



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01397/2015

THE IMMIGRATION ACTS

Heard at Field House
On 22 September 2015

Decision & Reasons Promulgated
On 28 September 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

V M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Spurling, Counsel, instructed by Kanaga Solicitors
For the Respondent: Ms Holmes, Senior Home Office Presenting Officer

DECISION AND REASONS

1. An anonymity direction has been made in these proceedings and I direct that it continues.
2. The appellant is a citizen of Sri Lanka born on 5 July 1988. He is of Tamil ethnicity.
3. The appellant arrived in the UK as a student with entry clearance from 10 January 2010 to 30 January 2013. He claimed asylum on 28 January 2013. His asylum claim was refused. Following judicial review proceedings the appellant made further submissions including a medical report. The respondent made a fresh decision to refuse his asylum claim on 8 January 2015. The appellant appealed that decision; his appeal was dismissed by First-tier Tribunal Judge Macdonald (“the FTTJ”) on asylum and humanitarian protection grounds in a decision promulgated on 1 June 2015.

4. The appellant's claim before the First-tier Tribunal was that, as a former member of the LTTE and active member of the Tamil diaspora in the UK, he was of adverse interest to the authorities who had approached his mother at the family home with the intention of arresting him. Whilst the FTTJ accepted the appellant's evidence of his involvement with the LTTE and his activities in the UK, he did not accept that the appellant was at risk on return, applying the guidance in **GJ**. He did "not find that the appellant has or could be perceived to have a significant role in relation to post-conflict Tamil separatism or renewal of hostilities" (paragraph 115). He found there was no evidence the appellant was on a stop list (paragraph 116). He decided that the appellant's past history could not be construed in the light of **GJ** as presenting a risk to the unitary Sri Lankan state or government. He described the appellant as a low-level supporter of the LTTE who did not fight for the LTTE, did not kill anyone; he was a schoolboy who was pressed into service by the LTTE largely against his will. The FTTJ noted at paragraph 119 the following:

"Although the appellant has given two instances of inquiries made by the authorities into his whereabouts, once to his mother and once to his brother in law, I do not find these to be significant and do not find that they justify departure from the Country Guidance in **GJ**".

No reasons are given for this finding.

5. The appellant was granted permission to appeal and the matter came before me and Upper Tribunal Judge Chalkley, sitting as a panel, on 11 August 2015. Both representatives accepted at that hearing that the FTTJ had failed to make clear and properly reasoned findings on the matters set out at paragraphs 50 and 52 of his decision, namely the questioning by the police of the appellant's brother-in-law in 2012 as to the appellant's whereabouts and the appellant's mother's "interaction with the Sri Lankan authorities". Clear findings were required on the appellant's claim that the Sri Lankan authorities were still interested in the appellant, in the context of **GJ and Others (Post civil war: returnees) Sri Lanka CG [2013] UKUT 000319 (IAC)**. In the absence of such findings, the FTTJ had materially erred on a point of law. We preserved the findings of the FTTJ but set aside his decision. We directed that the findings of the FTTJ should stand and that the appeal be heard afresh with properly reasoned findings on the evidence that the appellant was of continuing interest to the Sri Lankan authorities. The hearing was adjourned and the appellant was directed to produce a bundle of documents, if so advised.
6. The appellant then lodged a supplementary bundle of documents, including his own witness statement and a witness statement by his brother-in-law. Also included in the bundle are various news articles which have not been translated into English; there are also various photographs which have been published in the Tamil press.
7. Thus the appeal came before me at a resumed hearing.
8. Both parties relied on the guidance in **GJ and Others (Post civil war: returnees) Sri Lanka CG [2013] UKUT 000319 (IAC)**. In addition, I have taken into account the documents before the FTTJ and those produced for the hearing before me, including the appellant's supplementary bundle and **MP (Sri Lanka) & Or v SSHD [2014] EWCA Civ 829**.
9. Before me, the appellant and his brother-in-law gave oral evidence in Tamil through an interpreter. I ascertained that they each fully understood each other. It was confirmed to me that they did.

10. In examination-in-chief, the appellant was referred to an answer he had given in interview to the effect that someone had given information about him to the Sri Lankan police. He clarified that, after he had been arrested, whilst in detention he had been identified as LTTE to his captors by a person with whom he had worked previously. He thought this explained the police interest in him. He told me he was in regular telephone contact with his mother; his sister in the UK was also in contact with her and passed news of their mother to the appellant. About a month before, the appellant's mother had told him people were still visiting her, asking where he was. She told him they referred to his anti-government activities in London.
11. Under cross-examination, the appellant gave evidence about what he had been told by his sister about his mother's arrest in February 2015. He said he was not in contact with his brother in Sri Lanka; he did not want to be reminded of "past incidents". He was challenged about this lack of contact but said he realised that his mother was in trouble with the authorities as a result of him and he did not want this to happen to his brother. He was asked why, if that was the case, he had become involved in attending demonstrations in this country and replied that these activities gave him some peace of mind, knowing that this might contribute to peace in Sri Lanka.
12. The appellant's brother-in-law's evidence is that on 4 September 2015, his birthday, he spoke to the appellant's mother who told him the authorities had been to her house about two weeks earlier and asked about the appellant; they had told her they were aware of his overseas activities and this was the reason for their visits. Under cross-examination he said there had been about five visits by the authorities to the appellant's mother's home since 2012. He referred to the occasion in 2012 when they came to arrest the appellant but instead "arrested me". Under re-examination, he clarified this by explaining that the authorities had attempted to arrest him but had not done so when he produced his British passport.
13. Ms Holmes accepted in her submissions that I could not go behind the findings of the FTTJ and that the error of law in his decision was limited; the FTTJ had accepted that the appellant's mother had been arrested. She submitted that it was not credible that the appellant's mother was being harassed now: this was an easy claim to make; there was no witness statement in support yet this would have been easily obtained. There was no adverse interest in other relatives in Sri Lanka. There was no reason for the appellant's mother being targeted: if the authorities knew the appellant was in the UK, it begged the question why they wasted their resources on bothering her. This claim was also inconsistent with the findings in **GJ**, paragraph 324, as follows:

"324. President Rajapaksa has stated, and the press reports and experts confirm, that the government has sophisticated intelligence concerning who is contacting the diaspora or seeking to revive the quest for a Tamil homeland. The government's intelligence includes monitoring of activities online, on mobile phones, and in the diaspora in the four hotspots: London, Paris, Oslo and Toronto. It has informers throughout the Northern and Eastern Provinces, and in the diaspora. It intercepts electronic and telephone communications and closes down websites. Photographs are taken of demonstrations and the GOSL sponsors an image recognition project at Colombo University."
14. It was further submitted that the appellant would have been of little interest to the authorities, given that he only joined the British Tamil Forum in February this year. The supporting correspondence relating to his activities in the UK was vague and self-serving. With the intelligence available to the authorities, according to **GJ**, they would have identified that the appellant was doing little in the UK to demonstrate he was committed to overthrowing the

state or was a danger to the state. The authorities know that many asylum seekers are economic migrants. The evidence pointed to the appellant being no danger to the state. In sum, his activities were not consistent with the claimed level of interest shown in his mother. In that regard his evidence was not plausible or credible.

15. For the appellant, Mr Spurling noted that the evidence of adverse interest in the appellant had been accepted; this tribunal's role was to focus on the significance of that interest, not the fact of it. He accepted that, without evidence of interest, this appellant's activities in the UK, seen in the context of **GJ**, would not alone be sufficient to concern the authorities. However, the evidence is that the authorities were interested in the appellant, according to the findings of the FTTJ, and it extended to February 2015, over five years after he escaped detention. That was a preserved finding.
16. Mr Spurling referred me to **MP (Sri Lanka) & Or v SSHD [2014] EWCA Civ 829**, particularly the final paragraph, 50. He relied on Underhill LJ's observation that

“It is also clear that the [Upper] Tribunal believed that “diaspora activism”, actual or perceived, is the principal basis on which the Government of Sri Lanka is likely to treat returning Tamils as posing a current or future threat; and I agree that that too was a conclusion which it was entitled to reach. But I do not read para. 356(7)(a) of its determination as prescribing that diaspora activism is the only basis on which a returning Tamil might be regarded as posing such a threat and thus of being at risk on return. Even apart from cases falling under heads (b)-(d) in para. 356(7), there may, though untypically, be other cases (of which NT may be an example) 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”.

He submitted that interest of the kind shown in the appellant was of a type envisaged by Underhill LJ. It was accepted that the Sri Lankan security services have intelligence on their opposition, as identified in paragraph 324 of **GJ**. However, it did not necessarily follow that the security services had particular or accurate intelligence. The issue, as identified in headnote 7(a) of **GJ**, was the perception of the authorities. The threat by the authorities to arrest the appellant on return should be taken seriously. The fact the appellant's mother had been arrested and a lawyer was required to get her out suggested the authorities wanted to arrest and detain the appellant. The risk of detention put him in need of protection.

17. I bear in mind the findings of fact of the FTTJ are preserved. The FTTJ accepted that the appellant had been involved with the LTTE as a low level supporter, that the appellant had been active in the UK as part of the Tamil diaspora but did not find that the appellant could be perceived as having a significant role in relation to post-conflict Tamil separatism or renewal of hostilities. He found there was no evidence the appellant was on a stop list. He found that the appellant's past history could not be construed as presenting a risk to the unitary Sri Lankan state or government. The FTTJ also accepted that the appellant's brother-in-law had been subjected to enquiries about the appellant's whereabouts in 2012 and that his mother had similarly been subjected to enquires. The FTTJ referred at paragraph 52 to the evidence provided by a notary to confirm the appellant's mother's arrest in February 2015.
18. It can be inferred from the FTTJ's findings that he found the appellant a credible witness; he accepted the appellant's account of events in Sri Lanka and in the UK. I have heard nothing to suggest it would be appropriate to depart from that inference: the appellant's and his brother-in-law's evidence before me was almost wholly consistent. The only inconsistency

was the appellant's brother-in-law's reference in oral evidence to his being "arrested" whereas he later corrected this, on re-examination, to say that the authorities had attempted to arrest him but had not actually done so when he had produced his British passport. I do not consider this to be a significant discrepancy: the appellant's brother-in-law had referred to this event in passing when answering a question about what the authorities had said to his mother-in-law during the visits. This inconsistency does not detract from the core evidence to the effect that the authorities had been looking for the appellant at the time.

19. I find the appellant and his brother-in-law wholly credible and reliable witnesses and accept that the authorities have visited the appellant's mother's home as recently as early September this year, looking for the appellant. I also accept that the authorities referred, during those visits, to the appellant's being active in the Tamil diaspora in the UK.
20. I agree with Mr Spurling that the issue to be decided is the significance of the visits by the authorities to the appellant's mother's home.
21. I bear in mind the guidance in **PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 1011** with regard to the reliability of documents from local lawyers: false documents are widely available in Sri Lanka. However, the FTTJ made no finding that the letter from the notary who was instructed to deal with the appellant's mother's release was unreliable. That letter refers to the appellant's mother having been arrested in February 2015 "to find information about her son" and her release "on condition that she should surrender her son before the CID at Batticaloa". I consider this letter and its content in the round with the remaining evidence.
22. I also consider it relevant, as submitted by Mr Spurling, that the appellant was the subject of a specific arrest in August 2009 after the surrender. This arrest indicates he was of adverse interest at that stage. However, the timing of his arrest calls into question the nature and accuracy of the information held by the authorities about the appellant at that time, given that he was only a low-level supporter of the LTTE.
23. This is a case where several factors are in play: the authorities know the appellant was involved with the LTTE (albeit in reality that involvement was only at a low level), know of his attendance at demonstrations in the UK as part of the Tamil diaspora (albeit, also at a low level) and there have been various visits to the appellant's mother's home for the purpose of locating the appellant as a result of his activities in the UK.
24. I consider that the visits to the appellant's mother's home and the attempted arrest of the appellant's brother-in-law and the arrest of his mother are significant factors and should be taken into account in the round with the rest of the appellant's history, past and present. The point is well made by the respondent's representative that the appellant's activities throughout have been low-level, but it is appropriate to construe the authorities' perception of the appellant's activities rather than rely solely on his actual activities. The steps taken by the authorities in the past and more recently suggest that their perception of his past and current activities is not wholly accurate and does not reflect his actual activities.
25. Given that the appellant's mother has herself been arrested and released on condition of surrendering her son to the police, I accept that the appellant would, on return to his home area, be similarly arrested. Given the appellant's past detention and the continuing interest in his activities and location, it is reasonable to conclude that he would be detained again.

26. I conclude therefore that the appellant is at real risk of persecution in his home area, where his arrival will be verified by the CID or police within a few days. Internal relocation is not an option for the appellant because the government controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.

Notice of Decision

This appeal is allowed on asylum grounds.

Signed
Deputy Upper Tribunal Judge A M Black

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.

Fee Award

No fee was paid or is payable and there can be no fee award.

Signed
Deputy Upper Tribunal Judge A M Black