



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

Appeal Number: AA/10141/2014

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 10 June 2015**

**Decision & Reasons Promulgated  
On 25 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE DEANS**

**Between**

**MR SRIMATHAN SRIPALAN**  
(Anonymity order not made)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr T Ruddy, Jain, Neil & Ruddy, Solicitors

For the Respondent: Mrs M O'Brien, Home Office Presenting Officer

**DETERMINATION AND REASONS**

- 1) This is an appeal with permission against a decision by Judge of the First-tier Tribunal D'ambrosio dismissing an appeal on asylum and human rights grounds.
- 2) The appellant was born on 15 April 1988 and is a national of Sri Lanka. He is of Tamil ethnicity. In March 2014 when he was visiting Vavuniya he was detained by the Sri Lankan Army in a house to house search. The army were looking for a prominent LTTE member who had been involved in a shooting incident with the police but had escaped from the scene. The appellant was detained for a month. Early on in the period of detention

the army discovered that the appellant was related to an LTTE leader called Siva Sankar, known in the LTTE as Pottu Amman. The appellant was accused of having links with both Pottu Amman and with the individual suspected of involvement in the shooting incident, known as Gopi, both of whom were attempting to rebuild the LTTE. The army tried to make the appellant confess that he was linked to these two individuals and to make him disclose their location. According to the appellant he had no such links and he did not know their location. His relationship with Pottu Amman is that Pottu Amman is the son of the appellant's grandmother's sister. The appellant was tortured to make him reveal information. This included beating and burning his back with a hot iron rod. The judge had before him a medical report describing the appellant's injuries.

- 3) The appellant escaped from detention after his sister bribed army officers to release him. An agent arranged for the appellant to leave Sri Lanka straight away after his release. He was taken by boat to India where he stayed for 3 months. In August 2015 he travelled from Dubai to the UK using a false Indian passport.
- 4) Shortly after his arrival in the UK the appellant spoke to his sister by telephone. She told him that two days previously three plain clothes intelligence officers had visited her home. They told her that the appellant had escaped from detention and was in London. They said he would be killed if he returned to Sri Lanka. The appellant spoke to his sister by phone again in November. She told him that two plain clothes intelligence officers had visited her home. She was required to notify them if she heard anything about the appellant. He was not recorded by the army as having been released. His record showed that he had escaped and was on a wanted list. The appellant fears detention and torture if he returns to Sri Lanka.
- 5) The judge noted that the medical report stated that the burn scars on the appellant's back would have caused severe pain. The location of the scars were such that they were not likely to have been self-inflicted. The scars were consistent with the appellant's account of torture. The judge was satisfied that the judge had not inflicted the scars himself or arranged for them to be treated by proxy. The judge was satisfied that they were inflicted by the Sri Lankan Army when the appellant was detained in March/April 2014. The judge also accepted the appellant's evidence as to his relationship with Pottu Amman and his account of how he had escaped from detention.
- 6) Nevertheless, the judge did not accept that the appellant would be on a wanted list in Sri Lanka. The judge considered it implausible that if the appellant's escape had been arranged through a bribe he would subsequently have been placed on a wanted list. The judge considered it more plausible that in order to avoid possible repercussions for themselves the army officers involved in the appellant's escape would have recorded that he was released from detention as of no further interest. On this basis, having regard to the country guideline case of GJ &

others (post-civil war) Sri Lanka CG [2013] UKUT 00319 the appellant would be unlikely to be of interest to the authorities on return and would not be at risk. For this reason his appeal was dismissed.

- 7) Permission to appeal was granted on the basis that given the judge's favourable credibility findings the judge arguably erred in concluding that the appellant would not be at risk in terms of the guidance set out in GJ and others.
- 8) A rule 24 notice was lodged on behalf of the respondent contending that the judge directed himself appropriately and that his findings were consistent with GJ and others. The judge was entitled to find there was no reason to believe the appellant was on a watch list or had a profile that would suggest ongoing interest.

### **Submissions**

- 9) At the hearing before me Mr Ruddy for the appellant relied upon the grounds of the application for permission to appeal and stressed the positive credibility findings which had been made by the judge, including the appellant's link to Pottu Amman. The judge accepted that the appellant had been tortured and accepted the evidence of the medical report regarding the scars on the appellant's body. The judge accepted the appellant escaped from detention through bribery. There was nothing negative in the judge's findings about the appellant's history. On the basis of this the judge should have allowed the appeal on asylum grounds. The appellant fell within paragraph 7(a) of the risk factors in GJ and others. He was perceived as a threat. He was detained and tortured a short time ago. He was linked to high profile individuals. These were clear findings.
- 10) Mr Ruddy further submitted that reference had been made at the hearing before the First-tier Tribunal to paragraph 339K of the Immigration Rules but this had not been referred to in the determination. The risk to the appellant had not been assessed properly and this was a material error. The appeal should be allowed in the basis of the positive findings made by the judge.
- 11) For the respondent Mrs O'Brien referred to the rule 24 notice. She acknowledged the favourable findings for the appellant, for example at paragraph 59, where the judge recorded that the appellant was initially detained without torture but described increasingly severe forms of torture after the army received information that he was related to Pottu Amman. He was then released to an agent after the army realised that he could or would not provide useful information. The judge accepted that the appellant had been detained because of his relationship with Pottu Amman. The respondent's reasons for refusal letter of 6 November 2014 was based on rejection of the appellant's history as not credible. If he were to be regarded as credible there was nothing in the refusal letter to indicate that with his history he would not be regarded as being at risk.

## Discussion

- 12) Having considered the determination and heard the parties' submissions, I am satisfied that the judge erred in law. First, the judge ought to have had regard to paragraph 339K of the Immigration Rules having found that the appellant had suffered past persecution. In terms of paragraph 339K the fact that a person has already been subject to persecution or serious harm is to be regarded as a serious indication of the person's well founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such a persecution or serious harm will not be repeated. The judge erred by not approaching the question of risk in these terms.
- 13) In itself this might not lead to the decision being set aside. At paragraph 82, however, the judge treats the consequences of the appellant's escape from detention and finds that it is not plausible the appellant would have been described by the army in their records as someone who had escaped from detention because this might lead to possible repercussions for the soldiers concerned. It was more plausible that the appellant would have been recorded as having been released and therefore he would not be on a "stop" or "wanted" list. I consider that the judge's reasoning in this regard is inadequate. He is speculating about the motives and attitudes of the soldiers concerned and about the keeping of records of escapes or releases in the Sri Lanka Army, a matter on which he does not appear to have had any specific country information. Accordingly, I do not think that the finding made by the judge at paragraph 82 that the appellant's escape would have been recorded as a release is a finding that is sustainable. In making this finding without sufficient evidence or reasons the judge further erred in law.
- 14) The proper course for me is to set aside the decision, while preserving the positive findings in respect of the appellant's treatment in Sri Lanka, and to re-make the decision.
- 15) In terms of paragraph 7(a) of the summary of GJ and others, those at risk of persecution or serious harm on return to Sri Lanka include 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 renewal of hostilities within Sri Lanka. Also at risk in terms of 7(d) are those whose names appear 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. It is further stated in GJ and others, in the summary at paragraph 8, that the Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. At paragraph 9 it is stated that 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. This would be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

- 16) In this appeal the appellant claimed to be on a “wanted” list. This appears to be a “watch” list rather than a “stop” list as there is no evidence of an arrest warrant or court summons for the appellant. Nevertheless, the evidence is that he remains of interest to the authorities in Sri Lanka because of his relationship to the activist Pottu Amman and his suspected link to another activist called Gopi. In this regard it is significant that the appellant’s detention and torture was a recent event, taking place in March/April 2014, nearly 5 years after the cessation of the civil war. This indicates that the appellant is perceived by the Sri Lankan authorities as associated with individuals who continue to be regarded as a threat to the integrity of Sri Lanka.
- 17) Although the appellant was able to secure his release from detention in April 2014, this was only after he had been tortured. As long as the appellant remains of interest to the authorities because of his relationship with, in particular, Pottu Amman, there is a real risk that he would be detained in the future were he to return to Sri Lanka and suffer further torture in an attempt to extract information from him as a perceived supporter of the LTTE or someone perceived to have close links to the LTTE leadership. On this basis his asylum appeal will succeed. I re-make the decision by allowing the appeal on asylum grounds.

### **Conclusions**

- 18) The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
- 19) I set aside the decision.
- 20) I re-make the decision in the appeal by allowing it.

### **Anonymity**

- 21) The First-tier Tribunal did not make an order for anonymity. As the appeal has been allowed and no application has been made for such an order, I do not consider that it is necessary and I make no such order.

### **Fee Award**

**Note:** This is not part of the determination

As no fee has been paid or is payable, no fee award is made.

Signed

Date

Judge of the Upper Tribunal