



IAC-FH-CK-V1

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

Appeal Number: IA/17027/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 9 October 2015**

Oral determination given following  
hearing

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

**Before**

**UPPER TRIBUNAL JUDGE CRAIG  
UPPER TRIBUNAL JUDGE S. STOREY**

**Between**

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

Appellant

**and**

**MR MAYURAN MAHALINGAM  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr S Kandola, Home Office Presenting Officer

For the Respondent: Mr P J Lewis, Counsel instructed by Jain Solicitors

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of a panel of the First-tier Tribunal promulgated on 26 May 2015 following a hearing at Taylor House on 16 April 2015 in which the panel allowed Mr Mahalingam's appeal against the refusal of the Secretary of State to vary his leave to remain on the basis that his removal would be in breach of his rights under the Refugee Convention. For ease of reference I shall throughout this determination refer to the Secretary of State, who was the original

respondent, as “the Secretary of State” and to Mr Mahalingam, who was the original appellant, as “the claimant”.

2. The immigration history of the claimant can be set out briefly. He is a national of Sri Lanka who was born on 2 May 1982. He is of Tamil ethnicity and he was from Jaffna in the North of Sri Lanka. He entered this country as a student on 15 August 2011 with valid leave to enter.
3. On 6 February 2014 he made a combined application to vary his leave to remain as a student and for a biometric residence permit which application was refused because he had failed to meet the requirements set out within the Rules; his original grounds of appeal against that decision were made with reference to paragraph 322(1A) of the Immigration Rules. Pursuant to Sections 120 and 82(1) of the Nationality, Immigration and Asylum Act 2002 his grounds of appeal were amended on 23 February 2015 to include a claim that his removal would be contrary to this country’s obligations under the Refugee Convention and accordingly the appeal was on the basis that he had a right to remain in this country because his refusal would be in breach of this country’s obligations under the Refugee Convention.
4. The case was then listed for hearing at Taylor House on 16 April 2015 as I have noted. That is some two months after notice had been given to the Secretary of State that the basis of his appeal would be that the claimant was entitled to asylum. In the context of this appeal that is of some relevance.
5. The claimant’s reasons for claiming asylum were essentially that he would be perceived on return to be a current supporter of the LTTE and would be perceived as someone who was a risk to the unitary state post civil war in that country. As noted by the panel at paragraph 5 of its determination “the main thrust of his appeal was his refugee claim based on an imputed and/or political opinion, in that he was suspected by the Sri Lankan authorities of being a member of the LTTE working to regroup and revive the LTTE in Sri Lanka”.
6. The hearing of this appeal, we were told by Mr Lewis representing the claimant today, had originally been listed for 10am although it was put back until 2pm. At 2.05pm, that is at that hearing itself, for the very first time the advocate representing the Home Office at that hearing sought permission to adduce evidence of what was said to be a “watch list” which was in the public domain and which listed various organisations and persons said to be of interest to the Sri Lankan authorities.
7. Counsel then representing the claimant, Ms Rothwell, had in fact been at Taylor House since before 10am and it has not been explained as to why this evidence had not at the very least been given to her before the start of the proceedings at 2pm and nor was any explanation offered as to why in any event this evidence if and to the extent it was relevant had not been produced earlier. There was apparently some discussion as to the

relevance of this evidence to which I will refer below but the panel having heard the submissions relating to this evidence refused to allow it to be adduced in the following terms at paragraph 12 of its determination:

“12. The respondent sought to produce as part of their case the Gazette of the Democratic Socialist Republic of Sri Lanka. The relevance of this document was that it contained a current list of the names of those persons who were on the watch list. This was at 2.05pm the case having been listed for 2.00pm. He stated that there had been operational difficulties in serving the document earlier and it was in the public domain. The appellant objected to this document being submitted at such short notice. His Counsel submitted that she had been in the building all day and had not been served with the document, the content of which she was not familiar with. She added the document appeared to relate to LTTE members who were living overseas at the time of the war and some names were not on the list. The application by the respondent to adduce this evidence was refused and the document was excluded. The respondent had been aware of the amended grounds of appeal and could have served the document prior to the hearing. Taking into account the vulnerable condition of the appellant, and considering the interests of fairness, we determine the application by the respondent to adduce this evidence so late was refused and the document was excluded”.

8. The panel then went on to consider the claimant’s appeal first by making findings with regard to his evidence which was accepted as being truthful and then in the context of these findings considering whether he would be at risk in light of the guidance given by this Tribunal in the country guidance case of *Gj and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319. On the basis of its findings and in light of the country guidance the panel allowed the claimant’s appeal, considering that he would be at risk of persecution on return.
9. The respondent now appeals against this decision on essentially two grounds. The first is that the panel ought properly to have allowed the respondent the opportunity to adduce “highly relevant evidence” and it was noted that “any unfairness to the appellant could have been remedied by adjourning the proceedings for a short period” and that “the judge’s stance led to unfairness to the respondent” (paragraph 1 of the grounds).
10. The next ground on which the Secretary of State sought permission to appeal was that the determination was said to be inadequately reasoned. It is said at paragraph 2 of the grounds that although “the judge records [31] that the appellant ‘was an active member of the LTTE in Sri Lanka between June 2004 and June 2009 and was detained by the Terrorist Investigation Department from 3.7.2009 for a period of twenty months’, this is not sufficient to bring the appellant within the risk categories identified in *Gj*”.
11. These grounds were relied upon by Mr Kandola, who represented the Secretary of State before us today, and we made a careful note of his submissions which I will refer to below only where this is necessary. We

have, however, had regard to everything which was said on behalf of both parties as well as to all the documents contained within the file whether or not the same is specifically referred to below.

12. We deal first with the issue of whether or not the panel was entitled to exclude the evidence which the Secretary of State wished to adduce at the hearing and in any event whether or not if this was an error this could have made a material difference to the outcome. We accept that even if the representative of the Secretary of State ought to have given this material to Ms Rothwell earlier in the day and that his failure to do so might give rise to questions of retraining (about which we cannot fairly form any definitive conclusions) this would not in itself be a reason for dismissing this appeal and this would not have been a reason justifying the panel in excluding the evidence on its own.
13. Even if the Secretary of State's representative's conduct is open to criticism the grant of refugee status should not be made merely to punish the Secretary of State by failures by her representatives. If an applicant's representative had made a late application to adduce evidence which might have had a material bearing as to whether or not he would be at risk on return it is highly unlikely that that evidence would have been excluded merely because his representative had not submitted it earlier if indeed any prejudice to the Secretary of State in those circumstances could have been dealt with by an adjournment.
14. Similarly in this case, if this evidence was or might have been material to the outcome of the proceedings there would have to be a good reason why that evidence should have been excluded. In our judgment that was a decision for the panel to take and although it would have been preferable if its reasons had been set out in terms within the determination it is clear from the Rule 24 response made on behalf of the applicant that there had been discussion as to the relevance of this material and indeed we have had the advantage ourselves of having heard submissions as to whether this material could have been relevant.
15. We are entirely satisfied that even if the evidence might have been admitted it would not have made a material difference to the outcome of the appeal, and for this reason we consider that the panel was entirely justified in refusing to admit this evidence albeit that any prejudice to the claimant other than the prejudice which would ordinarily be suffered by a vulnerable person who had to endure yet further delay could have been alleviated by an adjournment.
16. Our reasons for so finding are as follows. In the first place there is nothing stated within the document as to precisely what it is. It may or may not have been what is referred to as a "watch list" which is what the Secretary of State asserts that this document, which is in the public domain, actually is. However, it is apparent that there are many names that are not on this list including the name of the person referred to in the

country guidance case as “GJ” who would clearly be of interest to the authorities.

17. Moreover, the fact that this claimant’s name is not on a “watch list” would not be determinative of his case and what is more would not even harm his case. The reason that we so find is because the guidance given in *GJ* is that persons whose names are on a watch list will be monitored on return to Sri Lanka but will not be detained at the airport. It is only those persons who are on a “stop list” who would be detained at the airport and for the most part these lists are mutually exclusive.
18. The fact that somebody’s name is on a watch list rather than a stop list would tend to indicate that that person was not to be detained on his return which would be contrary to the case which the claimant was putting forward. It is notable that in *GJ* the Tribunal found that the mere fact that one is on a watch list was not in itself sufficient evidence to show that an applicant would be at risk on return. That is not to say that the fact that one is on a watch list would be in itself totally irrelevant because if somebody was on the watch list and while being monitored in Sri Lanka carried out activities which were deemed to be against the interests of the state he or she might then be at risk but as this is not the basis upon which this claimant’s case was put it was entirely open to the panel to find that in the circumstances of this case and taking all the factors into consideration it was not right to adjourn this case any further to allow evidence to be adduced which did not have any real relevance.
19. We turn now to consider whether or not the determination can be said to contain any other errors of law and in our judgment it cannot. It was argued on behalf of the Secretary of State that the claimant could not be on a “stop list” because he had not produced an arrest warrant but, as Mr Lewis representing the claimant rightly pointed out to us, arrest warrants are not regularly handed to the subjects of those warrants. The arrest warrants would be retained by the authorities in Sri Lanka in normal circumstances until they are executed and so the fact that the claimant was not in possession of such a warrant could not be said to damage his credibility nor could the fact that he was unable to produce any stop list with his name on it because these lists were not a matter of public record and it was not suggested on behalf of the Secretary of State that they were.
20. The panel’s finding that the claimant was a credible witness was open to it. The panel considered his evidence very carefully indeed. The panel accepted that he had not fabricated evidence as to how his injuries occurred and it is notable that he had been in custody for some considerable period after the ending of the civil war. What is particularly relevant in this case is that, as the panel accepted, the claimant’s father had been arrested and was still reporting to the authorities, which on the claimant’s case, which was accepted, was solely because of the authorities’ interest in the claimant.

21. All of these findings were open to the panel and this Tribunal can only interfere with such findings if they are inadequately reasoned or if the panel asked itself the wrong questions. The panel asked itself the right questions, the findings were adequately reasoned and accordingly it follows that there is no arguable basis upon which this Tribunal could find an error of law in the panel's determination such as to justify its decision being set aside.
22. It follows that this appeal by the Secretary of State must be dismissed and we will so find.

**Notice of Decision**

**The Secretary of State's appeal against the decision of the panel of the First-tier Tribunal allowing the claimant's appeal against the Secretary of State's decision to remove him, on asylum and humanitarian protection grounds, is dismissed.**

**The decision of the First-tier Tribunal allowing the claimant's appeal is affirmed.**

**Signed:**

A handwritten signature in black ink that reads "Ken Craig". The signature is written in a cursive style with a long, vertical tail on the letter 'g'.

**Upper Tribunal Judge Craig**

**16 November 2015**