



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

Appeal Number: AA/02082/2014

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 23 September 2014**

**Determination Sent
On 13 October 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

**MK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Paramjorthy, instructed by Fernandes Vaz Solicitors
For the Respondent: Mr J Parkinson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appeal is subject to an anonymity order made by the First-tier Tribunal pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230). Neither party invited me to rescind the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Introduction

2. The appellant is a citizen of Sri Lanka who was born on 22 February 1977. He claims to have arrived in the United Kingdom on 5 July 2001 when he claimed asylum. On 19 February 2002, his claim for asylum was refused and an appeal against that decision was dismissed on 2 September 2002. On 19 July 2010, the appellant was encountered working illegally and was detained pending removal. On 20 July 2010, further representations were made on behalf of the appellant relying on the “legacy” scheme. The appellant’s claim was refused on 17 August 2010. A judicial review claim was lodged challenging that decision. Removal directions were initially set on 15 September 2010 but injunctive relief was granted on 30 September 2010. That order was discharged on 17 December 2010 and further removal directions were set on 21 January 2011. Subsequently, on oral renewal the appellant was granted permission to bring judicial review proceedings on 2 March 2011. The appellant’s claim for judicial review was dismissed on 8 December 2011 and permission to appeal to the Court of Appeal was refused on 4 April 2012.
3. Thereafter, on 6 June 2012, further submissions were made on the appellant’s behalf but his claim was refused on 6 November 2012 and directions for removal were set on 14 November 2012. A further judicial review application was lodged on 19 November 2012 and permission granted on 25 March 2013. Thereafter, on 16 April 2013, the judicial review proceedings were withdrawn following a consent order allowing for further submissions to be made on the appellant’s behalf which, if rejected, would attract a right of appeal. Those representations were made on 6 August 2013 and the appellant’s claim was refused on 13 March 2014. On that latter date, a decision was made to refuse the appellant leave to enter with directions that he be removed to Sri Lanka.
4. The appellant appealed against that decision to the First-tier Tribunal. In a determination promulgated on 12 May 2014, Judge Troup dismissed the appellant’s appeal on asylum grounds, under the Immigration Rules and under Art 8 of the ECHR.
5. The appellant sought permission to appeal to the Upper Tribunal solely against the decision to dismiss his appeal on asylum grounds. On 6 June 2014, the First-tier Tribunal (Judge P J G White) granted the appellant permission to appeal on the basis that the judge had arguably erred in law in assessing the risk to the appellant on return by failing to have sufficient regard to the country guidance decision in GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC). Thus, the appeal came before me.

The Appellant’s Claim for Asylum

6. The primary facts relevant to the appellant’s claim are not essentially disputed. They were found initially by the Adjudicator (Ms Griffith) in her determination promulgated on 2 September 2002 in relation to the appellant’s first appeal and also in the determination of Judge Troup in the current appeal.

7. The appellant is a Hindu Tamil who was born in Vavuniya in Sri Lanka. He is an only child and he lived in Vavuniya until he left Sri Lanka in 2001. After he left school at the age of 12, the appellant worked in his father's shop for eight or nine years. In 1999 he was approached by the LTTE and was told to store parcels for them in the shop. He had no option but to comply and parcels were deposited once or twice a week and later collected. The appellant did not know what was in them.
8. In June or July 1999 the appellant was arrested by the army and accused of helping the LTTE. He was detained for about two months and suffered ill-treatment. He was eventually released when a bribe was paid by a family friend.
9. About two months later, the appellant opened a restaurant in Vavuniya. In February 2001, he was arrested after an army truck was ambushed and three soldiers were killed. He was detained, questioned and beaten and released after two weeks upon payment again of a bribe.
10. The appellant feared for his life and left Sri Lanka on 25 June 2001 when he came to the UK and claimed asylum.
11. Since the appellant has been in the UK he attended three protests in London, attended by between 500 and 1,000 people - the last one being in 2009. The appellant's evidence before the judge in this appeal was that he did not know if his photograph had been taken.
12. The appellant's evidence was that he does not have a passport and if he applies for a travel document from the Sri Lankan authorities he will be "monitored" thereafter by the Sri Lankan government. He fears that records will have been kept in Sri Lanka and that he is likely to be arrested and tortured on return.

The Judge's Decision

13. The judge's reasoning can be found at paras 26-30 of his determination.
14. At para 26 the judge set out the Adjudicator's factual findings in her 2002 determination including that, after his arrest and release in 1999, "the army was no longer interested in him". Judge Troup then continued:

"It was accepted that the Appellant was arrested again in 2001 following the killing of three soldiers. It was found by the Adjudicator however that had it been believed that the Appellant was instrumental in the killings, he would not have been released. It was concluded that the Appellant was of no continuing interest to the authorities."
15. At para 27, following Devaseelan [2002] UKIAT 702, Judge Troup stated that the Adjudicator's findings were the "starting point" for him. Judge Troup then set out Counsel for the Appellant's argument, which he rejected, that the situation in Sri Lanka was now different:

“Counsel has urged me to find that the situation in Sri Lanka in 1999 and 2001 was very different to the situation that obtains today. He said that a ceasefire was agreed in 2002 as a result of which emergency powers were suspended. On both occasions the Appellant was arrested on suspicion of being an LTTE member or sympathiser but, as has been found, following periods of detention he obtained his release as he was no longer of any interest to the authorities. I am not persuaded that such changes as may have occurred in Sri Lanka will have any adverse effect upon the Appellant in the event of his return.”

16. Judge Troup then summarised paras (7)-(9) of the head note in GJ and Others (which reflected the UT’s determination at [356(7)-(9)]). Applying that guidance Judge Troup concluded that the appellant would not be at risk on return.

17. First, the appellant did not claim to have any role in post-conflict Tamil separatism which was the only relevant risk category in para (7) of the head note. Secondly, Judge Troup concluded that the appellant would not be at risk on the basis that he would be perceived as being a present risk to the Sri Lankan state. At para 29, Judge Troup continued as follows:

“It has been found, however, that the Appellant is not and never has been an LTTE member or sympathiser; such role as he had had was peripheral and forced upon him under duress and he has been found to be of no interest to the authorities.”

18. Judge Troup then concluded that, applying para (9) of the head note in GJ and Others, in the unlikely event of the appellant’s name appearing on a ‘watch list’, it was not reasonably likely that he would be detained as he had never claimed to be a Tamil activist. At para 30, Judge Troup said this:

“This Appellant does not claim to be, or to have ever been a Tamil activist. He was caught up in the civil war as an innocent by-stander and was forced under duress to assist the LTTE. He does not claim to have worked or to be working to destabilise the country or to revive the conflict. I find that although there is a possibility that he will be monitored following his return, he will not be engaging in any of the activities that would result in detention or ill treatment. He claims to have engaged in ‘diaspora activities’ in the UK but not since 2009, and there is no evidence before me to suggest that those activities such as they were, have brought him to the adverse attention of the Sri Lankan authorities.”

The Submissions

19. On behalf of the Appellant, Mr Paramjorthy submitted that the judge had failed properly to apply the country guidance in GJ and Others, in particular [356(7)(a)]. He relied upon the decision of the Court of Appeal in MP and NT (Sri Lanka) v SSHD [2014] EWCA Civ 829, in particular at [50] and the short concurring judgment of Underhill LJ that the risk category in [356(7)(a)] of GJ and Others might apply:

“Where the evidence shows particular grounds for concluding that the government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism.”

20. Mr Paramjorthy submitted that taking the appellant's history together with his *sur place* activities in the UK, he would be at risk as he would be questioned at the airport and his history discovered. Mr Paramjorthy, in particular, relied upon the appellant's "unusual" history - as he characterised it - namely that the appellant had been arrested in 1999 as a result of being identified by an informant as being an LTTE member. Mr Paramjorthy also adopted the grounds of appeal which, in addition to the point elaborated in his oral submissions, sought to challenge Judge Troup's finding that the appellant was of no interest to the authorities when he was released after the payment of a bribe on the basis that release in that way was "not indicative of the authorities' insufficient adverse interest" in the appellant. He relied upon para 29.10 of the *Country of Origin Information Report* on Sri Lanka for February 2010 which cited an Amnesty International paper which noted reports that, even those with ties to the LTTE, were able to "buy their way out of the camps by bribing army personnel".
21. On behalf of the respondent, Mr Parkinson submitted that even if the appellant had been of some interest when he was arrested in 2001 following the attack on an army truck, both the Adjudicator and Judge Troup had been entitled to conclude that the appellant was of no interest to the authorities when he was released. In any event, Mr Parkinson submitted that it was clear from GJ and Others that the Sri Lankan government was now only concerned with past membership or sympathy to the LTTE to the extent that a person posed a "destabilising threat in post-conflict Sri Lanka" citing [311] of GJ and Others.

Discussion

22. I begin with the relevant guidance set out in GJ and Others at [356]. It is appropriate to set it out in its entirety as follows:

"356. Having considered and reviewed all the evidence, including the latest UNHCR guidance, we consider that the change in the GOSL's approach is so significant that it is preferable to reframe the risk analysis for the present political situation in Sri Lanka. We give the following country guidance:

- (1) This determination replaces all existing country guidance on Sri Lanka.
- (2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
- (3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil

separatist organisation and (b) the revival of the civil war within Sri Lanka.

- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a 'stop' list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) *Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.*
 - (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
 - (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witness war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.
 - (d) A person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.
- (8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, 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 or the Sri Lankan Government.

- (9) The authorities maintain a computerised intelligence-led [watch] list. A person whose name appears on a 'watch' list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.
- (10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the 'Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka' published by UNHCR on 21 December 2012." (my emphasis)

23. The relevant risk category relied upon by the appellant in this appeal is in [356(7)(a)], namely that he would be perceived as a threat to the integrity of the Sri Lankan state because he would be perceived as having a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
24. The UT makes clear in [356(8)] that in post-conflict Sri Lanka an individual's past history is only relevant to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the state or government.
25. In MP and NT (Sri Lanka), the Court of Appeal, on appeal from the Upper Tribunal in GJ and Others, considered a legal challenge to the country guidance set out in [356]. The Court of Appeal rejected a number of challenges and upheld the guidance. In particular, the Court of Appeal accepted that the Upper Tribunal was entitled to depart from the UNHCR guidelines, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka" (21 December 2012) which set out (at pages 26-27) risk categories of individuals with "more elaborate links to the LTTE" including former combatants or cadres and those sheltering or transporting LTTE personnel or supplying or transporting goods for the LTTE.
26. However, the Court of Appeal did so on the basis that the UT had not excluded the relevance of the "more elaborate links with the LTTE" in determining whether an individual fell within the risk category in [356(7)(a)] as presenting a present threat to the integrity of Sri Lanka. At [15] Maurice Kay LJ observed that the UT's decision meant that: "[m]erely to have one or more of the features listed in the 'more elaborate links' part of the UNHCR Guidelines is not enough".

27. At [16] Maurice Kay LJ concluded:

“I am unable to escape the conclusion that the UNHCR’s Guidelines are indeed less demanding than the UT’s guidance although no doubt it will be easier to infer that the paragraph 356(7) test is satisfied where elaborate links are established than where they are not.”

28. Underhill LJ at [50] also accepted that the UT was entitled to exclude from a risk category *per se* those who had “more elaborate links” with the LTTE. He also concluded that the UT was entitled to find that the Sri Lankan government’s concern was now with “current or future threats to the integrity of Sri Lanka as a unitary state”.

29. Underhill LJ concluded that in assessing that risk, whilst principally the Sri Lankan government was focused on actual or perceived “diaspora activism”, nevertheless:

“there may, though untypically, be other cases ... where the evidence shows particular grounds for concluding that the Government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism.”

30. The issue which I must decide is whether the judge was entitled to find, in the light of the country guidance, that the appellant did not fall within the risk category in [356(7)(a)] as a person who would be perceived to be a threat to the integrity of Sri Lanka as a single state because of their significant role in post-conflict Tamil separatism within the diaspora or a renewal of hostilities within Sri Lanka.

31. The appellant’s history of detention and ill-treatment in 1999 and 2001 is accepted, as is accepted that he was released on both occasions by a bribe.

32. Mr Paramjorthy, in his grounds, relied upon [308] and [309] of GJ and Others that the appellant will, as part of the documentation process and return to Sri Lanka, be asked and expected to answer questions about his former LTTE involvement. Those paragraphs are as follows:

“308. During the re-documentation process in the United Kingdom, or at the airport on return, a forced returnee can expect to be asked about his own and his family’s LTTE connections and sympathies.

309. Those with Sri Lankan passports returning on scheduled flights will be able to walk through Colombo airport without difficulty, unless their names are on a ‘stop’ list, by reason of an outstanding Court order or arrest warrant. Those on a ‘watch’ list are not stopped at the airport but will be monitored and if considered to be a destabilisation risk, may be picked up from their home area.”

33. In addition, it is important to note what is said in [310] of GJ and Others:

“310. There are no detention facilities at the airport. Although individuals may be interviewed at the airport by the security forces, the Sri Lankan

authorities now aim to move returnees relatively quickly out of the airport and on their way to their home areas and to verify whether they have arrived there soon afterward. If the authorities have an adverse interest in an individual, he will be picked up at home, not at the airport, unless there is a 'stop' notice on the airport computer system. There is no evidence that strip searches occur at the airport; the GOSL's approach is intelligence-led rather than being driven by roundups and checkpoints as it was during the civil war."

34. Whilst, therefore, the appellant's history may be identified by the Sri Lankan authorities, the guidance makes plain that he would only be in difficulties at the airport if he was on a "stop" list as a result of there being an extant court order or arrest warrant (see [356(7)(d)]). There is no evidence that the appellant is subject to either a court order or arrest warrant and would, therefore, be on a "stop" list.
35. The judge accepted that the appellant might be on a "watch" list (see para 30 of the determination), however, as [356(9)] of GJ and Others makes plain, such an individual is not reasonably likely to be detained at the airport but subject to monitoring by the security services to see if he is working as a Tamil activist to destabilise the Sri Lankan state or revive the internal conflict. Unless that is the case, the individual is not likely to be detained.
36. In my judgement, even if the appellant is someone whose history brings him to the attention of the Sri Lankan authorities, that history taken with his *sur place* activities in the UK does not create a real risk that he will be perceived as someone who has a significant (or indeed any) role in relation to post-conflict Tamil separatism or in the renewal of hostilities within Sri Lanka.
37. The appellant's activities that led to his detention and ill-treatment in 1999 and 2001 were "low level". The fact that he had, in 1999, been arrested as a result of information obtained from an informant does not, in my judgment, alter that fact or lead to a change of perception by the Sri Lankan authorities as to whether he presents a current risk to the integrity of the Sri Lankan state.
38. In addition, although his release in 1999 was as a result of a bribe, the authorities had no interest in him until February 2001 following the incident in which an army truck was ambushed and three soldiers were killed. There is no suggestion that he was sought by the Sri Lankan authorities because he was released through bribery rather than through due process.
39. As regards his release following detention in 2001, there was no evidence that in the four months that passed after his release and before he came to the UK in June 2001 that the authorities in Sri Lanka sought the appellant again because of his release through bribery rather than through due process.

40. In my judgment, the background material relied upon by Mr Paramjorthy in the *COI Report* for February 2010, which is in any event nine years after the appellant was released from detention in 2001, does not undermine the Adjudicator's finding and that of Judge Troup that the appellant was of no interest to the authorities in Sri Lanka following his release through bribery. There is simply no evidence that he was of any interest to them following his release.
41. In relation to the appellant's *sur place* activities in the UK, his evidence was that he attended three protests in London where between 500 and 1,000 people attended, the last being in 2009 and he did not know if a photograph had been taken. In GJ and Others the UT accepted that the Sri Lankan authorities had "sophisticated intelligence", both within and outside Sri Lanka. There is, therefore, a risk that they will be aware of the appellant's activities in the UK. However, the limited involvement of the appellant in attending three protests where a significant number of other people were in attendance – the most recent being in 2009 – does not create, in my judgement, a real risk that he will be perceived as a "diaspora activist" with a significant role in activities designed to destabilise the unitary Sri Lankan state or to revive the internal armed conflict. Sophisticated intelligence would not lead to any such conclusion.
42. Even accepting the appellant's history and that the Sri Lankan authorities will be aware of it, I see no basis upon which it can be said that the judge could not rationally conclude that the appellant would not be perceived as a person who, within [356(7)(a)] of GJ and others, would be perceived as a present threat to the integrity of Sri Lanka because of his post-conflict Tamil separatism within the diaspora or as part of a renewal of hostilities in Sri Lanka.
43. In my judgement, Judge Troup's finding that the appellant would not be at risk on return to Sri Lanka was properly open to him on the evidence applying the country guidance in GJ and Others.

Decision

44. For these reasons, the First-tier Tribunal did not err in law in dismissing the appellant's appeal on asylum grounds. That decision stands.
45. The judge's decisions to dismiss the appellant's appeal on humanitarian protection and human rights grounds and under the Immigration Rules are not challenged and those decisions also stand.
46. The appellant's appeal to the Upper Tribunal is, accordingly, dismissed.

Signed

A Grubb
Judge of the Upper Tribunal