



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

Appeal Number: AA/10591/2013

THE IMMIGRATION ACTS

**Heard at Newport
On 23 September 2014**

**Determination Sent
10 October 2014**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**TP
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr J Parkinson, Senior Home Office Presenting Officer
For the Respondent: Mr G Hodgetts instructed by McGarvey Immigration & Asylum Practitioners Ltd

DETERMINATION AND REASONS

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

the order and I continue it pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698).

Introduction

2. This is an appeal by the Secretary of State against a decision of the First-tier Tribunal (Judge Trevaskis) allowing TP's appeal on asylum grounds against the Secretary of State's decision to remove him by way of directions to Sri Lanka on 30 November 2013.
3. For convenience, I will refer to the parties as they appeared before the First-tier Tribunal.
4. The appeal initially came before me on 6 May 2014. In a decision dated 19 May 2014, I concluded that the First-tier Tribunal had erred in law in its assessment of the risk to the appellant on return to Sri Lanka applying the country guidance of GJ and Others (Post-Civil War: Returnees) Sri Lanka CG [2013] UKUT 319 (IAC). As a result, I set aside the First-tier Tribunal's decision and adjourned the appeal to a further hearing in the Upper Tribunal to remake the decision.
5. Judge Trevaskis' findings of fact stand and the sole issue in the appeal is whether, given those facts, the appellant had established a real risk of persecution for a Convention reason applying GJ and Others.

The Background Facts

6. The appellant is a citizen of Sri Lanka who was born on 12 October 1975. He arrived in the United Kingdom on 18 September 2013 and, on 16 October 2013 he claimed asylum. That claim was refused by the Secretary of State on 13 November 2013 and a decision was made to remove him as an illegal entrant by way of directions to Sri Lanka.
7. The appellant's appeal against that decision was allowed by the First-tier Tribunal (Judge Trevaskis) in a determination dated 26 January 2014.
8. The Judge found the appellant to be credible (see para 63). That finding stands as a result of my earlier decision rejecting the Secretary of State's grounds of challenge to the Judge's factual findings. The appellant's evidence is set out at paras 29-37 of Judge Trevaskis' determination as follows:
 - "29. The Appellant gave evidence with the assistance of an interpreter of the Tamil language. He adopted his statement dated 2nd January 2014. He joined the LTTE in 1996 and received 3 months weapons training. From 1996 to 2002 he was stationed in a camp near Kuchchaveli, carrying out general tasks.
 30. He was only involved in fighting twice in 1997/1998; the army attacked the camp, and later he was attacked by the army when collecting food from a village. In 2000 he was injured by a grenade during an attack on the camp; he still has pain in his right hip from that injury.

31. He has provided a photo; he says it is of him, taken around 2000; he is holding a M-16 assault rifle, wearing a military holster containing a grenade and 6 magazines of ammunition, and has a cyanide capsule on a string around his neck.
 32. He left LTTE in 2002 because his mother wanted him to look after the family; he had to carry out 6 months' punishment in order to leave within 10 years of joining. He returned to Trincomalee and married his wife in 2002. He worked as a delivery driver, sometimes transporting LTTE members, despite no longer being a member. On 11th July 2004 he daughter was born.
 33. In 2005 LTTE brought him a refrigerator van to collect and sell fish; he gave them the money he earned and they paid him. The peace agreement between the government and LTTE in 2002 ended in 2006; the war started again, and people who assisted LTTE were being arrested and killed. He moved to Colombo in 2006 with his wife and daughter, and stayed with his sister for 6 months.
 34. On 17th September 2006 they returned to his village because his mother told him it was safe to return. They went to his cousin's house for lunch; after lunch he was inside the house when he heard shooting outside; his 2 cousins went outside and were killed. The Appellant and his brother-in-law went out of the back door and hid in a neighbouring village. He was told by his mother that his friend and his 2 cousins were killed, and his wife and daughter were wounded; later he was told that his daughter had died. His mother told him the Criminal Investigation Department was looking for him. He remained in hiding until after his daughter's funeral and his wife's discharge from hospital; he joined her in Vanni and they stayed there until 2009; he made a living selling paraffin at the roadside. On 8th August 2007 his second daughter was born.
 35. In 2008 he was forced to assist LTTE by transporting men and supplies, which he did until April 2009 when the civil war ended. He continued to transport items for LTTE, which he believed were weapons and ammunition and were buried. He and his family left Vanni for a refugee camp at Vavuniya; he paid a bribe to get out of the camp and went to stay with relatives in Vavuniya village. On 17th June 2010 his third daughter was born.
 36. On 5th June 2013 he was stopped when walking to the shops; he was placed in a van and taken to Joseph Camp, the main army base in Vavuniya. He was kept there for 3 months; he was told he had been named as LTTE and he knew where the arms were buried. He showed the 3 places where he thought the arms were buried, but they had been moved. While detained he was regularly beaten on his back, legs and heels with a stick, wire and a pipe containing sand. On 10th September 2013 he was taken in a van to meet his uncle, who paid a bribe for his release.
 37. His uncle took him to the house of an agent in Manaar. On 11th September he was taken to the Maldives by boat; after 3 days he was flown to an unknown Arab country, and then to an unknown European country; he left there by car and arrived in the United Kingdom on 18th September 2013."
9. The appellant's case is that because of his knowledge of where he believes the LTTE has buried arms, he will be perceived as a threat to the

integrity of Sri Lanka because of his significant role in relation to the renewal of hostilities within Sri Lanka and falls within the risk category set out in [356(7)(a)] of GJ and Others.

GJ and Others

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

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

- (1) This determination replaces all existing country guidance on Sri Lanka.
- (2) The focus of the Sri Lankan government’s concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
- (3) The government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the ‘violation of territorial integrity’ of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
- (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.
- (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.
- (6) There are no detention facilities at the airport. Only those whose names appear on a ‘stop’ list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
- (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) *Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.*

- (b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.
 - (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witness war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.
 - (d) A person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.
- (8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.
- (9) The authorities maintain a computerised intelligence-led [watch] list. A person whose name appears on a 'watch' list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.
- (10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the 'Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka' published by UNHCR on 21 December 2012." (my emphasis)

11. The relevant risk category relied upon by the appellant in this appeal is in [356(7)(a)], namely that he would be perceived as a threat to the integrity of the Sri Lankan state because he would be perceived as having a

significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.

12. The UT makes clear in [356(8)] that in post-conflict Sri Lanka an individual's past history is only relevant to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the state or government.
13. In MP and NT (Sri Lanka), the Court of Appeal, on appeal from the Upper Tribunal in GJ and Others, considered a legal challenge to the country guidance set out in [356]. The Court of Appeal rejected a number of challenges and upheld the guidance. In particular, the Court of Appeal accepted that the Upper Tribunal was entitled to depart from the UNHCR guidelines, "Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from Sri Lanka" (21 December 2012) which set out (at pages 26-27) risk categories of individuals with "more elaborate links to the LTTE" including former combatants or cadres and those sheltering or transporting LTTE personnel or supplying or transporting goods for the LTTE.
14. However, the Court of Appeal did so on the basis that the UT had not excluded the relevance of the "more elaborate links with the LTTE" in determining whether an individual fell within the risk category in [356(7) (a)] as presenting a threat to the integrity of Sri Lanka. At [15] Maurice Kay LJ observed that the UT's decision meant that: "[m]erely to have one or more of the features listed in the 'more elaborate links' part of the UNHCR Guidelines is not enough".
15. At [16] Maurice Kay LJ concluded:

"I am unable to escape the conclusion that the UNHCR's Guidelines are indeed less demanding than the UT's guidance although no doubt it will be easier to infer that the paragraph 356(7) test is satisfied where elaborate links are established than where they are not."
16. Underhill LJ at [50] also accepted that the UT was entitled to exclude from a risk category *per se* those who had "more elaborate links" with the LTTE. He also concluded that the UT was entitled to find that the Sri Lankan government's concern was now with "current or future threats to the integrity of Sri Lanka as a unitary state".
17. Underhill LJ concluded that in assessing that risk, whilst principally the Sri Lankan government was focused on actual or perceived "diaspora activism", nevertheless:

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

18. The issue which I must decide is whether, in the light of the country guidance, the appellant falls within the risk category in [356(7)(a)] as a person who would be perceived to be a present threat to the integrity of Sri Lanka as a single state because of their significant role in post-conflict Tamil separatism within the diaspora or a renewal of hostilities within Sri Lanka.

Discussion

19. Mr Hodgetts, on behalf of the appellant submitted that it was not necessary for the appellant to show any “diaspora activities” in order to establish that he fell within the risk category in [356(7)(a)]. That, as I have already made clear, I accept in the light of MP and NT (Sri Lanka) at [43] and [50].
20. The issue here is whether the appellant’s past history including his recent detention and ill-treatment in June 2013 creates a real risk that he will be of interest to the Sri Lankan authorities because he would be perceived as someone who poses a threat to the integrity of Sri Lanka as a unitary state.
21. The starting point must be that as recently as June 2013, the appellant was detained and ill-treated precisely because of his knowledge of potential sites where LTTE arms were buried. The Judge accepted, and so do I, the appellant’s evidence that he was persecuted and seriously ill-treated whilst detained because of that knowledge.
22. In assessing his future risk, I bear in mind para 339K of the Immigration Rules (HC 395 as amended) which provides as follows:

“The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or serious harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”
23. It seems to me that the only possible “change” in circumstances is that the appellant was released. However, he was released by a bribe and left Sri Lanka one day after he was released. I do not accept that his release demonstrates that he was not of continuing interest to the Sri Lankan authorities. The appellant’s evidence was that whilst he was detained he was told by his interrogator that they thought that he wanted to restart the civil war (see para 28 of the appellant’s witness statement dated 2 January 2014 at page 7 of the appellant’s bundle). The appellant’s evidence was that the Sri Lankan authorities think that the LTTE will use the hidden weapons to come back to power (see Question 164 of the appellant’s asylum interview). I accept that there is a real risk that the appellant’s history, including his detention and involvement with transporting and subsequently directing the authorities to the buried arms will be discovered during the documentation process in the UK (see [308]-[309] of G] and Others) and that on return to Sri Lanka he will continue to

be of interest in relation to the buried arms. I do not accept Mr Parkinson's submission that, in effect, the Sri Lankan authority's interest in the appellant is spent. Their last interest in him was only just over twelve months ago and his release was not as a result of due process but because of bribery. The recent nature of the authorities' interest in the appellant differentiates this case from many other where the interest is truly historical only. Further, the appellant is not simply a former LTTE member or supporter involved in their activities in Sri Lanka including fighting government forces. The appellant potentially has information relevant to a future risk or threat to the integrity of Sri Lanka and, in particular, any renewal of hostilities by the LTTE using their hidden arms. Such matters are likely to remain of concern to the Sri Lankan authorities as relevant to a present threat to the state. This, in my judgment, is precisely one of the situations contemplated by the UT in GJ and Others in [356(7)(a)]. In my judgment, having regard to the "elaborate links" with the LTTE, this is a case in which the appellant's recent past points to a future interest in him by the Sri Lankan authorities and creates a real risk of detention during which, as is accepted in GJ and Others, there is a real risk of persecution or serious ill-treatment as indeed occurred to the appellant in June 2013.

24. For these reasons, I am satisfied that the appellant has a well-founded fear of persecution for a Convention reason and I allow his appeal on asylum grounds.

Decision

25. The decision of the First-tier Tribunal to allow the appellant's appeal on asylum grounds involved the making of an error of law. That decision was set aside. To that extent, the Secretary of State's appeal to the Upper Tribunal is allowed.
26. I remake the decision allowing the appeal on asylum grounds.
27. No other ground was relied on by the appellant before me.

Signed

A Grubb
Judge of the Upper Tribunal

Date: 6 October 2014

