Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12436/2019

THE IMMIGRATION ACTS

Heard at Field House
Via Microsoft Teams
On 12 August 2021

Decision Promulgated
On 27 August 2021

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Ms A V Appellant
(ANONYMITY ORDER MADE)

And

The Secretary of State for the Home Department Respondent

Anonymity

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the original appellant. No report of these proceedings shall directly or indirectly identify her. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings.
The parties at liberty to apply to discharge this order, with reasons.
I make this order because this is a protection claim.

Representation:
For the appellant: Ms P Solanki, of Counsel, instructed by Tamil Welfare Association.
For the respondent: Mr C Avery, Senior Home Office Presenting Officer.

DECISION AND REASONS

1. The appellant is a national of Sri Lanka of Tamil ethnicity from the north of Sri Lanka, born on 21 October 1984. She appeals against a decision of Judge of the First-tier Tribunal C Griffith (hereafter the "judge") promulgated on 30 March 2021 following a hearing on 16 March 2021 by which the judge dismissed her appeal on asylum grounds and on human rights grounds against a decision of the respondent of 29 November 2019 to refuse her further submissions of 9 August 2018.

2. The grounds contend, in summary, that the judge materially erred in law in her assessment of the appellant's credibility, the risk on return, her Article 3 claim based on her medical condition and, in relation to the appellant's private life claim, in reaching her finding for the purposes of para 296ADE(1)(vi) of the Immigration Rules, that there would not be very significant obstacles to the appellant's reintegration in Sri Lanka .

3. Each ground has more than one limb. I have therefore described them below as ground 1(a), ground 1(b), ground 2(a) etc.

Background

4. The appellant arrived in the United Kingdom on 26 June 2010 on a direct flight from Sri Lanka with entry clearance as a student valid until 10 June 2012, having obtained a passport through an agent which gave her correct name, date of birth and photograph.

5. On 14 September 2012, the appellant claimed asylum. This was refused on 1 March 2015. Her appeal against the decision of 1 March 2015 was heard by the First-tier on 23 May 2016 and remitted to the respondent for reconsideration.

6. The decision was reconsidered and her asylum claim refused on 13 December 2017. Her appeal against that decision was dismissed following a hearing on 2 February 2018 before Judge of the First-tier Tribunal Andonian in a decision promulgated on 22 February 2018. She was granted permission to appeal to the Upper Tribunal. Her appeal to the Upper Tribunal was dismissed by Deputy Upper Tribunal Judge Monson on 17 October 2018. Permission to appeal was refused by the Upper Tribunal and the Court of Appeal. She exhausted her appeal rights on 16 April 2019.

7. The appellant's further submissions of 9 August 2018 relied upon PP (female headed household; expert duties) Sri Lanka [2017] UKUT 00117 (IAC) and contended, inter alia, that the Sri Lankan authorities were continuing to visit her family home in Sri Lanka looking for her and she would therefore be unable to reside with her parents or siblings in Sri Lanka. She would therefore be forced to reside in Jaffna in isolation without the support of her male relatives. She was of low socio-economic status which would expose her to dependence on government aid and/or other services by the security forces in Jaffna. She also maintained that she was at risk on return in Sri Lanka due to her involvement with the LTTE. She relied upon Article 3 in relation to her medical condition. She suffers from post-traumatic stress disorder (PTSD) and moderate depressive episodes. Finally, she relied on her right to her private life.

8. The applicable country guidance at the time of Judge Andonian's decision as well as the judge's decision was GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).

Basis of asylum claim before Judge Andonian

9. The appellant was involved in the LTTE. She took part in LTTE plays in school in 2002. She organised social events and was involved in Heroes Day. She was also involved in recruitment for the LTTE, canvassing in this regard from door-to-door. She joined the LTTE in 2006 and became involved in food distribution and caring for the wounded. She was a programme organiser in schools in Vanni.

10. The appellant was arrested and detained in October 2002 and in April 2006. On each occasion, she was sexually abused. She was accused of being an LTTE member and interrogated. Following her release from her second detention in July 2006, the authorities attended her home in search for her. She was involved with the LTTE until the end of the conflict. The army sent her to live in an IDP camp where she contracted chickenpox. A priest took her to live in a church hostel. In October 2009, the authorities came in search of her at the hostel. Between October and November 2009, she stayed in hiding with an aunt and made arrangements to leave the country. In April 2010, the authorities came in search of her again. They attended again in 2011 and 2012. Her father informed her that individuals continue to call at the family home in search of her.

Judge Andonian's decision

11. Judge Andonian accepted that the appellant is a Sri Lankan of Tamil ethnicity and that she originates from northern Sri Lanka. He rejected her evidence that she had been detained. He did not believe her evidence that she was unable to tell the Home Office about the sexual abuse.

12. Judge Andonian found that the appellant "*may well have had some connection with the LTTE and had been questioned about it*" but he did not find that the Sri Lankan authorities would have any interest in her on return as she was a low level member and not prominent (paras 79, 80, 88 and 91 of Judge Andonian's decision). He found that she was not and never had been a prominent member and, even if she was a member, it was at a very low level, so insignificant that there would be no interest in her on return. He stated: "*I cannot see how providing food and knocking on doors to galvanise support for the LTTE, over eleven years ago, singing songs and being in plays at school some sixteen years ago, would open her to a risk of persecution upon return. I do not believe she comes within the ambit of GJ.*"

13. Judge Andonian found that the appellant's parents were not at risk as they had remained in Sri Lanka. He did not accept that the authorities were returning to her family home (paras 92-94). She would not have been able to obtain a passport. He did not believe her evidence that her agent had obtained her passport and visa. He found it unbelievable that the agent would have been able to obtain a student visa for the appellant without her being interviewed and without applying for the visa herself. Her delay in claiming asylum damaged her credibility (96). She could return to her family.

The judge's decision

The appellant's asylum claim

14. The judge summarised the country expert evidence of Dr Gilberto Algar-Faria dated 5 March 2021 at paras 40-44 of her decision and also referred to his evidence at paras 82, 83 and 88.

15. The judge reminded herself of the guidance in Devaseelan v Secretary of State for the Home Department * [2002] UKIAT 702 (para 68) and the findings of Judge Andonian. She assessed the new material before her. Her findings, which I have assembled from paras 76-91 and set out in historical timeline in relation to the appellant's asylum claim, may be summarised as follows:

    (i) The appellant's past activities when she was a teenager during the course of the civil war were credible. It was credible that at that time activities, in particular recruiting for the LTTE, would have been capable of making the authorities interested in her (para 77). There was no evidence that she was a prominent activist (para 78).

    (ii) The judge gave the appellant the benefit of the doubt that she was arrested on two occasions albeit for short periods (para 78). However, the appellant was not released from detention on the payment of a bribe (para 87).

    (iii) The judge also said that, given that the appellant was a young vulnerable female, she was prepared to accept that she was sexually assaulted in detention (para 78).

    (iv) The judge said that she saw no reason to depart from the findings of Judge Andonian regarding the low-level level of involvement the appellant had had with the LTTE when she was a teenager (para 76).

    (v) She noted that no interest was shown in the appellant between the 2002 arrest and the 2006 arrest. In the interim, she was able to complete her 'A' levels and continue with her LTTE activities (para 78).

    (vi) In relation to the appellant's evidence that the authorities looked for her at the hostel where she was then living (i.e. in October 2009), the judge noted that para 13 of Judge Andonian's decision stated that the authorities went looking for her at the hostel because she was from Vanni. The judge considered that the timing was relevant as this happened shortly after the end of the civil war. She considered that it was possible that at that stage the authorities were interested in any Tamil in the north and those who had connections with the LTTE (para 87).

    (vii) The judge rejected the appellant's evidence that she obtained her passport and student visa through an agent (para 88).

    (viii) The judge noted that the appellant had not taken part in any *sur place* activities in the United Kingdom and then said that the appellant "*has had no role let alone any significant role in post-conflict Tamil separatism within the diaspora or within Sri Lanka"* (para 78).

    (ix) The judge considered a letter dated 2 August 2019 said to be from the appellant's father which stated, inter alia, that the appellant could not return to live with her family in Sri Lanka. She found that the letter was a fabrication (paras 84-86). She found that there was no reason why the appellant could not return to live with her parents and siblings in the family home (para 86).

(x) The judge rejected the appellant's claim that the authorities have continued to attend the family home looking for her (para 86).

(xi) The judge considered that the appellant's failure to claim asylum on arrival and that she waited until her student visa had expired went against her credibility (para 90).

16. In relation to the risk on return at the airport, the judge found that the appellant may well be asked questions on arrival in Sri Lanka because she will be returned as a failed asylum seeker and because she has been out of the country for a number of years. However, the judge noted that the appellant had left Sri Lanka on a student visa to pursue a course of studies. She stated that, as she was not satisfied there was anything in the appellant's background to excite the interest of the authorities arising from her former LTTE contacts, she did not find the appellant would be at risk of being detained by the security services (para 89). The judge found that there were no grounds for believing that the appellant was or could be perceived to be a threat to the integrity of Sri Lanka (para 78). The appellant was not on a "*stop list*", which comprises of a list of individuals against whom there is an extant court order or arrest warrant, given that there was no evidence to suggest that any court order or arrest warrant had been issued in respect of her (para 80).

17. Similarly, with regard to a "*watch list*", the judge found that there was nothing to suggest that the appellant was a Tamil activist working to destabilise the state or revive internal armed conflict and therefore she did not find that there was any reasonable likelihood that the appellant would be monitored by the security services or detained after leaving the airport (para 81).

The appellant's Article 3 health claim

18. The judge summarised the (first) report of Dr Stevens dated 31 January 2018 (which was also considered by Judge Andonian) at paras 27-30, the second report of Dr Stevens dated 14 November 2019 at paras 31-32 and the most recent report of Ms Joanne Lackenby at paras 33-39. She also summarised the expert evidence of Dr Algar-Faria on the issue of accessing healthcare at para 44.

19. The judge assessed the appellant's Article 3 claim based on her medical condition at paras 92-102. There was no dispute that the appellant was suffering from severe to moderate PTSD and depression. She was born Christian. She had recently become a Jehovah's Witness and for religious reasons would not take her own life. The judge noted that the most recent report stated that *"She does not have a significant history of attempted suicide. Her religious beliefs act as a strong protective factor and are likely to continue to do so"* (para 92).

20. The only medication the appellant is receiving at present, according to her evidence, is sleeping pills which the appellant took infrequently (para 93).

21. The judge considered Ms Lackenby's opinion that the appellant was unlikely to engage with the mental health services in Sri Lanka at para 94, specifically quoting (at para 94) from a paragraph in Ms Lackenby's report where Ms Lackenby had referred, inter alia, to "*cultural and shame-based barriers*" which she said were likely to increase in Sri Lanka; that the appellant was likely to fear greater judgment from members of her own culture due to the taboos surrounding sexual abuse; that females were more at risk of stigma and sexual acts; and that returning to the

environment where the trauma occurred was likely to be a further barrier to engagement with the therapies and her symptoms are likely to worsen.

22. Having considered the respondent's Country Policy and Information Note ("CPIN") dated July 2020 on medical treatment and healthcare in Sri Lanka at paras 96-98 of her decision, the judge said, at para 99:

> "99. Although described as inadequate, the objective material shows that there are treatments available both in terms of therapy and a number of drugs. It is stated that mental health carries a stigma in Sri Lanka and is therefore something that might deter the appellant from engaging. It seems to me, however, that she has not engaged to any significant degree in the UK, in that what medication is offered to her, she takes intermittently. A medical expert states that the appellant would benefit from long-term psychological therapy and is likely to engage more meaningfully with a female and someone who is not from her own culture. There are treatments available in Sri Lanka which include counselling, CBT as well as medication, albeit they are not on a par with what is on offer in the UK. It is significant, however, that the appellant's state of health has not deteriorated despite the absence of talking therapy over the last year and the low level of engagement the appellant has shown as regards her medication."

23. Having reminded herself at para 96 of the Supreme Court's judgment in AM (Zimbabwe) v SSHD [2020] UKSC 17, the judge said (paras 101-102) that she did not find that the appellant if returned would be exposed to a serious, rapid and irreversible decline in her state of health resulting in intense suffering or to a reduction in her life expectancy and therefore that the appellant did not meet the test in AM (Zimbabwe). Her current treatment in the United Kingdom appeared to be minimal, there are treatments available in Sri Lanka and the appellant would have the support of her family.

The appellant's private life claim – para 276ADE of the Immigration Rules

24. The judge reminded herself of the appellant's diagnosis, that her condition was described in the most recent report as moderate to severe and that her symptoms are in the moderate range. She took into account her earlier findings regarding the availability of treatment in Sri Lanka, the fact that the appellant was not currently taking any anti-depressant medication and that, it appeared, she had not engaged with any therapy for a year. The judge noted that, despite this, her mental health had not deteriorated for at least the last two years (para 104).

25. The judge said that she attached considerable significance to the fact that the appellant has family in Sri Lanka and remained in contact with them and her earlier finding that the appellant would be able to live with them on return (para 105).

26. The judge noted the evidence that mental illness carries a stigma in Sri Lanka at paras 105 and 108. However, she found that there was no evidence before her that the appellant's family would reject her for those reasons or fail to provide help to her to access such medical services as are available. She noted that the family's circumstances were described by Dr Stevens as "*materially comfortable*" which the judge considered suggested that there would be money available to pay for treatment and travel if that were necessary (para 105).

27. The judge rejected the submission that the appellant has a low standard of education, given that the appellant had studied as far as 'A' level in Sri Lanka and had begun an HND in Computing, which she failed to complete only because the funding for it ceased to be available (para 106).

28. The judge reminded herself of the guidance as to integration in Kamara [2016] EWCA Civ 813, quoting from the judgment at para 108 of her decision. She was satisfied that the appellant will have retained an understanding of how life in Sri Lanka is carried on and that, despite her mental health issues, she could participate in it with the help of her family. She stated that whilst mental illness was said to carry a stigma, the evidence did not suggest that those with mental health issues are discriminated against to such a degree that they cannot participate in society. She was therefore not satisfied that the appellant had established that her circumstances on return would amount to very significant obstacles to her integration.

ASSESSMENT

Ground 1(a)

29. Ground 1(a) is that the judge erred in her assessment of the credibility of the appellant's evidence that her family have not been visited by the Sri Lankan authorities since her arrival in the United Kingdom in 2010, in that she failed to take into account the expert evidence of Dr Algar-Faria and the respondent's CPIN on Tamil Separatism, version 6.0 dated May 2020.

30. Ms Solanki took me to the expert evidence and background evidence she relied upon, i.e. paras 6.4.1, 6.4.4. and 6.8.5 of the respondent's CPIN on Tamil Separatism and paras 5.3.1 and 5.3.2 of the report of Dr. Algar-Faria.

31. I have carefully considered the background material to which I was referred.

32. There is nothing in the evidence to which I was referred in the CPIN on Tamil Separatism that suggests that family members of all former LTTE members are monitored irrespective of the nature, extent and duration of their activities and irrespective of whether or not they have engaged in any activities that threaten the integrity of the state of Sri Lanka. To the contrary, para 6.4.4 specifically refers to "*close relatives of high-profile former LTTE members who are wanted by Sri Lankan authorities may be subject to monitoring*" (my emphasis) and para 6.8.5 states that:

> "An NGO told the UK FFT that family members of former LTTE cadres *may* be under some surveillance and that rehabilitees have to routinely report to the military…. Similarly, the Human Rights Commission thought that monitoring of former LTTE members continued."
>
> (my emphasis)

33. I do not accept that the judge failed to take into account the expert's opinion that the appellant's evidence, that the Sri Lankan authorities continue to visit her family looking for her, was consistent with the country information. She summarised the expert's evidence at paras 40-43 of her decision, referring specifically, to the evidence he gave concerning the plausibility of the appellant's family home in Jaffna being visited at para 41 of her decision which reads:

> "41. Addressing the plausibility, if any, of the appellant's claim that the authorities have continued to visit the family home in Jaffna enquiring about her, in the expert's opinion the appellant's claim that her father received visits between 2010 and 2015 was consistent with country information and, if credible, it is plausible that the authorities may still be looking for her."

34. The judge again referred to the expert's opinion in the second sentence of para 83 of her decision where she began her assessment of the appellant's evidence that her family continued to be visited by the Sri Lankan authorities. Para 83 reads:

> "83. I have considered the appellant's claims that her family continue to be visited by unnamed individuals asking about her. A negative credibility finding was made by Judge Andonian. I have considered the expert's report on the issue who found it was consistent with country information. I accept that the families of those who have or had a high profile within the LTTE might have received visits and, at its highest, that shortly after the end of the civil war the families of all those detained at some point during the conflict might have been visited. However, given that the authorities have sophisticated intelligence gathering at their disposal and in light of the lack of any political activity in the UK since her arrival in 2010, I do not accept the credibility of her account that the family continued to be visited until 2015 or beyond."

35. In reaching her finding on the credibility of the appellant's evidence that her family continued to be visited by the Sri Lankan authorities, the judge considered not only her assessment of credibility as a whole but also the fact that Judge Andonian had made a negative credibility finding on this evidence.

36. In reality, ground 1(a) amounts to no more than an attempt to re-argue the case, despite the fact that it has been advanced on the basis that the judge failed to consider the expert evidence and the background evidence in the respondent's CPIN on Tamil Separatism.

37. I therefore reject ground 1(a).

Ground 1(b)

38. Ground 1(b) is that the judge failed to put to the appellant any questions concerning how her student visa was secured. It was therefore unfair to hold this issue against the appellant.

39. Ms Solanki did not address ground 1(b) at the hearing until I asked her whether she was going to do so. I pointed out to her that, as Judge Andonian had specifically raised the issue, it was open to the appellant to have addressed it at the hearing before the judge if she had wished to do so. Ms Solanki accepted this to be so but nevertheless also submitted that it was the case that the judge had not raised it.

40. I have no hesitation in rejecting any suggestion that there was any unfairness by reason of the judge failing to put to the appellant questions about how she was able to obtain her student visa. Plainly, she was aware that Judge Andonian had raised it in his decision and taken it into account in assessing her credibility. It was open to her to have addressed the point, if she had wished to do so.

41. I therefore reject ground 1(b).

Ground 2(a)

42. Ground 2(a) is that, in assessing the risk on return, the judge failed to consider the extent of the appellant's LTTE activities and the interest in her as a result. She failed to take into account relevant facts.

43. Paras 9 and 10 of the grounds contend that the relevant facts are as follows:

(i) (para 9 of the grounds) the accumulation of the appellant's LTTE activities over a long period of time combined with her double detention record, her long absence from Sri Lanka, her vulnerability as a female, her return from a diaspora hotspot to a highly militarised area and the current regime in Sri Lanka;

(ii) (para 10 of the grounds) the following facts: (a) taking part in LTTE plays in school in 2002, (b) being arrested, tortured, interrogated and detained for a week as a suspected LTTE member of supporter in 2002, (c) being involved in Heroes Day activities and LTTE recruitment persuading people to join the LTTE in 2005, (d) she was a LTTE programme organiser in schools in Vanni in 2006 and 2007 and also recruited for the LTTE in Kalliyadi, (e) she was arrested, interrogated, tortured, sexually assaulted and detained for a week in 2006 owing to her suspected LTTE support/membership, (f) she provided food for the LTTE cadres in 2007, (g) the authorities came to look for her in late 2009 whilst she was in hiding.

44. Para 11 of the grounds contends that the facts that the judge failed to take into account were that the appellant was a programme organiser in Vanni in 2006 and 2007, her recruitment of LTTE members post 2005 and her provision of food for LTTE cadres in 2007.

45. In view of the fact that para 11 of the grounds specifically identifies the facts that it is contended the judge fail to take into account, I draw the inference that it is not suggested that the judge failed to take into account the other facts mentioned in paras 9 and 10 of the grounds that are not mentioned in para 11 of the grounds. In any event, I reject any suggestion that the judge failed to take into account those other facts. Leaving aside the obvious repetition in para 10 of the grounds of some of the facts, the judge plainly did take into account the appellant's activities from the age of 17 years (the age being specifically stated at para 5) until she was sent to the IDP camp in May 2009 at the end of the civil war (para 12). She made specific reference to the length of the appellant's absence from Sri Lanka, in that she specifically mentioned that the appellant arrived in June 2010 (para 6) and she said at para 89 that the appellant has been out of Sri Lanka for a number of years. She specifically mentioned the appellant's vulnerability as a female (para 78). She took into account that the appellant had not been involved in any diaspora activities (para 81) and that the appellant originates from Jaffna where her family home is situated. The judge's finding that the appellant would be able to return to her family home shows that she took into account that the appellant would be returning to the north.

46. Turning then to facts identified in para 11 of the grounds as having been overlooked by the judge, I reject the submission that the judge failed to take into account the appellant's recruitment activities post 2005. She specifically referred to the appellant's recruitment for the LTTE, mentioning it both in terms of Judge Andonian's decision (para 69) as well as her own assessment (third sentence from the end of para 77). She specifically mentioned the appellant's activity in the provision of food, mentioning this in the context of Judge Andonian's decision (para 69).

47. I acknowledge that there appears to be no mention in the judge's decision of the appellant's evidence that she was a programme organiser in Vanni in 2006 and 2007. However, the fact is that there was a lot of evidence before the judge. She had four bundles of documents which contained several medical reports and a lengthy country expert report, together with other background evidence including the respondent's

CPIN on Tamil Separatism. It is simply unrealistic and, indeed, undesirable, to expect judges to engage specifically with every piece of the evidence placed before them. The judge's decision was a lengthy and thorough one. I am satisfied that she engaged with the evidence that was before her more than adequately.

48. I therefore reject ground 2(a).

49. At the hearing, Ms Solanki attempted to rely upon the decision in KK and RS (*Sur place* activities: risk) Sri Lanka CG [2021] UKUT 0130 (IAC) in support of her submission that the judge's failure to consider the matters raised in para 11 of the grounds was material because (in her submission) KK & RS shows that even low level members of the LTTE are harassed. However, I have concluded that the judge did not err in law as contended in ground 2(a).

50. Furthermore, and as I said at the hearing, the fact is that the guidance in KK and RS and the evidence that was before the Upper Tribunal in KK and RS was not before the judge and therefore cannot be relied upon in order to establish a material error of law. In any event, I cannot see anything in the guidance issued in KK and RS that is of any material assistance to the appellant, given the total lack of any *sur place* activities on the appellant's part, the nature and extent of her activities with the LTTE in Sri Lanka, that her detentions were short and that her activities are now long distant.

Ground 2(b)

51. Ground 2(b) is that the judge failed to consider the risk on return against the UNHCR Guidelines set out in GJ at paras 288-294 and MP (Sri Lanka) v SSHD [2014] EWCA Civ 829.

52. The relevant UNHCR Guidelines were set out at para 290 of GJ, which reads:

> "290. We have considered the passage on page 27 of the UNHCR Guidelines relied upon by Miss Jegarajah: with respect, we disagree with her assessment that it asserts that any former links with the LTTE are determinative of an asylum claim today. The relevant passage begins on page 26 and reads as follows:
>
> **"A. Risk Profiles**
>
> ***A.1 Persons Suspected of Certain Links with the Liberation Tigers of Tamil Eelam (LTTE)***
>
> At the height of its influence in Sri Lanka in 2000-2001, the LTTE controlled and administered 76% of what are now the Northern and Eastern Provinces. Therefore, all persons living in those areas, and at the outer fringes of the areas under LTTE control, necessarily had contact with the LTTE and its civilian administration in their daily lives. Originating from an area that was previously controlled by the LTTE does not in itself result in a need for international refugee protection in the sense of the 1951 Convention and its 1967 Protocol.
>
> However, previous (real or perceived) links that go beyond prior residency within an area controlled by the LTTE continue to expose individuals to treatment *which may give rise to a need for international refugee protection, depending on the specifics of the individual case.* The nature of these more elaborate links to the LTTE can vary, but may include people with the following profiles:
>
> 1) Persons who held senior positions with considerable authority in the LTTE civilian administration, when the LTTE was in control of large parts of what are now the Northern and Eastern Provinces;
>
> 2) Former LTTE combatants or "cadres";

> 3) Former LTTE combatants or "cadres" who, due to injury or other reason, were employed by the LTTE in functions within the administration, intelligence, "computer branch" or media (newspaper and radio);
>
> 4) Former LTTE supporters who may never have undergone military training, but were involved in sheltering or transporting LTTE personnel, or the supply and transport of goods for the LTTE;
>
> 5) LTTE fundraisers and propaganda activists and those with, or perceived as having had, links to the Sri Lankan diaspora that provided funding and other support to the LTTE;
>
> 6) Persons with family links or who are dependent on or otherwise closely related to persons with the above profiles.
>
> When assessing claims of persons with the profiles above, it may, depending on the individual circumstances of the claim, be important to examine the applicability of the exclusion clauses. …" *[Emphasis added]*
>
> The effect of that passage is that these categories remain fact-specific. We shall set out later, in the light of the wide-ranging expertise we have heard and read, what we consider to be the fact-specific risk groups, some of which overlap with the general categories set out in the UNHCR guidelines generally and at paragraph A.1 in particular."

53. Whereas para 13 of the grounds contends that the appellant falls within categories 2), 3) and 4) of the UNHCR Guidelines, Ms Solanki submitted at the hearing that the appellant falls within categories 3), 4) and 5).

54. At the hearing, Ms Solanki submitted that, in view of the judgment of the Court of Appeal in MP (Sri Lanka) with reference to paras 11 and 50 of the judgment, the UNHCR Guidelines apply.

55. I have carefully considered the judgment in MP (Sri Lanka). It is my understanding that the Court of Appeal concluded that the UNHCR Guidelines were less demanding than the Upper Tribunal's country guidance in GJ (paras 15 and 16) and, importantly, that the Upper Tribunal in GJ gave due consideration to the UNHCR Guidelines but was entitled to adopt the less generous approach to risk demonstrated by its guidance (paras 17-20, in particular para 20; and para 50).

56. It is clear from MP (Sri Lanka) that the central question is whether or not there is a real risk of the Sri Lankan government regarding an individual as posing a current threat to the integrity of Sri Lanka as a single state. Such a real risk may arise even in the absence of evidence that the individual has been involved in diaspora activism (para 50).

57. That central question is precisely the question that the judge considered. I therefore do not accept that the judge erred in law in failing to mention the UNHCR Guidelines.

58. I therefore reject ground 2(b).

Ground 2(c)

59. Ground 2(c) is that the judge failed to consider the risk on return against the evidence that was before her concerning the current regime in Sri Lanka, i.e. the country expert evidence of Dr Algar-Faria and the respondent's CPIN on Tamil Separatism.

60. At the hearing, Ms Solanki referred me to paras 5.2.1, 5.2.5, 5.2.10, 5.2.12, 5.2.19-5.2.21 and the conclusion at para 5.2.26 of the expert's report as well as to the whole of section 3.3 of the respondent's CPIN on Tamil Separatism, all of which she

submitted was evidence of the deterioration in the human rights situation in Sri Lanka under the Rajapaksa regime. She submitted that the judge failed to address the address this evidence.

61. I have carefully considered the passages in the expert's report to which I was referred. I noted, inter alia, that:

    (i) At para 5.2.5 of his report, the expert referred to a spate of attacks by unidentified individuals against human rights activists and journalists and that individuals working for human rights organisations have been summoned for questioning and accused of being involved in terrorist activities and receiving money abroad for terrorist activists.

    (ii) At para 5.2.10 of his report, the expert refers to "*Sri Lankan security forces and intelligence agencies [having] intensified surveillance and threats against families of victims of enforced disappearance and activists supporting them".*

    (iii) At para 5.2.12 of his report, the expert refers to a continuance of "*arbitrary detention and mistreatment of activists*" and that in April 2020, a social media commentator and a prominent Sri Lankan lawyer were both arrested and have since been detained without charge or access to a lawyer.

    (iv) The expert concludes, at para 5.2.26, that the Rajapaksa presidency presents "*an imminent risk to any suspected ex-LTTE members*".

62. The opinion expressed by the expert at para 5.2.26 is sufficiently wide to include anyone who had been a LTTE member in the past, even if such membership was long distant, irrespective of the nature and/or duration of the individual's activities and even if it is found to the lower standard of proof that applies in protection claims that there is no reasonable likelihood that the individual concerned was or might be perceived to be a threat to the integrity of the state of Sri Lanka. For example, on the expert's opinion, even someone who was a fleeting member of the LTTE some 20 years ago, who had assisted the LTTE with low-level activities such as digging bunkers and who had not subsequently involved himself in any way whatsoever with any activities that might be of adverse interest, would nevertheless be at risk, according to para 5.2.26. That conclusion was simply not supported by the evidence in the preceding paragraphs, the main points of which I have summarised at para 61 (i)-(iii) above.

63. I have also carefully considered section 3.3 of the respondent's CPIN on Tamil Separatism. I noted, inter alia, that:

    (i) Para 3.3.5 states that officials and journalists who had investigated the Rajapaksa regime for human rights abuses and corruption had begun to flee the country. It also mentions the abduction and questioning of a female of Sri Lankan nationality employed by the Swiss Embassy in Colombo. It was said that the abductors appeared to be focused on finding information about a Sri Lankan detective who had been investigating Rajapaksa.

    (ii) Section 3 goes on to refer to the Rajapaksas taking steps to consolidate their family's control of the government and stifle investigations into human rights abuses and corruption as well as taking steps that appeared to be aimed at weakening religious and ethnic-based parties.

64. Whilst it is true that section 3 of the CPIN on Tamil Separatism does show a deterioration of the human rights situation in Sri Lanka, the evidence is that the risk

arises in respect of activists engaged in investigating human rights abuses and corruption. However, there was no evidence before the judge of the appellant being involved in such activities in the United Kingdom or intending to become involved in such activities in Sri Lanka.

65. Given the substantial body of evidence and reports that the judge had before her, the judge did not err in law by failing to engage in terms with the specific aspects of the expert's report and/or the CPIN on Tamil Separatism relied upon in ground 2(b). The fact that she did not engage with this evidence does not mean that she did not consider it. There is no obligation on judges to engage with every aspect of the evidence that is placed before them. The judge's decision was a very detailed decision which dealt with the evidence that was before her more than adequately.

66. In any event, any such error was not material, for the reasons I have given above.

67. I therefore reject ground 2(c).

Ground 2(d)

68. Ground 2(d) is that the judge failed to consider and properly weigh the country expert evidence.

69. At para 16 of the grounds, it is accepted that the judge had considered some aspects of the expert's report. However, it is contended that the failure to consider the particular aspects that are set out at para 15 of the grounds amounts to a material error of law as it leaves the judge's assessment incomplete.

70. At the hearing, Ms Solanki referred me to paras 5.5.12, 5.5.16 as well as the whole of para 5.6 of the expert's report.

71. All of the passages of the expert's report referred to in the grounds and at the hearing by Ms Solanki relate to the expert's opinion that the appellant would be at real risk on return given her past activities and the deterioration in the human rights situation in Sri Lanka. I have already dealt with the evidence concerning the deterioration in the human rights situation in Sri Lanka. It did not constitute any basis for departing from the country guidance.

72. Accordingly, all that remains of ground 2(d) is that the judge failed to take into account the expert's opinion that the appellant's circumstances are such that she is at real risk on return. However, the fact is that the judge plainly did take into account the expert's opinion as to the risk on return. She specifically mentioned it at para 82 and stated that his opinion was not consistent with country guidance. For the reasons, I have already given she was entirely correct to say (para 82):

> "82. … There is no evidence even to suggest that, given the nature of her low-level involvement with the LTTE and her lack of diaspora activities, she would be of any interest on return because of her former involvement."

73. Again, given the substantial body of evidence and reports that the judge had before her, the fact that she did not engage with this evidence does not mean that she did not consider it. Her decision was a very detailed decision which, again, dealt with the evidence that was before her more than adequately.

74. In any event, any such error was not material, for the reasons I have given above.

75. I therefore reject ground 2(d).

Ground 2(e)

76. Ground 2(e) is that the judge failed to assess the risk on return against the country guidance in reaching her finding that the appellant would not be on a watch list.

77. In this regard, it is said that the judge failed to apply GJ, in that she overlooked the fact that the question was whether the appellant would be perceived as threat to the integrity of the state of Sri Lanka.

78. There is simply no substance in this ground. The judge specifically considered this issue, for example in the last sentence of para 78 where the judge said: "*This appellant is not, and there are no grounds for believing that she could be perceived to be, a threat to the integrity of Sri Lanka*".

79. There is simply no basis for the assertion in the second sentence of para 20.b. of the grounds that "*the appellant had clearly been of adverse interest to the authorities for many years on the accepted facts, including post-conflict in late 2009*" (my emphasis). The assertion that she was of adverse interest to the authorities "*for many years*" ignores the fact that, as the judge found, the appellant's detentions were short, that she was not released on the payment of a bribe (para 87), and that no interest was shown in her between the 2002 and 2006 incidents (para 78).

80. At the hearing, Ms Solanki submitted that the judge failed to take into account that the appellant was of adverse interest because the authorities looked for her after the end of the civil war. This refers to the fact that the Sri Lankan authorities looked for the appellant when she was in the church hostel in October 2009. However, the judge specifically mentioned this at para 12 and took it into account at para 87 in reaching her finding that the appellant would not be on the watch-list. She said that the timing of the visit by the Sri Lankan authorities in October 2009 was relevant; that this happened "… *shortly after the end of the civil war and, as I have stated above, it is possible that at that stage the authorities were interested in any Tamil in the north and those who had connections with the LTTE…"*

81. The remainder of para 20 of the grounds amounts, in reality, to no more than a disagreement with the judge's reasoning and finding that the appellant would not be on a watch-list.

82. I therefore reject ground 2(e).

In relation to the appellant's Article 3 health claim:

Ground 3(a)

83. Ground 3(a) is that the judge failed to take into account relevant evidence. It is contended that the judge overlooked the following:

    (i) (Para 23 of the grounds) that there has been no improvement in the appellant's mental health since her diagnosis of PTSD, depressive episode and anxiety from at least 2018; and that Dr Lackenby had stated that the appellant's mental illness and symptoms were likely to worsen upon return this being the location of trauma and her fear of persecution.

(ii) (Para 24 of the grounds) that part of the problem was accessibility owing to cultural issues, shame and stigma.

84. There is simply no substance in any of the submissions in paras 23 and 24 of the grounds for the following reasons:

(i) The submission that the judge failed to take into account that there has been no improvement in the appellant's mental health ignores the fact that an assessment of an individual's Article 3 health claim begins with consideration of their current health and the extent of any deterioration upon return. No authority was given for the proposition that lack of improvement in an individual's health in the United Kingdom was in itself a relevant consideration.

(ii) Not only is it the case that the judge summarised the evidence of Ms Lackenby at paras 33-39 of her decision, she took into account (at para 95) Ms Lackenby's opinion that the appellant would be unlikely to engage with the mental health services in Sri Lanka and quoted from Ms Lackenby's report, as follows:

> "95. The reasons for this are multi-faceted. Cultural and shame-based barriers are likely to increase in Sri Lanka, she is likely to fear greater judgment from members of her own culture more so than members of a Western culture, due to the taboos surrounding sexual abuse, relationships outside of marriage and mental illness. Whilst not an expert in mental health services in Sri Lanka, experience of working in Sri Lanka and supervising education provision in one university in Colombo, suggested that psychological therapies are not respected in Sri Lanka, nor are they operational to the same degree they are in the UK. There does remain stigma regarding mental illness. Females are more at risk of stigma and sexual acts, in whatever form, are not openly discussed. Moreover, returning to the environment where the trauma occurred is likely to be a further barrier to engagement with the therapies and her symptoms are likely to worsen."

(My emphasis)

85. In addition to Ms Lackenby's evidence as to the accessibility of treatment, the judge took into account the expert evidence of Dr Algar-Faria on the subject, at para 44 of her decision, which reads:

> "44. On the issue of accessing healthcare, the expert stated that Tamils living anywhere in Sri Lanka may face difficulties accessing healthcare. Addressing in particular the availability of mental health facilities, referring to a 2013 podcast on mental health, he stated that medical professionals in Sri Lanka noted that those with mental health issues are likely to be stigmatised, that mental health services have been struggling although there has been a significant improvement. Referring to comments from a representative of the Human Rights Commission, "PTSD seen across the country but the psycho-social support is lacking. More mental health services are required." He reported that the mental health service is largely centralised and that options outside Colombo were much more limited than those available in the capital, but remain extremely limited in remote areas and there are conflicting accounts about the quality and availability of care facilities in built-up areas. He drew attention to the stigma associated with attending hospital for a mental health reason."

(my emphasis)

86. Accordingly, contrary to paras 23 and 24 of the grounds, the judge specifically considered Ms Lackenby's evidence (as well as the evidence of the country expert) concerning accessibility of treatment, reasons for inaccessibility and that the appellant's condition was likely to worsen.

87. At the hearing, Ms Solanki referred me para 17.5 of the psychiatric report dated 22 May 2016 of Dr Saleh Dhumad to the effect that there would be an increase in the risk of suicide in the event of removal (AB3/20) and paras 56-58 of the psychiatric report dated 31 January 2018 of Dr Stevens to the effect that the potential for the risk of suicide was "*essentially unknown*" (AB3/44).

88. However, the report of Dr Dhumad was nearly 5 years old by the date of the hearing before the judge. In addition, the judge had summarised the report of Dr Stevens dated 31 January 2018 at paras 27-30 of her decision. Furthermore, the most recent medical report before her was that of Ms Lackenby dated March 2021 which stated, as the judge noted (para 92) that *"[the appellant] does not have a significant history of attempted suicide. Her religious beliefs (she had recently become a Jehovah's witness) act as a strong protective factor and are likely to continue to do so.*"

89. In these circumstances, I am satisfied that there is no substance in Ms Solanki's submission that the judge had erred by failing to take into account the medical evidence of Dr Dhumad and Dr Stevens as to the risk of suicide. It was unhelpful for me to be referred to the long distant reports of Dr Dhumad and Dr Stevens in relation to the risk of suicide.

90. At the hearing, Ms Solanki submitted that what was relevant in relation to ground 3 was the appellant's presentation on arrival at the airport in Sri Lanka and when visited by the authorities at home and monitored which (in her submission) the judge failed to consider.

91. I pause here to draw attention to the fact that this submission was advanced before me in the context of the appellant's Article 3 *health* claim, and not her asylum claim. There was no ground brought against the judge's decision on the appellant's Article 3 claim that is based on the facts of her asylum claim.

92. Given that the submission was made in the context of the appellant's Article 3 health claim, the argument must be that such is the appellant's current mental condition that there are substantial grounds for believing that, if she is questioned/monitored by the Sri Lankan authorities upon or after return, she would face a real risk, on account of the absence of appropriate treatment in Sri Lanka, of being exposed to a serious, rapid and irreversible decline in the state of her health resulting in intense suffering or to a significant reduction in life expectancy.

93. I reject the submission that the judge erred in her assessment of the appellant's Article 3 health claim by failing to consider the appellant's condition on being questioned by the Sri Lankan authorities on arrival in Sri Lanka, for the following reasons:

    (i) In the first place, there was nothing in the passages in the reports of Dr Dhumad and Dr Stevens to which Ms Solanki referred me that dealt with the appellant's condition on being questioned by the Sri Lankan authorities. In any event, their reports are long distant.

    (ii) I noted that para 23 of the grounds does make a fleeting reference to the issue in that it states that "*her mental illness and symptoms are likely to worsen upon return to Sri Lanka this being the location of trauma and her fear of persecution, which in turn will have a debilitating impact on her presentation and wellbeing (AB4 p26-48)*". This is a reference to the entire report of Ms Lackenby. No attempt was made to refer me to any specific part of Ms Lackenby's report that

dealt specifically with the appellant's condition on being questioned or monitored by the Sri Lankan authorities.

(iii) Nevertheless, I have read the entire report of Ms Lackenby. There is nothing in it which deals with the appellant's condition on being questioned by the Sri Lankan authorities. Ms Lackenby was asked to comment on the appellant's fitness to give evidence at the hearing. In that regard, she said that the appellant was fit to give evidence although she was likely to become anxious and distressed; that if the questioning was adversarial and overtly critical, she was unlikely to provide coherent or full responses; and that an inquisitorial style exploring her evidence is more likely to result in more detailed evidence (paras 10.1 c) II and III AB4/41). However, the fact is that she was not asked to comment on the appellant's condition on being questioned by the Sri Lankan authorities.

(iv) There was therefore no evidence before the judge that the appellant's condition on being questioned by the Sri Lankan authorities would be such that there were substantial grounds for believing that she would face, on account of the absence of appropriate treatment in Sri Lanka, a real risk of being exposed to a serious, rapid and irreversible decline in the state of her health resulting in intense suffering or to a significant reduction in life expectancy.

(v) Importantly, I noted that the skeleton argument that was before the judge made no mention of any submission that the appellant's condition on being questioned by the Sri Lankan authorities would be such that there were substantial grounds for believing that she would face, on account of the absence of appropriate treatment in Sri Lanka, a real risk of being exposed to a serious, rapid and irreversible decline in the state of her health resulting in intense suffering or to a significant reduction in life expectancy. The closest it comes to is at para 26 where it is stated that "*her mental health makes it likely that she would be unable to withstand interrogation too".*

(vi) It is therefore clear that the issue raised at the hearing before me (summarised at para 90 above) was in fact not argued before the judge and there was no evidence in support of it before the judge.

94. I therefore reject ground 3(a).

Ground 3(b)

95. Ground 3(b) is that the judge failed to address the health claim against GJ (paras 269-271 and 449-457) or the large amount of background evidence that she was referred to at paras 39-41 of the skeleton argument and Annex 1 to the skeleton argument that was before the judge.

96. However, para 269 of GJ referred to Dr Smith as being the only witness to suggest that having a mental health issue was a risk factor. Furthermore, the Upper Tribunal rejected the submission that "*mental health*" should be added as an additional risk factor (para 271).

97. There is therefore no substance in the submission that the judge erred by failing to address the appellant's health claim against paras 269-271 of GJ. It was unhelpful for me to be referred to paras 269-271 of GJ.

98. At paras 449-457 of GJ, the Upper Tribunal considered the appeal of the third appellant in GJ. It has been said, time and again, that it is unhelpful to make factual comparisons between one case and another. Paras 449-457 were not part of the guidance given by the Upper Tribunal. There is therefore no merit whatsoever in Ms Solanki's submission that the judge erred by failing to address the appellant's health claim against paras 449-457 of GJ.

99. In any event, the Upper Tribunal in GJ noted that the evidence before it showed that the third appellant was considered by his Consultant Psychiatrist to have clear plans to commit suicide if returned and that he was mentally very ill, too ill to give reliable evidence. In contrast:

    (i) The judge found, relying upon the report of Ms Lackenby, that the appellant's religious beliefs were a strong protective factor (para 92).

    (ii) The appellant was able to give evidence before the judge (para 104). The judge noted that the appellant's interview with Ms Lackenby had lasted four hours and that Ms Lackenby had reported that the appellant did not appear to have obvious signs of difficulty with concentration. The judge further noted that the appellant spoke fluently and responded to the questions put to her by the respondent's representative.

100. It was therefore unhelpful for me to be referred to the Upper Tribunal's treatment of the evidence concerning the mental health of the third appellant in GJ in support of a submission that the judge erred in law in assessing the evidence concerning the appellant's mental health.

101. I have considered paras 39-41 of the skeleton argument that was before the judge. These concern mental health treatment facilities in Sri Lanka and the stigma attached to mental ill-health in Sri Lanka. There is nothing in these extracts which adds anything material to the evidence that the judge considered.

102. I am satisfied that this is also the case in respect of Annex 1 to the skeleton argument that was before the judge. That too concerned the stigma in Sri Lanka relating to mental ill-health.

103. I therefore reject ground 3(b).

Assessment of para 276ADE(vi) of the Immigration Rules

Ground 4(a)

104. Ground 4(a) is that, in reaching her finding that there was no evidence that the appellant's family will reject her owing to her mental health, the judge failed to address the appellant's submission or consider the objective evidence to which she was referred which demonstrated that Sri Lankan families routinely did so.

105. The nub of this ground is that, given the background material to the effect that Sri Lankan families routinely reject family members who suffer from mental ill-health, the judge erred in finding that the appellant would be able to return to live with her family.

106. However, the fact is that this was a fact-sensitive point. In reaching her finding that the appellant would be able to return to live with her family and that she would have their support, she took into account the appellant's evidence that she had been in regular contact with her family. The only evidence that had been submitted to

establish the appellant's claim that she would have to live in isolation from her family was a letter dated 2 August 2019 said to be from her father.

107. Not only is it the case that the judge found that the letter was a fabrication (para 86), there was nothing in the letter itself that stated that the reason why the appellant could not return to live with her family was because of her mental ill-health. The judge was therefore entirely correct to find that there was no evidence that the appellant's family will reject her.

108. In essence, Ms Solanki was attempting to rely upon general background evidence to the effect that Sri Lankan families routinely reject family members who are mentally ill to establish that the appellant's family would reject her without advancing any evidence whatsoever that is specific to the appellant. That is simply untenable, especially given the appellant's regular contact with her family and that the letter said to be from her father does not give mental illness as a reason for her not being able to live with her family.

109. I therefore reject ground 4(a).

Ground 4(b)

110. Ground 4(b) is that, in reaching her finding that there would not be very significant obstacles to the appellant's reintegration in Sri Lanka, the judge failed to take into account "*a number of relevant issues*" including: her heightened fears on return as an accepted torture and sexual abuse victim at the hands of the government of Sri Lanka; the situation in Sri Lanka, particularly for Tamils in the north "*where there was one officer for every five civilians"*; and the problems that the deterioration in her mental health would pose in obtaining employment, establishing relationships with others and participating in society.

111. However, the judge reminded herself of the guidance as to integration in Kamara [2016] EWCA Civ 813 at para 108 of her decision, that:

> "The idea of 'integration' calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life."

112. The judge then said:

> "I am satisfied the appellant will have retained an understanding of how life in Sri Lanka is carried on and, despite her mental health issues, could, with the help of her family, participate in it. Whilst mental illness is said to carry a stigma, the evidence does not suggest that those with mental health issues are discriminated against to such a degree that they cannot participate in society."

113. The judge can be taken to have understood, from the guidance in Kamara, that participation in society included the prospect of being employed, establish relationships with others and participate in society. She was plainly aware that the appellant had suffered sexual abuse in detention in Sri Lanka.

114. There is therefore no substance in ground 4(b) which I reject.

115. For all of the reasons given above, the judge did not err in law.

116. Having dealt with all of the grounds, it is appropriate for me to stress, in view of the lengthy grounds, that the judge's decision was a very careful, considered and adequately detailed decision. I stress that, in the instant case, the judge had before her four bundles of documents as well as the respondent's CPIN on Tamil Separatism and on healthcare. She had a very lengthy skeleton argument with further background evidence attached to the skeleton argument. As I have said, it is neither reasonable nor desirable to expect the judge to have dealt with the evidence before her in the detail that appears to have been expected on the appellant's behalf.

117. I make one final point. It is difficult to avoid the conclusion that permission was granted in this case by the First-tier Tribunal not because there were any arguable errors of law but because the drafting of the grounds did not lend itself to a different disposal of the application for permission within a reasonable timescale. That is not a criticism of the permission judge.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of any error of law sufficient to require it to be set aside.

Signed Date: 17 August 2021

Upper Tribunal Judge Gill

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email