in 2009 and, at the same time, the appellant was not a high-profile LTTE activist, let alone a member of the LTTE.
31. Ms Jegarajah submits that this adverse credibility finding is erroneous in law, as she submits that the country background evidence indicates precisely the opposite. She submits that the torture to which the appellant was subjected in detention is not consistent with him being taken to rehabilitation, but is consistent with him being perceived as an LTTE activist who had information of strategic value to the authorities which needed to be extracted by torture. She submits that his lengthy detention is also consistent with him being held for ransom so as to force his father to return to Sri Lanka to secure his release.
32. However, I consider that the Judge's findings are entirely consistent with the guidance given in **GJ**, and in particular the following propositions: (a) the GOSL's concern now is not the past membership or sympathy, but whether a person is a destabilising threat in post-conflict Sri Lanka (paragraph 311); (b) it is not established that previous LTTE connections or sympathies (whether direct or familial) are perceived by the GOSL as indicating now that an individual poses a destabilising threat in post-conflict Sri Lanka (paragraph 325); and (c) an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state which lacks in Government (paragraph 356).
33. The Judge's adverse credibility finding was clearly open to him, having regard to the fact that the appellant was, as the Judge accepted, arrested in February 2009, when (as Ms Jegarajah accepts) the civil war was reaching a climax, and the risk of persecutory ill-treatment to someone such as the appellant was at its highest. The torture which the appellant received in detention is entirely consistent with the appellant being tortured at the time of maximum risk (February to April 2009) and being later released, after the end of the civil war, as a person who was no longer of any interest to the authorities. As the Judge correctly stated, the medical expert was not able to confirm that the scarring had been inflicted between 2009 and 2013, as distinct from being only inflicted in 2009.
34. Ms Jegarajah relied on **UB (Sri Lanka) & SSHD [2017] EWCA Civ 85**, a

case in which the Court of Appeal considered the implications of neither the First-tier Tribunal nor the Upper Tribunal being referred to the Home Office Policy Guidance of 28 August 2015, entitled: "*Tamil Separatism*". Ms Jegarajah stated that the Judge had erred in law in not considering this guidance, in which the SSHD accepted as a matter of policy that a person with the appellant's risk profile came within the risk categories of **GJ** as he was a person who had provided weapons or explosives to the LTTE.

35. Ms Jegarajah did not produce a copy of the guidance, but read out the extract upon which she relied from her laptop. Apart from the fact that Mr Lingajorthy did not rely on the guidance as fortifying the appellant's case under **GJ**, it was not the appellant's evidence in interview that he routinely transported weapons - still less that he provided weapons to the LTTE. He said that he might have been carrying a consignment of weapons in the boat which was seized by the Army, but he did not know whether or not the items in the boat were weapons or something else. Moreover, he did not claim to have been interrogated at any point about the transportation of weapons, or indeed about the transportation of armed LTTE soldiers. Furthermore, he was never charged with any terrorist offence, including an offence of the transportation of weapons, and the fact that he was never charged runs counter to the background evidence that, if he had been caught red-handed engaging in such activity, he would have been charged.
36. Ms Jegarajah submits that the Judge failed to take account of the additional risk factor of the appellant being found in a boat with three leaders of the LTTE. This ignores the fact that, whereas the appellant initially claimed that three people in the boat were leaders of the LTTE, he rapidly retracted this claim, saying that the three people who he had named at the screening interview had not been on the boat.
37. Ms Jegarajah submits that the Judge failed to take into account that there was the additional risk factor of the appellant's association with his father. Her submission ignores the fact that the appellant, on his account, actually volunteered his connection to his father when first apprehended by the army, which is not consistent with his father being notorious in helping the LTTE. (In his witness statement, dated 19 September 2016, the appellant said at paragraph 10 that he informed the officers that his father was a local politician, as he believed that the officers would let him go if he said that). Moreover, given that the only independent evidence of the basis on which his father claimed political asylum in Belgium is the newspaper article of 24 April 2006 (which contains no reference to the father supporting the LTTE) and given the non-disclosure of the claim which the appellant's father actually presented to the Belgian authorities, it was entirely open to the Judge to find that it was not credible that the profile of the appellant's father would have resulted in ongoing adverse interest in the appellant on the part of the Sri Lankan authorities.
38. The third unsatisfactory feature identified by the Judge in paragraph 8 was the appellant's account of how he came to escape. The Judge said that there was very little evidence from the appellant, or from his father, to

explain what actions (if any) were taken by the family to establish the appellant's location and where he was being detained. The Judge did not accept that, almost 4 years after his detention, the appellant would quite fortuitously meet a person known to his uncle, who relayed information regarding where he was being held, and thus initiated a process leading to his departure from the Sri Lanka within 24 hours. This adverse credibility finding is not in terms challenged by Ms Jegarajah as being perverse or inadequately reasoned, and I consider that it was an adverse credibility finding which was reasonably open to the Judge for the reasons which he gave.

39. In conclusion, on analysis, the error of law challenge is ultimately an expression of disagreement with a conclusion on risk on return that was open to the Judge, for the reasons which he gave. The conclusion is neither perverse, nor inadequately reasoned.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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 12 October 2017

Judge Monson

Deputy Upper Tribunal Judge

