



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/05867/2015**

Appeal Number:

AA/

05876/2015

THE IMMIGRATION ACTS

**Heard at Glasgow
on 26 May 2016**

**Determination issued
On 2 June 2016**

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE MACLEMAN**

Between

**S L A C
S T C**

Appellants

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Winter, Advocate; Gray & Co, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction.

1. The appellants are husband and wife, Sinhalese citizens of Sri Lanka. An anonymity direction was made in the First-tier Tribunal. The matter was not addressed in the Upper Tribunal, so that order remains in force.
2. There has been confusion about whether there are one or two appeals in process. The matter was clarified before us. The second appellant was

not subject to a decision which entitled her to a right of appeal from within the UK. Nevertheless, the solicitors then acting for her (not the present representatives) lodged a purported notice of appeal, which was accepted in error by the First-tier Tribunal. At a case management review it was acknowledged that she should not be a party to the appeal, and the FtT issued notification accordingly. However, in his decision promulgated on 4 December 2015, First-tier Tribunal Judge Farrelly fell under the misapprehension that there were two appeals before him (although his decision is inconsistently worded, and reads in most parts as if only the husband were an appellant).

The claim.

3. There is only one appellant. He said that he had worked for a prominent politician who also engaged in serious crime. The appellant overheard this person admitting responsibility for murder, and ceased working for him, but later told him what he had heard. The politician arranged for the appellant to be detained on a fabricated suspicion of involvement with the LTTE. He was ill-treated but later appeared in court and was released on bail. He did not comply with reporting conditions and then arranged to come to the UK as a student, travelling with his wife as his dependant.
4. Although he arrived in August 2011 he did not claim asylum until September 2013, after refusal of further leave as a student.

The respondent's rejection of the claim.

5. The refusal letter is dated 19 March 2015. It was not accepted that the appellant had worked for the politician (paragraphs 38-44). The appellant said that he had been accused of helping the LTTE because of photographs the authorities had of him associating with Tamils. The respondent relied upon *Gj and others v SSHD* (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319. Mere association with Tamils would not render the appellant of any adverse interest to the authorities. If his powerful enemy had any interest in exacting revenge, the appellant would not have been released from prison. Although he produced evidence of injuries, those were not accepted to be the result of torture by the Sri Lankan Army (paragraphs 45-51). The delay in claiming was adverse to credibility (paragraphs 52-53). In any event, the appellant had not provided evidence that he would be at risk in any category set out in *Gj* (paragraphs 54-57) or as a failed asylum seeker (paragraphs 58-59).

The decision of the FtT Judge.

6. Judge Farrelly found at paragraph 37 as follows. The appellant fabricated his claim of risk from a corrupt politician, based it on information gleaned from public sources; there was no evidence to confirm the claimed employment, and no reason why that would not be available; it was unbelievable that murder would be discussed in the politician's office with the appellant present; it was even more incredible that he would tell the politician what he had overheard; it was inconsistent that at the height of

his claimed difficulties he would find time to get married, and that several months passed and visas were obtained before he left the country, a degree of time and organisation not indicative of someone in fear of his life. "In conclusion, therefore, I do not accept the truth of this claim."

7. At paragraphs 38-40 the judge accepted these contentions: the appellant had been abused by security personnel due to suspected involvement with the LTTE, notwithstanding that court documentation was provided at a late stage and its provenance was unknown; in light of a medical report, it was improbable that injuries had been inflicted with his agreement; in mid-2011 the appellant was detained for suspected LTTE activities, was granted bail and then absconded.
8. The judge turned to *Gj* and found that the appellant would not fall into a risk category.

The appellant's grounds of appeal and submissions in the Upper Tribunal.

9. The appellant claims that there are inconsistencies between the findings at paragraph 37 and those at paragraphs 38, 39 and 40. The conclusion that the appellant does not fall within the risk categories of *Gj* is not consistent with the finding that he has breached bail and was detained due to links to the LTTE. The inconsistency of the findings is a failure to provide adequate and comprehensible reasons why the account was found to have been fabricated.
10. Mr Winter submitted in particular that it was crucial to the materiality of the error that on the findings reached in favour of the appellant, he did fall within the categories of protection. The fact that he is not Tamil made no difference. The guidance is not restricted to Tamils or to Tamil activists. There was nothing in it which excluded Sinhalese. Mr Winter, however, acknowledged that he was unable to identify any instance from the case report or from the background evidence of any Sinhalese had been detained or ill-treated for suspected links to the LTTE in the post-civil war period. Nevertheless, he said that on the findings that the appellant was ill-treated and that there were court orders against him, he needed protection and so was entitled to status.

Submissions for respondent.

11. Mrs O'Brien submitted that the appellant's arguments failed to acknowledge the conclusions reached at paragraph 37, for sound reasons in which no error had been alleged. The crucial aspect of the claim, namely the connection to a prominent politician who caused the appellant to be targeted, was fabricated. The decision had to be read as a whole. It was perhaps surprising that the judge made other findings in favour of the appellant, although these stood for present purposes. The judge was entitled to find that once the major element of embellishment was excluded, and however the appellant had come to be suspected in 2011, there was nothing to raise his profile so that he would be at risk on return. The judge found that even if the appellant has defaulted on an obligation

to appear, he has the ability and the resources to vindicate his position lawfully on return. The release of the principal arrest warrant was inconsistent with any ongoing threat. There was nothing to suggest that he would appear on a stop list or be listed as a terrorist.

The country guidance.

12. The essential findings of GJ, set out in its heading, are as follows:

(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 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.

13. There has been no submission that the guidance has been superseded by any further evidence relevant to this appeal.

Discussion and conclusions.

14. Mr Winter sought to focus attention on 7(d), arguing that as there has been found to be an arrest warrant for non-appearance extant against the appellant, he will be on a stop list. However, we think it is important to read the guidance in context and as a whole. The government's focus is on Tamil activists in the diaspora, working for separatism and against the unitary state. The appellant is not within that scope, and is Sinhalese. The sophisticated intelligence agencies of the government will have no interest in him.
15. The guidance is not intended to suggest that anyone subject to extant court orders or arrest warrants, issued in any context or for any purpose, will be suspected as a potential terrorist. Further, such persons are not likely to have been released on bail.
16. Mr Winter referred us also to paragraphs 345 to 347 in *Gj*, regarding the interest of the Sri Lankan authorities in those returning on a travel document; but there is no reason for the appellant to return on a travel document flagging him up as a returnee. He may return on his own validly issued national passport. He used one to travel here (and it presumably is presently held by the respondent in the usual way). He cannot bring himself within the refugee definition simply by unwillingness to return. The question of forcible return on a travel document does not arise.
17. We do not find any error in the judge's conclusion that notwithstanding those findings which were favourable to the appellant, he did not fall within a risk category.
18. That is sufficient to dispose of the appeal.
19. The findings of the judge are at first sight somewhat self-contradictory, but not on close reading. The central part of the claim was not accepted, for sensible reasons given at paragraph 37 in which no error has been shown. It is perhaps surprising that the judge went on to accept that for some reason (not to be gleaned from anything said by the appellant, and otherwise inexplicable) he had nevertheless been detained and ill-treated for alleged links to the LTTE; but standing those findings, the judge did not go wrong by finding that the appellant's suspected links were minor, historic and of no ongoing interest. They did not disclose any risk in terms of country guidance and background evidence. The judge was also entitled to find that if there were any extant proceedings, the appellant would be able to vindicate himself in the legal process.
20. When attention focused in course of submissions on the original arrest warrant produced by the appellant, it became clear that it is not mentioned as an enclosure with the letter from the solicitor who acted for him in Sri Lanka, and that he has offered no explanation for the oddity of

such a document passing into his own hands. This must be what the judge meant by his comment that there was no provenance for the court documentation. This appears to us to be an indication that there is no ongoing intention of taking any action against the appellant. Besides which, we note that despite what was said to be a terrorist charge, the appellant was released from custody on generous reporting conditions (once a fortnight) and when he failed to meet them no action was taken for six months. Whatever might be read into the guidance in general cases, the appellant's own history contradicts his claim that the authorities maintain a real interest in him.

21. If there were any self-contradiction in the findings which had to be resolved, there appear to be rather better reasons for the findings against him than for those in his favour; but we have been able to reach our conclusions without revisiting those points.

22. The determination of the First-tier Tribunal, dismissing the appeal of the first appellant, shall stand.
23. So far as any purported appeal by the second “appellant” remains before us, it is dismissed for want of jurisdiction. This decision may be taken as a notice of no valid appeal in that respect.

A handwritten signature in black ink, reading "Hugh Macleman". The signature is written in a cursive style with a large, stylized initial 'H'.

1 June 2016
Upper Tribunal Judge Macleman