



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

Appeal Number: PA/10173/2018

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice Centre  
On 22<sup>nd</sup> March 2019**

**Decision & Reasons  
Promulgated  
On 3<sup>rd</sup> April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**D E  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms N Patel of Lei Dat & Baig Solicitors

For the Respondent: Mr A Tan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge D Alty (the judge) of the First-tier Tribunal (the FtT) promulgated on 15<sup>th</sup> October 2018.

2. The Appellant is a Sri Lankan citizen born 21<sup>st</sup> June 1971. He arrived in the UK on 24<sup>th</sup> October 2009 with leave to remain as a student. His leave was curtailed on 19<sup>th</sup> August 2014. He claimed asylum on 6<sup>th</sup> March 2018.
3. On 6<sup>th</sup> August 2018 the Respondent refused the Appellant's human rights and international protection claim. His appeal was heard by the judge on 26<sup>th</sup> September 2018.
4. The claim for international protection was based upon the Appellant's fear of persecution and ill-treatment from the Sri Lankan government as a suspected supporter of the LTTE.
5. The judge heard evidence from the Appellant and did not find him to be a credible witness. The judge found a lack of detail and consistency in the Appellant's account and found that he had not proved that he would be at risk if returned to Sri Lanka. The appeal was dismissed on all grounds.

### **The Application for Permission to Appeal**

6. The Appellant's solicitors relied upon two grounds. Firstly, it was submitted that the judge had erred at paragraph 32 in relation to his consideration of letters from Reverend Fernandopulle, and Reverend Ajith. The judge recorded that there was no reason to doubt the sincerity of their evidence, but noted that they had not attended the hearing for cross-examination and found that they had "by and large, given evidence of matters which have been reported to them by the appellant or his wife. Although their evidence has been taken into account in my overall assessment, these matters effect the weight I can attribute to it."
7. It was submitted that the judge had erred in law by not taking the contents of the letters properly into account. Reverend Fernandopulle had made contact with Reverend Ajith who is presently serving as a parish priest in Sri Lanka, and Reverend Ajith was able to corroborate the Appellant's account and provided a letter confirming that he had personally known the Appellant from childhood and that the Appellant had been facing persecution from army intelligence since 2008.
8. It was submitted that the judge had materially erred in finding that the letters of support referred to matters which had been reported to the author by the Appellant or his wife, because the letter from Reverend Fernandopulle states that he made contact with Reverend Ajith and that this was not simply a case of relaying information that the Appellant or his wife supplied.
9. The second ground relates to paragraph 29 in which the judge found it surprising that the Appellant was able to leave Sri Lanka using his own passport without difficulty. The judge referred to the country guidance decision **GJ (Sri Lanka) CG [2013] UKUT 319 (IAC)** noting that this case indicates that the authorities in Sri Lanka operate a computerised "stop" list at the airport. It was submitted that the judge erred, because the

“stop” list applies to persons who have an extant arrest warrant or court order and it was not known whether such paperwork exists in this case. In addition the Appellant explained that he left Sri Lanka in 2009 and computer facilities were not as advanced at that time. **GJ** was published four years later. The Appellant had explained that his father-in-law paid a bribe to facilitate his journey out of Sri Lanka, and therefore there were a number of reasons why the Appellant was able to leave the airport using his passport which had not been taken properly into consideration.

### **The Grant of Permission to Appeal**

10. Permission to appeal was originally refused by Judge Saffer of the FtT but subsequently granted by Deputy Upper Tribunal Chapman in the following terms;

- “3. The grounds of appeal disclose arguable errors of law in the decision of the First-tier Tribunal Judge. In respect of the first ground, whilst regrettably the letter from Rev Anton Fernandopulle is not listed in the index to the Appellant’s bundle, it does confirm that he is the parish priest of the parishes of St Agnes and St Aidan in Liverpool and that he had got in touch with Rev Tyrone Ajith, presently serving as the acting parish priest of Holy Rosary Church, Welikanna, Waga in Sri Lanka, who was able to corroborate the Appellant’s story. Whilst at [32] of the decision and reasons, the judge makes reference to this letter, arguably he was required to provide more by way of reasoning, other than the fact that Rev Fernandopulle did not attend the hearing for cross-examination, to reject the potential import of this letter, particularly given that it was not simply evidence of matters reported to him by the Appellant. This may, in turn, have had a material impact on any assessment of the Appellant’s credibility.
4. The second ground of appeal also raises arguable errors of law in respect of the judge’s finding at [29] given that the Appellant left Sri Lanka four years prior to the promulgation of the CG decision in **GJ [2013] UKUT 00319 (IAC)** thus that decision cannot be properly relied upon as authority as to the ability to leave Sri Lanka in 2009, rather than evidence of an ability to do so at that time.”

11. Directions were given that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT decision contained an error of law such that it must be set aside.

### **My Analysis and Conclusions**

12. At the oral hearing Ms Patel relied upon the grounds upon which permission to appeal had been granted, together with the grant of permission to appeal. It was submitted that the judge was incorrect to suggest that evidence given by Reverend Fernandopulle and Reverend Ajith was evidence given by the Appellant or his wife. It was submitted that this error was material and had this error not been made, the judge may have reached a different conclusion.

13. With reference to paragraph 29 of the judge's decision it was submitted that **GJ** could not be relied upon taking into account the Appellant left Sri Lanka in 2009 and **GJ** was not promulgated until 2013. Ms Patel suggested the appropriate country guidance case to be applied in relation to somebody leaving Sri Lanka in 2009 was **TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 00049**. It was submitted that paragraph 5 of **GJ** confirmed that **TK** was country guidance based on materials up to and including 26<sup>th</sup> October 2009.
14. Mr Tan submitted that the judge had not materially erred and the decision should stand. With reference to paragraph 32 of the judge's decision, Mr Tan submitted that the primary source of information in the letter written by Reverend Ajith, was provided by the Appellant's wife and the judge had not erred on that point. In any event, Mr Tan submitted that the decision of the FtT must be considered holistically and in the round. It was contended that the judge had given adequate reasons for findings that had been made.
15. Mr Tan submitted that it was open to the judge to express surprise that the Appellant, given his claim to be wanted by the Sri Lankan authorities for a bombing which killed numerous people, was able to obtain a passport and leave Sri Lanka without any difficulties.
16. I considered the FtT decision with care, and deal firstly with the challenge to paragraph 29. I find no material error of law contained in this paragraph. In my view, the judge has made findings which were open to make on the evidence. The judge was not making findings only on the Appellant's departure from Sri Lanka without difficulty, but was also considering his claim that he was suspected of being involved in a bombing.
17. The Appellant's claim was that the authorities suspected him of being involved in a bombing which killed 23 civilians. The judge noted the Appellant's evidence that he was detained twice but quickly released without any charge, and the judge noted the Appellant's claim to have been released as a result of a bribe. According to the Appellant, the authorities were still showing an active interest in him in August 2013, October 2015, and May 2016, even though he had left Sri Lanka in October 2009.
18. The judge was entitled to find the Appellant's claim that he had been detained twice very briefly after the bombing but released, was not compatible with his claim to remain of interest to the authorities. In my view the judge was also entitled to comment that it was surprising that if the appellant was of real interest to the Sri Lankan authorities, as he claimed that they were still interested in him several years after he left Sri Lanka, that the Appellant was allowed to leave Sri Lanka using his own passport without difficulties. In my view it is in error to refer to **GJ** and the "stop" list, as the judge notes at paragraph 27 that it was not submitted that the Appellant's name was on a "stop" list. This however is not a

material error, and the judge has not erred in law at paragraph 29 in finding the Appellant's claim to be inconsistent.

19. The judge goes on in paragraph 30 to make findings, which have not been challenged, that the Appellant's explanation as to how he was implicated in the bombing is vague. The judge found inconsistencies in his evidence, and that he claimed to have been released after payment of a bribe, but also claimed that he had been released on bail. In addition, the judge notes that the Appellant claimed in his asylum interview that his friend died in the bombing, but in his witness statement he explained that he was arrested in relation to that bombing with that friend, who he had claimed had died in the bombing, in a cinema. These findings, contained at paragraph 30, have not been challenged. I then turn to consider paragraph 32 and conclude that this paragraph discloses no material error of law. The judge was entitled to make reference to the letters and to record that while he did not ignore them, and he had no reason to doubt the sincerity of the evidence given by Reverend Fernandopulle and Reverend Ajith, they did not attend the hearing to be cross-examined. Non-attendance by Reverend Ajith is not surprising as he is in Sri Lanka. However the weight to be attached to the evidence is, in the absence of perversity or irrationality, a matter for the judge hearing the evidence to decide. I find no perversity or irrationality in this decision.
20. In my view the judge is not incorrect to record that the letters "by and large, give evidence of matters which have been reported to them by the Appellant or his wife."
21. It is correct that Reverend Fernandopulle has provided a letter at page 35 of the Appellant's bundle, in which he concludes that "Based on the information I received from Rev Tyrone Ajith I can attest to the fact that it would be extremely dangerous for Mr S to return to Sri Lanka." In my view the judge was entitled to place little weight upon that evidence.
22. The letter from Reverend Ajith is contained within the Respondent's bundle and contains four paragraphs. The third and fourth paragraphs contain information given to Reverend Ajith by the Appellant's wife. It is clear that the judge made no error in recording that to be the case.
23. In the first and second paragraphs Reverend Ajith describes the Appellant as a devoted Christian and states that he has been facing persecution from army intelligence, police and local political extremist groups since March 2008. In the second paragraph it is stated that the Appellant was arrested by the police in connection with helping Tamil victims during the years of 2008 and 2009 and suffered physical abuse from both police and army personnel. Reverend Ajith does not explain how he has been made aware of the claimed persecution, arrest and physical abuse. It may be that he was informed of this by the Appellant or his wife, but it is not clear. The judge was entitled to place little weight upon this letter.

24. In my view the judge considered the evidence in the round, and made findings which were open to make on the evidence and provided sustainable reasons for the findings. The judge did not take into account irrelevant evidence, and did take into account material evidence. I do not find that the judge acted perversely or irrationally.

### **Notice of Decision**

The decision of the FtT does not disclose a material error of law. The appeal is dismissed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 26<sup>th</sup> March 2019

Deputy Upper Tribunal Judge M A Hall

### **TO THE RESPONDENT FEE AWARD**

The appeal is dismissed. There is no fee award.

Signed

Date 26<sup>th</sup> March 2019

Deputy Upper Tribunal Judge M A Hall