



IAC-PE-SW-V1

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

Appeal Number: AA/02717/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17th March 2016**

**Decision & Reasons Promulgated
On 28th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE BAIRD

Between

**[KRISHNAPILLAI V]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Murphy - Counsel

For the Respondent: Miss Fidiwale - Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by [Krishnapillai V], a citizen of Sri Lanka born [] 1965. He appeals against the decision of the Respondent made on 30th January 2015 to refuse to grant asylum and to remove him from the United Kingdom. The Appellant appealed against that decision and the appeal was dismissed by First-tier Tribunal Judge Liddington on 11th September 2015. Permission to appeal was granted and on 10th December 2015, having heard submissions, I found that there was a material error of law in the determination of First-tier Tribunal Judge Liddington in that she had

failed to give adequate reasons for her findings on the question of risk on return to Sri Lanka. In particular she had failed to take account of evidence that the authorities in Sri Lanka had continued looking for the Appellant after his departure.

2. The Appellant arrived in the UK on 24th December 2012 and claimed asylum on 24th January 2013.
3. I now proceed to re-make the decision.

The Basis of the Appellant's Claim for Asylum

4. The Appellant's evidence is set out in a screening and asylum interview and in witness statements that were provided for the hearing. He claims to have joined the LTTE in 1990 at which point he underwent six months of training including the use of arms. He carried weapons and was involved in fighting until 1993. Between 1993 and 2001 he ceased to have a military role and began working for the LTTE collecting money, arranging meetings and looking after the welfare of LTTE members. When the truce that had been declared in the Civil War in 2001 ended in 2005 the Appellant moved to Vaagarai and then to Batticaloa where he was arrested on 12th March 2007 by the Sri Lankan Army. He claims to have been "severely tortured". He says that his front teeth and gums were damaged and he was beaten with iron bars. He suffered injury to his spine. He was released after five days when his sister lodged a human rights complaint but had to sign on every month. He did this until 2008 when he rejoined the LTTE. In Vanni he joined the Tamil Rehabilitation Organisation (TRO) looking after LTTE casualties. When the LTTE were defeated in 2009 the Appellant left by boat but was arrested by the Sri Lankan navy on 13th May 2009 and taken to Vavuniya camp where he remained until 27th November 2009. He was released after payment of a bribe and told to report to the police station at Trincomalee. He and his family moved again but he continued to sign on at the police station. He says that early in 2012 he was asked by the CID to identify a cousin of his who had been a senior member of the LTTE. This frightened him. He feared he would be arrested so came to the UK in December 2012. He did spend one week in France en route to the UK but did not ask for asylum there. Since he arrived in the UK he has attended Heroes' Day on two occasions but apart from that has taken no part in political activities relative to Sri Lanka.

The Decision of the Secretary of State

5. The copy of the refusal letter which I have appears to be some sort of draft. Large swathes of it have been deleted and alternative versions written in ink in the margins. It is not very easy to read. The Secretary of State accepts it to be likely that the Appellant actively supported the LTTE. She did however find inconsistencies in the Appellant's account of his detentions and the reporting conditions that he was subjected to over the years. He had said for example that he stopped signing on in 2008 when he went to Vanni but Home Office records show that his fingerprints were taken in France on 22nd May 2007 and that he applied for asylum (which he had previously denied) at the French Office of Protection of Refugees and Stateless Persons on 11th September 2007. This is inconsistent with his claim to have been

fingerprinted in France when he visited his sister in 2006. He was there for three days before returning to Sri Lanka. The Secretary of State said there is indeed no evidence that he did return to Sri Lanka. She noted the Appellant's claim that the authorities had approached his wife on 17th January 2015 and informed her that although the government may have changed during the recent election the army remained the same and would return to look for him. The Appellant also claimed that two of his brothers were killed, one in 1989 and one in 1988. Death certificates had been provided. The Secretary of State took into account that neither of these certificates makes references to his brothers' claimed involvement with the LTTE and do not say who was responsible for their deaths.

6. In short, the Secretary of State accepts that the Appellant was a low level supporter of the LTTE collecting taxes from local farmers on their behalf. She does not accept that he had a military role. She does not accept his account of his detention. She does not accept that he would be at risk on return. She does not accept that he was arrested, tortured or detained because of his perceived involvement with the LTTE. She does not accept that he had any difficulties with the Sri Lankan authorities. She does not accept that he would be on any list of people wanted by the authorities as his sister enabled his release from detention through a bribe. The Secretary of State relied on the decision **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**.

Evidence at the Hearing

7. I have an extract from the information book of the Trincomalee Police dated 18th May 2009. This states that the Appellant's sister reported that her brother had been missing since April 2009. There is another entry confirming that the Appellant was apprehended by the Sri Lankan navy and kept in Vavuniya camp for six months between May and November 2009. There is a letter confirming that the Appellant had been in France. There is a medical report from Professor S Lingam who examined the Appellant and provided a report dated 7th November 2013 confirming that the injuries to the Appellant's teeth and gums and injuries to his back are consistent with his account of torture.
8. In a statement provided for the hearing the Appellant gave a detailed account of his involvement with the LTTE including his training. He said that at the screening interview he was very nervous and the questions were very brief. He gave very general answers. He says that he was detained three times in 1988 before his LTTE involvement, in 2007 and then in 2009. In 2011 he was taken and asked about the whereabouts of his cousin. In his screening interview he said he went to France six years ago i.e. 2007 and not 2006 as is stated in the refusal letter. He went for three days to visit his sister who was unwell. He said it cannot be expected that death certificates will confirm membership of the LTTE or give the name of the people who killed his brothers.
9. I am going to set out verbatim what the Appellant said in his statement about a visit to France because he was asked about this at the hearing. He said:

“In response to paragraph 37, during my time in Bowini, France, on 22/05/2007 I was arrested by French police and they took me to the police station where I was fingerprinted. I had never claimed asylum in France and therefore that information and the date 11/09/2007 is incorrect. My cousin, who is currently in the UK, was granted asylum in the UK and he had links with very high profile LTTE for organising funds and they made arrangements for me to come to France for a meeting. I voluntarily left from France to Sri Lanka under the LTTE’s arrangements. The visa was arranged by them for a week and they explained that my sister was unwell and set up my visit to her. They also set up my exit from the airport and therefore I don’t have a copy of my visa.”

10. He says that he comes from a very high profile LTTE family. His brother and cousin were accepted as refugees in the UK and his sister as a refugee in France. He is known to current politicians. He is very well-known in the area and his life is at risk. Members of his family supported a separate land for Tamils in Sri Lanka from France. His family has been very well-known since 1983 after the death of his brother and have many Tamil opponents.
11. There is a statement from the Appellant’s brother, Sivarajah, who confirms that the Appellant went to train with the LTTE. He himself has asylum in the UK. He came here in 2001. He is a British citizen. He says that his family have been greatly affected by the Sri Lankan Army. Their house was destroyed by the army on three occasions. His brother would be at risk if returned. The Appellant has bonded strongly with his children in the UK and would be mentally scarred if he has to leave.
12. I heard oral evidence from the Appellant who adopted his statements. He accepted that he had initially denied having been in France so amended his statement to correct that. He was asked about what he had said at paragraph 13 in his statement about the LTTE making arrangements for him to leave France. (I have set this out above.)
13. His response was that the LTTE had some financial problems and sent him to France to collect money. They did this because he was in charge in their area. He was experienced. He was well-known. Three or four others went with him. He was asked why he was asked to this rather than simply asking their people in France to collect money. He said that they had severe problems and they wanted them to go to France to tell the LTTE people there what was happening. They were collecting money with the experienced LTTE people in France. He said that he did not ask the LTTE at that time if he could just stay in France because he had a lot of LTTE funds in his hand and they would not have allowed it. They might have tortured him. I asked if it was cash that he had and he confirmed that it was. He also had some important documents such as income and expenditure details of the LTTE and details of the funds collected. He was asked why the authorities would become interested in his cousin in 2012 and responded that some people in his group had surrendered to the authorities in 2009/10. He was asked what was the catalyst for their interest in 2012 and did not respond to the question. Eventually he said he did

not know. He was asked when he last spoke to his wife and said it was October 2015. When he was asked why he has not spoken to her since he said that the authorities may be monitoring her phone. They were still enquiring about him up to October 2015.

14. Miss Fidiwale in cross-examination asked the Appellant at what point after his release from detention in March 2007 he went to France. He said he could not say an exact date. He had a great deal of difficulty giving a date at all and eventually said it was probably about two months after his release but he really did not know. It was found that he had signed on for that two month period before he left for France and was in France for a week. He could not remember when he returned to Sri Lanka but said it was a 28 day trip by boat. He did not resume signing on when he returned. In response to a question of whether he had any problems with the authorities because of his failure to sign on he said that he did have problems. He could not remember when. When pressed on what the authorities did or said he responded that he did not see them. They went to his sister and asked about him. He said he signed on in his sister's house. He said the LTTE knew that he had claimed asylum in France. He said "that's why they took me there". He then said that he was staying in his sister's house and she was forcing him to claim asylum. The others who were with him did not claim asylum. He said he did not tell all his story when he came to the UK because he was ill and confused. He did not put it all in his witness statement because he was ill.
15. In her submissions Miss Fidiwale said she would rely on the refusal letter. She asked me to take into account that the Appellant was not truthful about having been in France and having claimed asylum there. She asked him why he did not put in his initial statement that he had been in France and claimed asylum and had no satisfactory response. Miss Fidiwale said that the Appellant was vague and inconsistent about the interest the authorities in Sri Lanka had in him over the years. He was failing to sign on. It is clear that the authorities had no interest in him. He was discrepant about whether or not he carried weapons. There are discrepancies about when he was detained. He at one point said it was 2009 and 2011 and at another that it was 2007, 2008 and 2009. Professor Lingam in his report does not give any dates. Another letter provided simply says that he has chronic anxiety. There was no evidence of any LTTE activity by any of his family. There was no evidence that he was a member of any party. There is a letter from an MP. It is not clear what involvement the Appellant had. He was simply a low level supporter.
16. In his submissions Mr Murphy said that the Appellant has rebutted the doubts and inconsistencies raised in the refusal letter. He said it is common knowledge that asylum will not be granted in France so there was no point in the Appellant making an application. Professor Lingam says that the Appellant's injuries are consistent with his account. At question 161 of his interview the Appellant gave great detail about what had happened to him in his detention. He suggested that the Appellant had in no way attempted to exaggerate his account. He was clear that he had not seen his cousin since 2007. A comment had been made by the Presenting Officer about the fact that the Appellant's brother had not come to court to give evidence.

Mr Murphy pointed out that his brother was indeed the man who was sitting at the back of the court but he had decided not to call him as he says he is confused and cannot remember things. He said that the MP's letter at page 14 of the bundle does assist the Appellant. He pointed out too that the Appellant had not exaggerated his involvement in the UK. He did not say that he has been attending demonstrations in the UK. He asked me to consider the evidence in the round submitting that was said in the country guidance case is "not written on tablets of stone".

17. The letter at page 14 of the bundle is headed "Eastern Provincial Council" and dated 6th June 2015. It is signed by Kumarasamy Nageswaran, a member of the Provincial Council. He states that he is from the same village as the Appellant and knows about him and his family before 1970. He was a member of EROS on a full-time basis. A lot of the people joined the LTTE when EROS was dissolved including its leader. He was one of these people. He said he has heard that the personnel attached to the intelligence group made enquiries from his family who were staying at Trincomalee. He had heard from the Appellant's family that the Appellant had left the country and gone abroad but the enquiries of the intelligence group continued. His life is at risk.

Burden and Standard of Proof

18. The burden is on the Appellant to show with regard to the asylum appeal that returning him would expose him to a real risk of an act of persecution for reasons set out in Regulation 6 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006. With regard to Humanitarian Protection he would have to show substantial grounds for believing that he would face a real risk of serious harm as defined by paragraph 339C of the Immigration Rules or face a real risk of a breach of his protected human rights.

My Findings

19. I have given very careful consideration to all the evidence put before me in this case including the medical report by Professor Lingam. It is accepted by the Respondent that the Appellant may have had some low level involvement with the LTTE. It seems to me that in general the Appellant's account is vague and there are lots of inconsistencies. He was quite simply unable to remember any dates at all. I do not expect Appellants to remember specific dates for every single element of their claim but the Appellant was totally vague about everything. I cannot understand how he would not be able to say with some certainty how long it was after his release that he went to France. Apart from anything else he was supposed to be signing on so he must have had concerns about leaving Sri Lanka and about how long he was going to be away. He embarked on a 28 day trip by boat and left his family behind to face any repercussions. Despite this he could not give any idea of when this happened. The account of why he went to France that he gave at his hearing was completely different to that given in his statement. He was asked in cross examination if there were any problems due to his failure to sign on and his response was extremely vague. He did not answer at first but eventually said that he did have problems. The

authorities had gone to his sisters. The difficulty with this answer is that the Appellant remained in Sri Lanka until December 2012 and mentioned no problems arising from his failure to sign on.

20. It is the case as was submitted on behalf of the Respondent that apart from the letter from the MP the Appellant did not provide any evidence at all of any involvement of his family in the LTTE. There is a letter from the Eastern Provincial Council the writer of which speaks of knowing of the Appellant before 1970 but the Appellant was only born in 1965. What the writer of the letter says about the authorities still looking for the Appellant is clearly hearsay. He had no personal knowledge of the authorities looking for the Appellant. The MP's letter says the whole of the Appellant's family was involved with the LTTE but does not confirm a high profile position or any detention.
21. The other thing that gives rise to some concern is the fact that the Appellant did not say why the authorities were looking for him in 2012. He mentioned 2009 and 2010 but could offer no explanation at all as to why the authorities would be interested in his cousin two years later and go looking for the Appellant. The Secretary of State made the point that the Appellant had not tried to leave Sri Lanka after having been released following his claimed torture. I have to ask why he would leave in 2012.
22. I accept that two of the Appellant's brothers are dead but they died many years ago and apart from the Appellant's account there is no evidence of the circumstances of their deaths. It is unfortunate that the brother who attended the hearing chose not to give evidence. I know he said he was confused but it seems to me to that as he was there in any event he may have been able to assist, given the vagueness of the Appellant's evidence.
23. I accept that the Appellant may at some point have been arrested, detained and released on payment of a bribe. I do not accept that he was detained as regularly as he said because I really do not accept that he would forget the dates of such traumatic experiences and the years he gave were discrepant. I do not accept his account of why he went to France or of what happened there. I am not satisfied that he had a position in the LTTE that would have warranted him being sent for the reasons stated, again because his evidence of why he went to France and what happened there was so confused. .
24. In GJ the Tribunal said:
 - (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 witnessed 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 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 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.

25. I have paid particular attention to paragraphs 7 and, 8 and 9 and find that the Appellant does not fit into any of these risk categories. He may have been detained at some point but he was released at least once on payment of a bribe and there is little apart from vague assertions from him and the writers of the two letters to suggest any further or recent interest in him on the part of the authorities. He says the authorities were visiting his wife asking about him but he proffered no up to date information and said he was unable to contact his wife because her phone may be monitored. In the light of modern communication systems I do not find that to be a credible explanation. Indeed his wife could have employed a very old fashioned mode of communication and written a letter giving details of these visits. As I have already said there is no reasonable explanation why he would not leave the country for good in 2009 but left in 2012. He was supposed to be signing on in 2009 so I have to question why he left at all then returned to Sri Lanka and why there is no credible evidence of any problems arising from his failure to sign on. There is no evidence before me to support a claim that attending Heroes Days in the UK would bring him to the adverse attention of the authorities on return.
26. The Appellant has only been in the UK since December 2012. He may have developed a private life whilst here but there is nothing to establish that his removal would be disproportionate to the need for effective immigration control in the UK. I accept that he has family here and may have a family life with them but I do not accept that these relationships go beyond normal ties such as to render interference with them disproportionate.
27. The Appellant has not established a right to Humanitarian Protection in the UK.

Notice of Decision

The appeal is dismissed on asylum grounds.

The appeal is dismissed on Humanitarian Protection and Human Rights grounds.

No anonymity direction is made.

Signed

Date: 25th April 2016

N A Baird
Deputy Judge of the Upper Tribunal