



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/06761/2018**

THE IMMIGRATION ACTS

**Heard at Field House
On December 21, 2018**

**Decision & Reasons
Promulgated
On January 21, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR P K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Popal, Counsel, instructed by S Satha & Co
For the Respondent: Mr Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Procedure Rules) I make an order prohibiting the disclosure or publication of specified documents or information relating to the proceedings or of any matter likely to lead members of the public to identify any person whom the Upper Tribunal considers should not be identified. The effect of such an “anonymity order” may therefore be to prohibit anyone (not merely the parties in the case) from disclosing relevant information. Breach of the order may be punishable as a contempt of court.

2. The appellant claimed to have entered the United Kingdom on May 15, 2010. He made an application for leave to remain as a student on June 15, 2011 but this was refused. The appellant remained in the United Kingdom and claimed asylum on March 12, 2013. The respondent refused his application and his appeal was dismissed on June 6, 2013. Although granted permission to appeal the Upper Tribunal found there was no error in law and he was refused permission to appeal to the Court of Appeal.
3. Further submissions were rejected on January 19 and July 22, 2016. On April 23, 2018 he submitted further representations which the respondent treated as a fresh claim. The respondent refused this application on April 30, 2018.
4. The appellant appealed this decision on May 29, 2018 under section 82(1) of the nationality, Immigration and Asylum Act 2002 and his appeal came before Judge of the First-tier Tribunal Mace on June 28, 2018 who in a decision promulgated on July 19, 2018 dismissed the appellant's appeal finding the starting point was the previous findings of the First-tier and Upper Tribunal who had rejected his claim.
5. The Judge concluded the appellant was only involved at a low level in the TGTE and would not attract the attention of the authorities and that his activities since 2013 would not bring him within a risk category set out in GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319.
6. Grounds of appeal were lodged with the Tribunal on August 2, 2018 but Judge of the First-tier Tribunal Lambert refused permission to appeal on August 20, 2018. Permission to appeal was renewed on September 5, 2018 and Upper Tribunal Judge Perkins granted permission to appeal finding it arguable the Judge had erred:
 - (a) The Judge had not properly considered the risks facing those who returned to Sri Lanka after demonstrating support for Tamil separatism.
 - (b) Paragraph [3] of the grounds of appeal made the best point.

SUBMISSIONS

7. Ms Popal relied on the grounds of appeal. In his earlier appeal it had been accepted he was supporter and had been detained and tortured. The new grounds centred around his sur place activities and whether the authorities retained an interest in him. She submitted that the finding at paragraph [32] did not amount to an inconsistency and argued that the Judge's decision was tainted.
8. Ms Popal submitted the Judge described a highly public event in paragraph [34] and argued that the Judge should have looked at the appellant's position against the background of paragraphs [336] and [354] of GJ. References to face recognition are made in the decision and there is an

acceptance sophisticated technology is used. None of this was considered by the Judge when he considered the risk posed to the appellant on return.

9. Paragraph 4 of the grounds dealt with issue of return and Ms Popal submitted the Judge did not consider the risk on return at all but as the appellant would be returned on an ETD he would be questioned and as he previously had an LTTE connection and given there are no detention facilities at the airport article 3 ECHR would be engaged. The Judge should have considered that para 399K HC 395 is engaged.
10. Turning to the second ground of appeal she referred to paragraph [453] of GJ as this dealt with medical facilities in Sri Lanka. The Judge did not consider any of this and failed to give any reasons why she departed from the country guidance case. Whilst it was open to the Judge to depart from GJ she must give reasons for doing so.
11. Finally, the Judge failed to tackle the fact TGTE is a proscribed terrorist group.
12. Mr Duffy submitted the fact no one attended from the TGTE was evidence that the appellant was not an important person within the organisation. The Judge had considered the evidence and found him to be low ranking member for reasons given in paragraph 32.
13. Referring to GJ he submitted it is about perception, but perception must be linked to the reality. He argued the authorities were aware people did these things to bolster asylum claims and that mere attendance at an event would not be sufficient. The authorities were only interested in those people who wanted to re-invigorate the LTTE and he argued the Judge found the appellant did not form into this category. The Judge gave plenty of reasons to reject the claim and concluded that although he attended all these demonstrations he would not be on their radar.
14. The Brigadier's actions were not directed at the appellant, so he would not have been specifically recognised. The fact he attended a demonstration was, he repeated, insufficient.
15. In relation to suicide risk he submitted the findings were open to the Judge and there was nothing to suggest in the medical evidence he was at risk. The observations in Appendix F was not the country guidance finding but was simply a finding in that particular case.
16. On the issue of the TGTE being a terrorist group he referred to the findings in GJ and being a member who organised meetings and sold lottery tickets risk did not place him in a risk category.
17. Ms Popal responded to these submissions and maintained that the Judge failed to properly consider he was formerly identified as being involved with the LTTE and his actions in the United Kingdom would be viewed as a continuation of his former behaviour and thereby placed him in a risk category. He would not be viewed simply as an economic migrant but as a

person who outwardly supported the campaign. At paragraph 34 the Judge failed to give reasons why the Brigadier was not looking at him. On the issue of suicide, she submitted the suicide risk was part of the country guidance and was not a separate sub-section and this point had been conceded by the respondent in GJ.

18. I reserved my decision.

FINDINGS

19. The renewed grounds of appeal centred on the claim that the Judge had failed to adequately assess the appellant's sur place activities or adequately assess the appellant's mental health issues. In her oral submissions Ms Popal expanded on these grounds and invited me to find that there had been an error in law.
20. The Judge recognised that this was not the first time the appellant had appeared before the Tribunal to argue his case and quite properly made reference not only to the First-tier Judge's decision from June 3, 2013 but also the decision of Deputy Upper Tribunal Judge Lewis who heard representations on October 3, 2013.
21. In giving permission to appeal Upper Tribunal Judge Perkins had concerns that the First-tier Tribunal had not considered properly the risks facing those who returned to Sri Lanka after demonstrating their support for Tamil separatism. Insufficient weight may have been given to the events of February 4, 2018 which concerned a protest involving Brigadier General Fernando.
22. Judge Mace was alert to the fact that much of the evidence adduced at the original appeal-hearing was evidence that had been before the Tribunal in June 2013. The Judge was satisfied that there was no reason to revisit the earlier findings and gave detailed reasons between paragraphs 27 and 42 to support his reasons.
23. With regard to the current grounds of appeal, weight is placed on two additional matters:
- (a) The events from February 2018 in which it is said the appellant is reasonably likely to have been identified by agents of the government and this evidence had not been properly considered by the First-tier Judge.
 - (b) His membership of the TGTE.
24. The Judge set out the evidence relating to the events of February 4, 2018 in paragraph [15] of his decision. The appellant claimed that he had been specifically threatened outside the Sri Lankan High Commission by the Brigadier. He claimed that the Brigadier had pointed at him and then pointed at his army badge and did a "slitting" action to his neck. The Judge considered the evidence at paragraph [34] of his decision and whilst he accepted that there had been a protest there on that day and that the

Brigadier's action had been widely reported he did not accept that this action had been targeted at the appellant personally but concluded that the actions were towards the whole group rather.

25. Ms Popal submitted that the Judge failed to have regard to the fact that the Sri Lankan authorities used facial recognition technology and intelligence that was gathered by its agents. Mr Duffy reminded me that there had already been a finding that the appellant had attended demonstrations, but this was found to be insufficient to engage the Refugee Convention and this earlier finding was subsequently endorsed by the Upper Tribunal in GJ.
26. Unless the Judge found that the appellant's role had been enhanced by his subsequent activities then his conclusions would have been open to him because mere attendance at meetings/demonstrations did not bring the appellant within the risk categories identified in paragraph 356(7) of GJ.
27. Whilst Upper Tribunal Judge Perkins accepted there was a possible error in this assessment, I am satisfied that the Judge made findings on the events from February 2018 and subsequently applied the country evidence and country guidance in considering whether there was a real risk of persecution to the appellant.
28. The Judge did consider both the appellant's activities and the case law and then posed the correct question at paragraph [39] of his decision. He concluded at paragraph [40] that the appellant's profile, perceived or otherwise, was little changed from the 2013 decisions.
29. In reaching the current decision, the Judge took into account the fact that he had continued to attend events and had joined the TGTE.
30. I do not accept Ms Popal's submission that the Judge erred. I find the Judge did give adequate consideration to the appellant's sur place activities and reached a decision on the evidence that was open to him.
31. The second ground of appeal concerned the Judge's approach to the appellant's mental health condition and in oral submissions Ms Popal argued the Judge did not properly consider the evidence and in particular paragraph [453] onwards of GJ as well as the relevant Appendix.
32. The Judge did give due consideration from paragraph 45 of the decision to mental health issues and reminded himself that as there had been past trauma there was a possibility that returning the appellant would create a risk of suicide.
33. The Judge noted the medical report and that the appellant had not attempted suicide and had no active plans to do so. The Judge also noted that the appellant's parents were a protective factor and he could return and live with them in Sri Lanka thereby mitigating any risk of suicide. The Judge set out the test that should be followed and concluded in paragraphs [50] and [51] that the appellant would be able to access

treatment. The Tribunal in GJ noted there was a lack of psychiatrists but did not conclude treatment was not available and the Judge found that the appellant had previously accessed therapy in Sri Lanka.

34. I am satisfied that the Judge did properly consider this issue and reached findings open to him.

DECISION

35. There was no error in law and I uphold the previous decision in all respects.

Signed

Date 31/12/2018



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award as I dismissed the appeal.

Signed

Date 31/12/2018



Deputy Upper Tribunal Judge Alis