



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/11708/2015

**THE IMMIGRATION ACTS**

Heard at Bennett House, Stoke  
On 4<sup>th</sup> July 2016

Decision Promulgated  
On 28<sup>th</sup> July 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

[K T]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah of Counsel instructed by A & P Solicitors  
For the Respondent: Mr C Bates, Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

**Background**

1. In a renewed application to the Upper Tribunal permission was granted to appeal against the decision of Judge of the First-tier Tribunal J Robertson in which she

dismissed the appeal on all grounds against the decision of the respondent, taken on 13<sup>th</sup> August 2015, to refuse asylum, humanitarian and human rights protection to the appellant, an adult citizen of Sri Lanka of Tamil ethnicity.

2. In granting permission Upper Tribunal Judge Pitt thought it arguable that the judge had erred by failing to take into consideration the potentially material factors set out in paragraph 5 of the grounds before the Upper Tribunal, bearing in mind that large parts of the appellant's claim to have been severely mistreated in the past by the authorities had been accepted.
3. The five factors identified in the grounds are as follows:
  - (i) The appellant's brother was murdered by the army on 6<sup>th</sup> December 2012. The army had occupied his house, made enquiries about the LTTE which the brother was unable to answer and then ran him down.
  - (ii) When the appellant was detained he was tortured in front of his wife and she too was beaten.
  - (iii) The appellant's brother-in-law was tortured and killed by the army.
  - (iv) In 2001 another brother-in-law was abducted and tortured.
  - (v) Currently the appellant's home is occupied by paramilitary personnel.
4. The grounds argued that the omissions were material because the attacks on various members of the appellant's family showed that the appellant had an arguable case of risk as a perceived member of an LTTE family. The fact that his home had been occupied by paramilitaries was evidence of that and would cause further and current risk if the appellant demanded his land back, as was his right. It is also argued that the additional factors showed that the appellant was in the risk categories identified in *GJ and Others (Post-civil war; returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC).
5. The respondent issued a response under Rule 24 to the grounds, contending that the comprehensive determination of the judge showed that she had considered the material evidence accepting the appellant's claim to have been detained and mistreated and to have transported supplies to the LTTE for many years. However, the judge was entitled to conclude that the appellant did not come into the risk categories in *GJ*.

### **The Hearing and Submissions**

6. Ms Jegarajah confirmed that the appellant relied upon the grounds of application put to the Upper Tribunal. However, she pointed out an error in the grounds at paragraph 2(i) indicating that an accepted finding was that the appellant's sister had been killed by the army. This should have indicated that it was the appellant's brother who had been killed. She then drew my attention to answers given by the appellant in his record of interview and statement of 11<sup>th</sup> December 2015 identifying the risk factors which, it is argued, had not been considered by the judge. In particular, she emphasised the failure to take into consideration that, in 2012, the appellant's brother had been detained and killed and two of his wife's brothers had also been killed. The appellant's own home had also been occupied by paramilitary.

In respect of the latter she emphasised that the appellant, if returned, would be required to live at that address (paragraph 348 of *GJ*) and so this would add to his problems.

7. Mr Bates accepted that the judge had made no reference to the murder of the brother but argued that she was not obliged to consider every matter. The judge had correctly identified the risk category which was limited to those perceived to be a threat to the integrity of Sri Lanka because of having a significant role in relation to post-conflict Tamil separatism. He thought that the appellant's past history, found to be credible, was largely irrelevant to risk and the death of the brother in 2012 was not material to those events.
8. He made reference to paragraph 348 of *GJ* concerning the requirement for the appellant to reside at his identity card address. He pointed out that such a requirement and the possibility of internal relocation to Colombo only applied to those with whom there was an adverse interest and so was, in any event, no help to the appellant in that situation. He contended that the judge had correctly identified the relevant risk category pointing out that, when the brother was killed in 2012, the appellant was living in the United Kingdom so could not be regarded as a current activist. The appellant had taken no steps to either raise his profile or involvement in Tamil separatism since coming to the United Kingdom. The evidence of the journalist, Mr Prabhakaran, before the First-tier Judge, did not show any subsequent separatist activity by the appellant. The judge had been right to consider the core of the appellant's account and so was entitled to dismiss the asylum appeal. The judge's consideration of Article 8 issues also did not show an error.
9. Ms Jegarajah concluded her submissions by informing me that, in *GJ*, UNHCR guidance was incorporated in paragraph 290, giving a risk category involving persons with family links or close relationship to persons still involved in Tamil separatism. She emphasised that the death of the appellant's brother showed post-conflict interest in the appellant's family such as to bring him within the risk category identified in paragraph 7(a) of the head note to *GJ*. She submitted that the death of the appellant's brother and the fact that the appellant's home was currently occupied by paramilitary personnel would put the appellant at risk on return.

## **Conclusions**

10. After I had considered the matter for a few moments I announced that, although I regarded the determination of the First-tier Judge to be generally comprehensive and cogently reasoned, her failure to consider the two risk categories emphasised by Ms Jegarajah amounted to a material error on a point of law.
11. Ms Jegarajah further submitted that, in that case, the appeal should be returned to the First-tier Tribunal for fresh findings on those issues and risk on return, generally.
12. The determination does not show that the judge gave any consideration to the claimed risk factors relating to the appellant's brother's death and the occupation of the appellant's home by paramilitary before reaching the conclusion that the appellant would not be perceived to be a threat as he did not have a significant role in relation to post-conflict Tamil separatism. The skeleton argument before the First-tier Tribunal made specific reference to the issue of the brother's death (paragraph 13) in

the context of the risk categories set out in GJ. It is also evident that the occupation of the appellant's home by paramilitary personnel is covered in the appellant's responses to questions recorded on pages 31 and 32 of the Asylum Interview Record. The appellant explained that the pro-government militant group was occupying his house and the appellant's attempt to sell the house was blocked because of that.

13. The factors identified required consideration by the judge in relation to both their credibility and whether or not it would be reasonably likely that the appellant, on return, would be regarded as someone perceived to be involved in post-conflict Tamil separatism particularly because of the claimed post-conflict activities of his brother. If the judge had considered these matters it might still have been open to her to dismiss the appeal but any reasons for dismissing those factors are not self-evident. The judge's failure to identify and give reasons for rejecting or accepting those factors therefore amounts to an error on a point of law such that the decision should be set aside and re-made.
14. As it will be necessary for the Tribunal to make fresh findings of fact in relation to the matters identified above and to consider risk on return in that context it is appropriate, having regard to the provisions of paragraph 7.2 of the Practice Statements for the Tribunal made by the Senior President on 25<sup>th</sup> September 2012, that the matter should be remitted to the First-tier Tribunal.

### **Anonymity**

The First-tier Tribunal did not make an anonymity direction nor did I consider one appropriate before the Upper Tribunal.

### **DIRECTIONS**

15. The appeal will be heard afresh before the First-tier Tribunal sitting at Birmingham on a date to be specified by the Resident Judge.
16. A Tamil interpreter will be required for the hearing which is estimated to take three hours.
17. Representatives should submit a consolidated bundle of documents to be relied upon at the remitted hearing at least fourteen days before the date of that hearing.
18. The remitted appeal should not be heard by Judge of the First-tier Tribunal J Robertson.

Signed

Date **28<sup>th</sup> July 2016**

Deputy Upper Tribunal Judge Garratt