



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

Appeal Number: AA/07671/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10th November 2014**

**Decision & Reasons
Promulgated
On 12th December 2014**

Before

UPPER TRIBUNAL JUDGE KING TD

Mr SP

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant Miss A Benfield, Counsel instructed by S Satha & Co
For the Respondent Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, born on 27th February 1986, is a citizen of Sri Lanka who arrived in the United Kingdom on 3rd December 2012. He claimed asylum on 3rd January 2013.
2. His application was refused by the respondent for the reasons as set out in the decision letter dated 26th July 2013. A further decision was made to remove the appellant from the United Kingdom under Section 10 of the Immigration and Asylum Act 1999.
3. The appellant sought to appeal against such decisions, which appeal came before First-tier Tribunal Judge Aujla on 14th January 2014.

4. The appeal was allowed on asylum grounds.
5. That decision was the subject matter of an appeal to the Upper Tribunal made by the Secretary of State for the Home Department contending that there were inadequate reasons for finding that the appellant came within any of the risk factors identified in the decision of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
6. Permission to appeal was granted and the matter came before me in pursuance of that permission.
7. It was my finding that there was a material error of law and that the Judge, although focusing upon paragraph 356(4) of **GJ** which indicated that if a person is detained by the Sri Lankan security authorities there remains a real risk of ill-treatment or harm, did not link that within the context of paragraph 356(6) which indicated that only those who appear on a stop list will be detained from the airport. The Judge had given no reason why that conclusion should not be followed or rather why he had chosen to depart from it. Further there had been little appreciation as to the fact that although the appellant had come to the attention of the authorities on several occasions since his release he had not been ill-treated on those occasions. The failure of the Judge to indicate why there should be a departure from that which is set out in **GJ** amounted in my estimation to an error of law such that the decision should be set aside to be remade.
8. It was, however, only necessary to revisit the matter to the limited area as to risk on return, in the light of the fact that no challenges had been made to the findings of fact made by the Judge as to experiences of the appellant when in Sri Lanka.
9. In general terms, therefore, the findings of fact were preserved. It was not considered necessary to remit the matter for rehearing to the First-tier Tribunal, rather that the area of concern could be properly considered by myself in the light of any submissions that might be made. That position was agreed by the parties.
10. Thus it was that the matter came before me on 10th November 2014 to determine specifically the issue as to risk on return. In that connection I also had before me on that occasion a skeleton argument submitted on behalf of the appellant together with photographs of his scarring. I had regard also to the country guidance case of **MP (Sri Lanka) and Another v Secretary of State for the Home Department [2014] EWCA Civ 829** and also to the Home Office country information guidance for Sri Lanka dated 28th August 2014. I also had the benefit of the matters set out in the supplementary bundles submitted for the purposes of the hearing.

11. In assessing the present risk on return it is necessary to consider in some detail the experiences of the appellant in Sri Lanka and to look at his profile real or perceived.
12. In terms of his background it was accepted that he was abducted and forcibly recruited by the LTTE on 15th April 2007. He was held at a political wing camp at Mankulam before being transferred to Vanni Vellakulam. There he worked in the finance division, food section, from May 2007 to 10th October 2008 when he was wounded by gunfire resulting in wounds to the left of his face and his stomach. He was known within the LTTE by the name "Semmalayaam".
13. He came to the attention of the CID on 15th May 2009 whilst transiting to an IDP camp as a result of his facial scarring. It was considered that that scarring may indicate that he was an LTTE member.
14. He was detained from 15th May 2009 to 28th January 2012 at Joseph camp. He was tortured and ill-treated during that period of his detention. He confessed to LTTE involvement under duress and was photographed and fingerprinted.
15. He was released in January 2012 without reporting conditions.
16. On 14th June 2012 the appellant was detained for three days when he failed to report to the police. It seems that he had attended the police station on 9th June 2012 as required and had carried out physical work such as chopping wood and was required to attend again. He had failed to do so which led to the detention. An issue arose as to whether he was detained for a day or three days but it was accepted that he was released without reporting conditions.
17. His third detention on 28th November 2012 was very brief when he along with others was suspected of sabotage. He was released after two hours also without any reporting conditions.
18. It was the finding of the First-tier Tribunal Judge that there was a common thread between the three detentions. Although the appellant had been processed during his last detention and released, he was a Tamil who in the past had been involved with the LTTE. That was the reason why he was called in June 2012 to go to the police station and made to work and why it was that in November 2012 he was detained with others because of a suspicion that he, being a Tamil, might have been involved in sabotage.
19. It was noted that the appellant has scars on his body, especially a large scar on the left side of his face. Throughout the course of his evidence before the First-tier Tribunal Judge the appellant had indicated that there was an arrest warrant out for his arrest and that the authorities were actively seeking him. The Judge noted, however, at paragraph 35 of the decision that the appellant was issued with his own passport and able to

leave the country without problems. In the absence of any further evidence he did not accept that there was such a warrant or interest in him. That matter has not been pursued before me. No evidence has been led on that particular issue. The Judge also accepted that the appellant had mental health problems and the fact that he was suffering from PTSD was accepted by the Judge. Indeed the diagnosis of Dr Persaud dated 7th January 2014 indicated that the appellant was suffering from a serious psychiatric disorder including major depression and PTSD. There seems to have been no challenge to that conclusion.

20. An area where evidence had been given but no clear findings had been made was in relation to the appellant's activities in the United Kingdom. He said that he had attended a number of protests and demonstrations in the United Kingdom which have served to have enhanced his profile. In particular it was said that he attended a demonstration organised by the British Tamils Forum at Downing Street on 2nd November 2013, and a similar demonstration in the Pall Mall on 15th November 2013. He attended Heroes Day at the London ExCeL Centre on 27th November 2013 and Mullaivaikkal Remembrance Day on 18th May 2014.
21. Miss Benfield, who represents the appellant, invited me to consider that a starting point in my consideration was in fact paragraph 339K of the Immigration Rules. The appellant had been arrested for an extended period of time and subjected to torture and physical abuse and that in itself, she submitted, was a serious indication as to his well-founded fear of persecution or risk of serious harm.
22. She invited me to consider also that the appellant by reason of his activities and profile was someone who fell within the risk categories as set out in **Gj and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
23. She submitted leaving aside the issue as to whether or not the appellant's name appeared on a computerised stop list accessible to the airport or whether there was an extant court order or arrest warrant, he nevertheless fell within the categories of a person at risk as envisaged in paragraph 356(7) of that case. That provides as follows:
 - “(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.”

24. It is her submission that the appellant is known to the authorities as a former LTTE member. The length of his detention and questioning was an indication that he was a person having important information about the LTTE owing to his employment in the finance division. Since arriving in the United Kingdom he had attended pro-Tamil events in the Diaspora which had been actively critical of the Sri Lankan authorities.
25. As stated in paragraph 356(7) and (8) it is the perception of the Sri Lankan authorities which is significant. At paragraph 311 the Upper Tribunal had stated that:

“The government’s concern now is not with past membership or sympathy, but with whether a person is a destabilising threat in post-conflict Sri Lanka.”
26. It is her submission that the appellant is likely to be viewed as a destabilising threat on the basis of his former involvement and his prolonged absence from Sri Lanka in the UK, which is viewed by the Sri Lankan authorities as a centre of Tamil Diaspora activities, and his attendance at protests and demonstrations in the United Kingdom. The fact that he has experience of the finance wing within the LTTE is not an irrelevant consideration in whether or not it is perceived that he is someone associating with attempts at reviving the LTTE. Further in that connection my attention was drawn to the country information and guidance Sri Lanka: Tamil Separatism 28th August 2014 and to a letter from the British High Commission (BHC) Colombo to the Home Office dated 25th July 2014 which is attached as Appendix D to that report.
27. There is an issue of the proscription of sixteen Tamil Diaspora organisations, including the British Tamil Forum (BTF) and the UK-based Global Tamil Forum (GTF), UN Security Resolution 1373 on Counter Terrorism on 1st April 2014.
28. The letter continues that there had been no reports in the local press of anyone being arrested because of their membership of or association with one of those proscribed organisations. Seemingly no returnees from any country have been arrested yet because of their association with one of the proscribed groups nor has any returnee been arrested on arrival for that reason. It indicated, however, that returnees may be questioned on arrival by immigration, CID, SIS and TID. They may be questioned about what they have been doing whilst out of Sri Lanka, including whether they have been involved with one of the Tamil Diaspora groups. It was said that it was normal practice for returnees to be asked about their activities in the country they are returning from. A spokesman from the SIS was quoted to say that people being “deported” will always be questioned about their overseas activities, including whether they have been involved with one of the proscribed organisations. A spokesman for the international NGO had not noticed any changes in the airport procedure for returnees.

29. Miss Benfield submits that it is a reasonable conclusion to draw from the action of the government of Sri Lanka in April 2014 announcing the designation of sixteen Tamil Diaspora organisations and 424 individuals as being members of a proscribed organisation, that they are taking the activities of the Diaspora very seriously and that the government is concerned lest there be a revival of LTTE activity. She asked me to find that whether or not the appellant has a significant profile must be viewed in the light of this increased sensitivity on the part of the Sri Lankan authorities.
30. It was in that context that my attention was drawn to **MP (Sri Lanka) and Another v Secretary of State for the Home Department [2014] EWCA Civ 829** and to paragraph 25 of that judgment, it being noted that there was evidence before the Upper Tribunal of sophisticated intelligence gathering by the Sri Lankan authorities. There was a surveillance and video recording or photography of Diaspora demonstrations. She submits therefore that the appellant as a known individual to the authorities could be readily identified by them as being part of the Diaspora.
31. Miss Benfield submits that it is not simply limited to people on the stop list as being those who would be stopped at the airport. The appellant would require an emergency travel document (ETD) to return to Sri Lanka. The process of an application for an emergency travel document was considered in the case of **GJ** at paragraph 307 and would require a lengthy disclosure by the appellant to the authorities in London of his situation and circumstances in order to get the document concerned. The Sri Lankan authorities would be forewarned that the appellant may return. It was noted that forced returnees can be expected to be asked about their own LTTE connections and sympathies upon return. That is set out in paragraphs 308 and 345.
32. She submitted that if asked about his activities in the United Kingdom it would not be proper to expect the appellant to lie about them.
33. In the UKBA Country of Origin Information Report of 7th March 2012 it is clear that upon arrival at the airport the appellant is likely to be escorted or presented to the Chief Immigration Officer as a returnee. Either that or he would come to the attention of the Department of Immigration and Emigration (DIE). He would be asked for his prior biological details and historical details.
34. The appellant had been previously identified by the CID in 2009 due to his facial scars as someone who was likely to be a former LTTE member. Although the country guidance does not consider scarring to be a distinct risk category it is, however, a factor which would lead to interest in the appellant.

35. As was established in **GJ** at paragraph 356(6) if there are no detention facilities at the airport and if detained the appellant would be transferred to a prison or detention centre where he would continue to be at risk of physical abuse.
36. There was nothing to prevent the appellant, however, even permitted to leave the airport without being detained not to be put on a “watch list” and picked up by the authorities at his home rather than at the airport.
37. In summary therefore she submits that it is inevitable that the appellant as a returnee will be questioned upon arrival, and as such the authorities know of his past and have ready access to details of his detention. Although attendance at demonstrations is not in itself evidence that a person is a committed Tamil activist it is a matter adding to the appellant’s profile as somebody who is still interested in pro-Tamil or LTTE activities. If detained he would suffer violence.
38. She invites me to find that although he was not ill-treated on the last two occasions when he was detained by the authorities, his circumstances have now changed given his absence from Sri Lanka and his involvement in the demonstrations and also that the attitude of the authorities has markedly changed for the worse considering those who may potentially be Tamil extremists. In those circumstances she invites me to find that there is a possibility of ill-treatment.
39. Miss Holmes, on behalf of the respondent, invites me to find that the appellant was and remains low profile. Had matters been contrary to that he would not have been released on the last two occasions. Although torture is not to be in any way condoned it was right to note that on the last two detentions which, upon the findings of the Judge were related to the first, the appellant was not ill-treated.
40. She invites me to find, therefore, that even were it the case that he were stopped at the airport and questioned such would simply result in his release without ill-treatment.
41. She invites me not to overstate the importance of the activities in the Diaspora and invites me to have regard to the full context of paragraph 25 in **MP**.
42. That paragraph reads as follows:-

“There was evidence before the UT of such intelligence gathering by the Sri Lankan authorities and that it has reached a level of sophistication. However, it did not take the form of a cogent correlation between mere participation in such demonstrations and persecution on return. Nor, for that matter, do the UNHCR guidelines put it so low. The reference to LTTE

‘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’

seems to assume a higher level than mere participation in one or more demonstrations. No doubt it can form a part of the picture but I do not consider that it was legally erroneous of the UT to conclude that it needs more to qualify as a risk category or operative risk factor. The real issue in this case is how much more – essentially the basis of the first ground of appeal.”

43. Thus she submits that even accepting the sophistication of surveillance, mere attendance at a demonstration is not without more to significantly raise a profile of an individual. She invites me to find that the appellant has such a profile as to cause any interest in him upon return. She invites me therefore to dismiss the appeal.
44. For the most part the risk categories of **GJ** are adopted in **MP** at paragraph 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. Its focus is both on preventing the resurgence of the LTTE and the revival of the civil war within Sri Lanka.
45. The authorities maintain a computerised intelligence-led watch list. A person whose name appears on such a list is not reasonably likely to be detained at the airport but will be monitored by security services after his or her return. If the monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state 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 upon any Diaspora activities carried out by such an individual.
46. It was recognised in paragraph 356(8) of **GJ** that the approach by the Sri Lankan authorities is based on sophisticated intelligence, both as to activities within Sri Lanka and in 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 state or government.
47. The court in **MP** considered the UNHCR guidelines and found that they were less demanding than the UT’s guidance. It considered whether or not therefore the UT’s departure from the more generous guidelines was justified.
48. Consideration was given to the features which led the Upper Tribunal to conclude that there had been real changes since the **LP/TK** factors were

propounded. Those were set out as identified in paragraphs 303, 311, 318, 325, 342, 345 and 349 of **GJ**.

49. The conclusion at paragraph 19 to the judgment was that it was rational and permissible to narrow the risk categories. It was recognised that the UT had heard a great deal of evidence which had been subjected to forensic examination. It was considered therefore that the UT, having given consideration to the UNHCR guidelines, was entitled to adopt a less generous approach to risk demonstrated by its guidance and the explicit and implicit reasoning underlying it.
50. The Court of Appeal considered in particular the grounds raised specifically to **NT** and it was noted that that appellant was separated from his family, transferred by the CID to a camp where he was interrogated under torture many times. The Court of Appeal did not agree with the approach taken by the Upper Tribunal to that individual and allowed the appeal to the extent that his case was remitted for reconsideration.
51. The individual **MP** had a distinguishing feature in that he had mental health difficulties with suicide risk. He had been involved with the LTTE in the 1990s and had been detained and tortured in 2001 and 2002. His case was dismissed under immigration and asylum as he remained properly protected under Article 3.
52. The mental health of the appellant in this appeal clearly is an important consideration in the overall context of the safety of his return. It was not submitted that he is at risk of suicide nor was Article 8 argued on the basis of his mental health. It was submitted, however, that his mental health was an important factor to bear in mind as to his ability to give a good account of himself if questioned or to cope with the rigours of interrogation.
53. The Court of Appeal in **MP** upheld the view as expressed in **GJ** that the focus of interest of the authorities had moved to the organisations and individuals who presented a significant threat to the state rather than purely having connections with the LTTE. In that connection it would be helpful to have had some clear evidence as to what happened to those who were being returned, particularly at the airport or elsewhere. In that connection I have had regard to the supplementary bundle that was provided and particularly an extract from The Guardian of 23rd September 2014 which criticises the stance taken by the UK government in returning asylum seekers despite evidence of torture. It was said of UK resident Tamils who had been detained and tortured when they visited Sri Lanka in 2013, half of whom were picked up at the airport on arrival. It spoke of some 90 cases being documented. A further report from the Federal Office for Migration dated 26th May 2014 spoke of the events in the summer of 2013. Two Sri Lankan nationals returned from Switzerland were arrested upon return to Sri Lanka. Such seems to be somewhat at variance with the letter from the British High Commission of 25th July 2014 to the effect

that no returnees had been arrested because of their association with one of the proscribed groups. This is notwithstanding the fact that people being deported would always be questioned about their overseas activities.

54. Such perhaps is somewhat unhelpful if the context of how many Tamils are forcefully removed to Sri Lanka is not stated. This seems to be at variance with other material. The Guardian article also does not of course indicate the nature of the profile of those that were in fact arrested and then ill-treated.
55. From the background material as presented I cannot detect any significant change in attitude and approach from that as identified by the Tribunal in **GJ** and recognised and acknowledged by the Court of Appeal in **MP**.
56. It seems to me therefore that in one way the aspect of risk turns full circle to the category of person as defined in **GJ** 356(7)(a), namely 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. The appeal in **MP** endorsed the narrowing of risk categories. I do not find that the appellant by reason of his previous involvement with the LTTE comes within that category. That he is a Tamil and previously involved with LTTE activities is to be acknowledged and indeed it was for that reason that he has faced three arrests. I find that it is significant in the context of attitude that in the last two cases when he was detained he was not ill-treated.
57. I do not find that mere attendance at demonstrations necessarily increases that profile in the eyes of the authorities. Nor do I find that scarring adds to the profile as it is said to be reasonably inferred that by the time the appellant comes or returns to Sri Lanka his background will be known.
58. Clearly the focus of consideration must be recognition that he will be questioned upon arrival as a returned asylum seeker and it is to be assumed that at that questioning he will be required to reveal the fact that he attended demonstrations and the fact that he was formerly in the LTTE. His mental difficulties are relevant as to whether or not he can give an explanation for himself and there was no suggestion that he could not.
59. The letter relied upon by Miss Benfield from the British High Commission does not, it seems to me, support her proposition of a clampdown of those who are returned. Quite the reverse.
60. I remind myself that I should not be unduly constrained by the formality of the risk categories if there be something within the profile or background of the appellant as would lead to a danger to him were he to return. I can find none. I remind myself also that there is a danger in relying upon the

predictability of outcome from previous experience, particularly in regimes where consistency of approach may not be the safest basis upon which to project future risk. Nevertheless it is an important matter in this case that the appellant has been arrested on three occasions and on the last two not subject to violence albeit that the authorities would have known full well his background and antecedents.

61. Miss Benfield invites me to find that he was likely to find himself in detention and thereby under ill-treatment rather than just being questioned upon return. I can find little basis for that conclusion. As I have indicated, it would have been helpful had there been some positive evidence that such happens to a significant number of individuals upon return but that evidence is not forthcoming and indeed the letter to which reference has repeatedly been made makes quite the opposite point.
62. I remind myself also that a lower standard and burden of proof should be applied in this case, namely whether it is reasonably likely or there is a possibility that the appellant would face ill-treatment upon return. I conclude, having looked at all matters in the round, that he would not.
63. I emphasise, however, that no evidence was adduced before me as to the issue of whether or not he is actively wanted by the authorities or indeed if an arrest warrant is issued against him. Clearly, were that evidence to be forthcoming it might be a relevant factor in the overall assessment because then it would seem to be reasonably likely that he would be detained upon arrest and ill-treated. However, it is not the basis upon which I make my findings.
64. In the absence of any suggestion that his mental illness would result in a breach of his Article 3 rights per se I do not proceed to find in favour of the appellant in any aspect of his appeal.
65. In the circumstances therefore the asylum appeal is dismissed. That in relation to humanitarian protection is dismissed. The appeals in relation to Articles 3 and 8 are also dismissed.

Notice of Decision

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 **10th November 2014**

Upper Tribunal Judge King TD