



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

Appeal Number: AA/06943/2015

THE IMMIGRATION ACTS

**Heard at UT(IAC) Birmingham
On 17 February 2016**

**Determination Promulgated
On 13 April 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

TA

Appellant

Respondent

Representation:

For the Appellant: Mrs R Petterson, Senior Home Office Presenting Officer
For the Respondent: Mr A Syed-Ali, Counsel, instructed by Vasuki Solicitors

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the

order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant (hereafter the Secretary of State) appeals against the decision of the First-tier Tribunal (Judge Borsada) allowing the respondent's appeal against a decision taken on 30 March to refuse the respondent's asylum claim and to remove the respondent from the UK.

Introduction

3. The respondent is a citizen of Sri Lanka born in 1993. He claims that his uncle was a member of the LTTE who had a role in supplying communication devices. The uncle was also involved in a terrorist bombing incident at the Pakistani High Commission in 2006. The uncle and his family fled to India in 2009. The respondent and his mother were questioned in 2011 and questioned about the uncle's activities. The uncle returned in 2012 and was arrested at the airport. He was forced into testifying against other LTTE members. The uncle was beaten to death in detention at the behest of a man called Douglas Devanada who then took possession of family property in 2013. The respondent was arrested in April 2013, accused of actively supporting the LTTE. He was sexually assaulted and tortured. His fingerprints and photographs were taken. He was released on a bribe and remained in the custody of an agent for the next three and a half months before obtaining a visa for the UK. Since arriving in the UK he has attended meetings of the TGTE in London and has been to several demonstrations.
4. The Secretary of State accepted the respondent's identity and nationality but concluded that his account was not credible and that he was not at risk upon return.

The Appeal

5. The respondent appealed to the First-tier Tribunal and attended an oral hearing in Birmingham on 7 September 2015. He was represented by Mr Paramothy of Counsel. The First-tier Tribunal found that the core of the respondent's account was credible. The medical evidence indicated that the respondent was likely to have obtained his scars during a period of detention and there was no reason to suspect assisted self-harm. The psychiatric diagnosis of depression and PTSD was consistent with the respondent having been tortured. The respondent provided false information for his visa because he was in fear of persecution. He has explained why he had not lodged his asylum claim sooner. He was a very committed activist to the cause of an independent Tamil state and wished to pursue that goal in the UK and Sri Lanka. He admitted to undertaking LTTE activities when he was detained in Sri Lanka. He gave the clear and wholly believable indication that he would want to continue anti-government activity in the future. The appeal was allowed on asylum and human rights grounds.

The Appeal to the Upper Tribunal

6. The Secretary of State sought permission to appeal to the Upper Tribunal on the basis that the First-tier Tribunal had erred in law in finding that the respondent was at risk given the absence of any adequate findings as to why the respondent would be someone perceived as playing a significant role in post-conflict Tamil separatism. Attending demonstrations and the alignment to the TGTE were unlikely to attract persecution; the profile of a person at risk was much higher.
7. Permission to appeal was granted by Designated First-tier Tribunal Judge Murray on 13 October 2015. It was arguable that the evidence before the judge was not sufficient to find that the appellant fell into a category which would put him at risk on return in terms of GJ and others [2013] UKUT 319 (IAC). To be aligned with the TGTE at a low level was not sufficient.
8. Thus, the appeal came before me

Discussion

9. Mrs Petterson submitted that the fact of activism within the UK did not take the respondent into a risk category. The country guidance was not correctly applied. The respondent was trying to impute something extra to GJ. Being a grassroots worker was not enough. The Upper Tribunal considered those specifically at risk. The findings here were not enough – otherwise everyone who was active abroad would be at risk.
10. Mr Syed-Ali submitted that the appeal hinged on one aspect and the judge was aware of the case law. The decision would have been the same under Articles 2 and 3 regardless of GJ. Paragraph 24 of MP and NT [2014] EWCA Civ 829 was relevant – the respondent was a diaspora demonstrator. The relevant evidential standard was applied. The category is not closed. The UNHCR guidelines cited at paragraphs 15-16 of MP were relevant. The respondent did not challenge the credibility findings.
11. I note that the judge found at paragraph 12 of the decision that the respondent was a very committed activist for the cause of an independent Tamil state and that he wished to pursue that goal in the UK and in Sri Lanka. The respondent was aligned to a proscribed organisation and was arrested and detained post-conflict in Sri Lanka. He admitted in detention to undertaking LTTE activities in Sri Lanka and had undertaken anti-government activities since departing Sri Lanka. The respondent had been told that the authorities still had an interest in him as an anti-government operative. Those findings of fact are not challenged by the Secretary of State.

12. I have considered GJ and MP. At paragraph 24 of MP, the Court of Appeal stated that the concern in relation to sur place activity is genuine diaspora demonstrators who may be put at risk on return as a result of surveillance and video recording or photographs. The issue in this appeal is whether, having regard to the respondent's activities in Sri Lanka, there is a real risk that he will be perceived as to be a diaspora activist with a significant role in diaspora activities designed to destabilise the unitary Sri Lankan state and revive the internal armed conflict.
13. On balance, I am satisfied that the findings of fact made by the judge are sufficient to justify such a conclusion. The judge did not simply rely upon low level diaspora activity. The judge could usefully have more closely related the findings in paragraph 12 of the decision to the risk category set out in paragraph 356(7)(a) of GJ. However, in my assessment the findings of fact permitted the judge to conclude that the respondent was perceived to be a threat to the integrity of Sri Lanka as a single state because he was 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. That conclusion was based upon the whole factual matrix including all of the events in Sri Lanka, sur place activities, the respondent's political loyalties and intentions and the continued interest from the Sri Lankan authorities.
14. Thus, the First-tier Tribunal's decision to allow the respondent's appeal did not involve the making of an error of law and its decision stands.

Decision

15. Consequently, I dismiss the appeal of the Secretary of State.

Signed



Date 2 April 2016

Judge Archer

Deputy Judge of the Upper Tribunal