



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/07009/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 27 January 2016

Promulgated

On 16 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW

Between

P E

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Lewis of counsel, instructed by Birnberg, Pierce and Partners
Solicitors

For the Respondent: Ms A Fijiwala, a Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. An anonymity order was made previously. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269). Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

2. This is an appeal by the appellant against a decision of First-tier Tribunal Judge Blundell, promulgated on 20 October 2015, in which he dismissed the appellant's appeal against the respondent's decision of 2 April 2015 refusing the appellant's claim for asylum.

Background

3. The appellant is a citizen of Sri Lanka who was born on 13 December 1967. The appellant arrived in the UK around June 2000. He claimed asylum on 14 June 2000. On 30 June 2000 the appellant returned his Statement of Evidence Form to the respondent. On 27 June 2001 the appellant signed a notice indicating that he wanted to withdraw his asylum claim. In October 2001, however, he changed his mind and indicated that he wanted to pursue his claim. It is accepted by the respondent that a letter to that effect was sent by his solicitors on 22 October 2001. On 17 February 2006 further representations in support of that claim were made by the appellant's solicitors. The appellant wrote to the respondent in May 2007 and March 2011. In 2012 the appellant's Member of Parliament, Stephen Timms MP, became involved in his case. He wrote to the respondent on 18 April 2012 seeking an update. On 16 May 2012 the respondent replied to Mr Timms MP accepting that the appellant had an outstanding claim. On 10 December 2013 the respondent wrote to the appellant's solicitors stating that the appellant's case had been transferred from the case assurance and audit unit to the older live cases unit. Mr Timms MP was involved again when he wrote to the respondent on 27 January 2015. The respondent replied on 17 February 2015 stating that the appellant's asylum claim had been refused on 27 October 2014 and that he had failed to appeal. The appellant was invited to leave the UK, failing which the respondent would seek to remove him. A letter before action was sent to the respondent submitting that the appellant had not received the letter of 27 October 2014 or any refusal. In response to the letter before action the respondent provided an amended immigration decision dated 2 April 2015 enclosing the original refusal letter of October 2014.

The Appeal to the First-tier Tribunal

4. The appellant appealed against the decision of the respondent of 2 April 2015 to the First-tier Tribunal. The Tribunal, in dismissing the appeal, did not accept the appellant's account of his involvement in the LTTE in Sri Lanka. He did not accept the appellant's account of detention, torture and ill-treatment at the hands of the Sri Lankan authorities. The Tribunal rejected the appellant's claim to have attended a number of demonstrations and protests in London thereby rejecting the appellant's account of extensive sur place activities. The Tribunal accepted the appellant's account that he was arrested on 20 June 2013 at a cricket match in Cardiff. However, the judge did not accept that it was reasonably likely that the authorities in Sri Lanka would have sought the appellant or arrested his wife on account of his activities on 20 June 2013. The Tribunal found that the appellant would not be at risk of persecution on account of his actual or perceived political opinion on return to Sri Lanka. The Tribunal also considered that the appellant's mental health was not such that a return to

Sri Lanka would breach Articles 3 or 8 of the European Convention on Human Rights.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal against the First-tier Tribunal's decision to the Upper Tribunal. The grounds of appeal assert that the First-tier Tribunal judge failed to consider the significance of the appellant's involvement with Tamil diaspora organisations. The grounds assert that the judge failed to apply the principles in the case of **HJ (Iran) [2010] UKSC 31 ('HJ (Iran)')** to the appellant's claim. The grounds also submit that the judge failed to give adequate reasons for not attaching weight to the appellant's wife's witness statement. On 19 November 2015 First-tier Tribunal Judge R A Cox granted the appellant permission to appeal. The grant of permission sets out that it is arguable that the First-tier Tribunal judge seemed to have rejected the appellant's wife's statement rather summarily and that counsel's Article 3 argument concerning the likelihood of detention and ill-treatment on return was not addressed by the judge.

Summary of Submissions

The appellant's submissions

6. Ground 1 of the grounds of appeal assert that the appellant claimed that he had been involved with Tamil diaspora organisations including the British Tamils Forum ('BTF') and the Transnational Government of Tamil Eelam ('TGTE'). It is asserted that the First-tier Tribunal judge failed to make reasoned findings as to whether the appellant's involvement with these organisations placed the appellant at risk owing to the proscription of those organisations by the Sri Lankan government as terrorist organisations. The grounds conceded, at paragraph 6, that the First-tier Tribunal judge was entitled to conclude that the appellant had not been involved in the extent of activities as claimed by the appellant. However, it is asserted that it was still incumbent upon the judge to consider whether the particular activities in which the appellant claimed he was involved placed him at risk of persecution. Reliance is placed on the case of **UB (Sri Lanka) v Secretary of State for the Home Department (C5/2015/0753) ('UB')** where it was found arguable that the appellant's involvement in the TGTE was significant. It is submitted that the First-tier Tribunal judge should have considered this point, the Court of Appeal having found it arguable that involvement with the TGTE makes an individual at risk of persecution.
7. Ground 2 of the grounds of appeal assert that the First-tier Tribunal judge appears to have doubted the claimant's claim in respect of the possible number of protests and demonstrations that he had attended in the UK but did not reject entirely that the appellant was politically active in the UK. It is submitted therefore, that the Judge should have gone on to consider whether the principles in **HJ (Iran)** -were relevant to the appellant's claim.

The First-tier Tribunal Judge states that he rejected the appellant's account of extensive sur place activities yet accepted his involvement in a protest at Cardiff Cricket Stadium on 20 June 2013 opposing the presence of the Sri Lankan cricket team in the UK. In accepting the appellant's involvement in this event, which the appellant described as being motivated by the opposition to involvement with the Sri Lankan team bearing in mind the genocide against Tamils, the Judge does not dispute why the appellant attended which, it is submitted, indicates the clear political opinion in opposition to the Sri Lankan government. It is therefore submitted that notwithstanding the quantity of the events that the appellant is accepted to have attended in the UK he is clearly someone who is actively critical of the Sri Lankan government in terms of the persecution and marginalisation of Tamil people in Sri Lanka. This is a political opinion that the appellant simply would not be able to express in Sri Lanka owing to the fear of persecution and on that basis the principles in **HJ (Iran)** should have been considered.

8. At ground 3 it is asserted that the First-tier Tribunal Judge did not give adequate reasons for not attaching weight to the appellant's wife's witness statement. The appellant's wife provided a witness statement dated 10 September 2015 which had been duly signed and attested by an attorney-at-law in Sri Lanka. The appellant's wife gave an account of having been detained on 24 July 2013 where she was shown photographs of the appellant attending the protest at Cardiff Cricket Ground. It is submitted that the First-tier Tribunal judge failed to give clear reasons as to why he rejected the appellant's wife's evidence and attached no weight on it as corroborative of the appellant's account. It submitted that the adverse interest in the appellant and her detention in July 2013 is clearly indicative of the fact that the Sri Lankan authorities perceived the appellant to have a significant role in post-conflict Tamil separatism such that the case of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) ('GJ')** should apply.
9. Ground 4 - It was confirmed at the hearing that ground 4, which was that the appellant's removal would amount to a breach of Article 3, was no longer being pursued by the appellant.
10. In oral submissions Mr Lewis acknowledged that the judge's decision was very comprehensive. However, he submitted that it was fundamentally flawed in the assessment of the activities of the appellant in the UK. He asserted that this was material because of the anxious scrutiny prevailing in asylum claims. He relied on the case of **GJ** in which the panel assessed the risk in Sri Lanka. He referred to the headnote at 7(a) and the category of persons at real risk are those who are perceived to be a threat because they have a significant role in the post-Tamil separatism. He submitted that mere detention is sufficient to place an individual at risk on return. He referred to paragraph 8 of the headnote where the panel also referred to the sophisticated intelligence in Sri Lanka. He referred to paragraph 336 where the Tribunal found that the diaspora is heavily penetrated and they take photos of people at demonstrations. It was noted that the Sri Lankan authorities may be using face recognition technology. He submitted that the

attendance at demonstrations alone was sufficient to create a risk. In the **GJ** case the first appellant's appeal was allowed, the factor that the Tribunal considered was attendance at pro-Tamil protests. He submitted that it was significant that there is a ten-year delay in determining the appellant's application by the Home Office. He referred to paragraph 55 of the Tribunal's decision where the judge rejected the appellant's attendance at demonstrations. Although the Judge considers the approach in **TK (Burundi) [2009] EWCA Civ 40 ('TK (Burundi)')** there is no evidence of any inconsistency in the appellant's account. The rejection of the evidence was because of no corroboration.

11. Mr Lewis submitted that the judge accepted that the appellant was at the demonstration and accepted that he took part in the protest. The panel in the **GJ** case accepted that the Sri Lankan authorities would be monitoring events. The judge's rejection of mere attendance would not therefore be sufficient. The conduct of the appellant was over and above mere participation as he was convicted of attacking someone during the demonstration. This shows that the appellant had a greater role. His profile would have been heightened. The authorities will perceive the protest as part of an attempt to gain an independent State. If the judge accepted that the appellant's attendance at the demonstration was covered by the press it was likely to come to the attention of the authorities. The government of Sri Lanka invest very significant resources using face recognition technology. The authorities could have found out about the participants from a Google search. If the government of Sri Lanka is taking photographs to identify protestors there was a real risk they would try to find out the names of those arrested and convicted because they were involved in disorder.
12. Further, there was corroboration as there was evidence from the appellant's wife who was questioned and assaulted. The judge makes no reference, given the objective evidence would corroborate the appellant's claim, why he gave no weight to the statement by the appellant's wife. The judge records it but no reason is given for rejecting it. Failure to give weight to the evidence of the appellant's wife is a material error given the real risk that he would be detained on return to Sri Lanka.
13. With regards to **HJ (Iran)** he submitted that it comes back to the fact that the judge accepted that the appellant attended the protest. The protests led to disruption of the cricket match between Sri Lanka and England and it would be monitored by the Sri Lankan authorities as the protest was directed at the attendance of the President of Sri Lanka in the UK. The judge has failed to give anxious scrutiny to the claim given the acceptance that he attended the protest in Cardiff. There is a risk that if the appellant were detained by the Sri Lankan authorities there would be a serious risk that he would be subjected to sexual violence and abuse.

The respondent's submissions

14. Ms Fijiwala submitted that there were no errors in the First-tier Tribunal decision. It was a comprehensive detailed decision. With regard to the first ground, the diaspora activities, although the appellant says he attended

London demonstrations the judge did not accept that. It was conceded in the grounds that the judge was entitled to conclude that the appellant was not involved in the London demonstrations. It cannot be argued now that the judge should have accepted the activities in London. The judge begins his consideration at paragraph 54 stating that there is not a shred of evidence to show that the appellant attended any events. The judge acknowledged that there is no requirement for corroboration as set out in the case of **TK (Burundi)**. However, the judge indicated that evidence in this case would have been readily available but nothing had been provided. The judge, having disbelieved the LTTE claims, highlighted the inconsistencies. With regard to the cricket ground the judge fully considered that one article in a local newspaper where the appellant was incorrectly named would not give rise to a risk on return. At paragraph 58 of the decision the judge refers to the fact that there are no other articles and no photographs regarding the incident. In paragraph 62 there is no reference that the appellant was involved in any particular activism on the day of the event in Cardiff. Even though the act of violence was committed by the appellant this does not mean that the appellant will be at risk on return. There is no evidence of how he was involved. At paragraph 64 the judge notes that the Sri Lankan authorities use sophisticated intelligence. Having thoroughly considered the background information the judge had no hesitation in finding that the authorities had no interest following the appellant's involvement in one single protest. The judge considered that the appellant would be perceived as a mere participant.

15. With regard to the case of **HJ (Iran)** she submitted that it is unclear how this was relevant. The judge found only that the appellant had attended one protest. The case before the First-tier Tribunal was not put on the basis of **HJ (Iran)**. There was no reference to **HJ (Iran)** in the skeleton argument. The findings at paragraph 62 and 64 that the appellant was a mere participant do not indicate that he behaved in such a manner that he would be at risk on return. The appellant does not fall within **HJ (Iran)** categories in any event.
16. With regard to ground 3 she submitted that the appellant's wife's witness statement should be considered in light of all the evidence in the round. At paragraph 10 the judge sets out the claim that the appellant's wife and children were ill-treated. It is clear that the judge had in mind the appellant's statement that his wife was ill-treated. At paragraph 24 the appellant's representative accepted that there were no photographs and only one report in which the appellant was incorrectly named. She submitted that the judge was correct to question how the authorities could have shown a photo of the appellant to his wife. She submitted that there is no shred of evidence of previous attendance of demonstrations. At paragraph 62 after considering the relevant cases it was perfectly reasonable for the judge to consider that it was not likely that the authorities would have any interest in the appellant. The judge gave the appellant the benefit of the doubt regarding inconsistencies and dates in the appellant's wife's witness statement. She submitted that it is unclear what more the judge could have done having not accepted that the appellant took part in any demonstrations in London and having found that the

appellant was not credible. The appellant's wife was not in the UK; her evidence could not be tested. There is no error in rejecting the witness statement as corroboration when looking at all the evidence in the round.

17. With regard to ground 4 Ms Fijiwala submitted that it did not appear that this was being pursued. This was confirmed by Mr Lewis.

The appellant's reply

18. In reply Mr Lewis submitted that the case came down to the objective evidence and what was known of the conduct of the Sri Lankan authorities who go to the effort of identifying nameless faces in crowds. There must be an inference that the Sri Lankan authorities would attempt to find the names of those arrested. This information would be easily available to them. It is clearly recorded that there was a banner saying that the Sri Lankan government is guilty of genocide. Those involved were charged with public law offences. There must therefore be an inference that anybody involved would be perceived to be a Tamil separatist. In that context the appellant's wife's evidence confirms a continuing interest in the appellant by the Sri Lankan authorities. The judge rejected the evidence on the basis that the appellant would not be of interest to the authorities. This is the very type of activity that would give interest to the authorities. Mr Lewis referred me to the UNHCR Guidance where it is set out that the treatment of relatives is relevant to the risk on return to Sri Lanka.

Discussion

19. There is no appeal against the adverse findings of the judge in dismissing the appeal in relation to the appellant's claims of detention, torture and involvement in the LTTE in Sri Lanka. As ground 4 was not pursued there is no appeal against the judge's findings in relation the weight to be placed on the medical report or his findings in relation to the claimed suicide attempt.
20. I have considered grounds 1 and 3 together as there is considerable overlap in terms of the findings of the judge.

Grounds 1 and 3

21. Ground 1 asserted that the judge failed to consider the significance of the appellant's involvement with Tamil diaspora organisations and ground 3 asserts that the Judge failed to give adequate reasons for not attaching weight to the appellant's wife's witness statement. The appellant conceded in the grounds of appeal that the First-tier Tribunal judge was entitled to conclude that the appellant had not been involved in the extent of diaspora activities as claimed. During the course of the hearing the appellant's representative requested leave to withdraw that concession. I refused leave to withdraw the concession. The findings made are, however, relevant to the assertion that the judge failed to consider the significance of the appellant's involvement with Tamil diaspora activities and I set them out below.
22. The judge found, at paragraph 56, that the appellant could have placed photographs or video footage of the protests/demonstrations that he

claimed to have attended before him. He considered that evidence in this case would have been readily available but nothing had been provided. The appellant could have adduced witness testimony from others who had attended such protests. The judge specifically referred to the principle that there is no requirement for corroboration in appeals of this nature but took into account that the Tribunal is well accustomed to receiving photographs and footage of individuals at such protests and witnesses are often called in order to support the claim of diaspora activity. The judge referred to the case of **TK (Burundi)** where, at paragraph 21, the court held that where a judge in assessing credibility relies on the fact that there is no independent supporting evidence, were there should be supporting evidence, and there is no credible account for its absence commits no error of law when he relies on that fact for rejecting the account of an appellant. Although Mr Lewis asserted that the **only** reason for rejection of the account was lack of corroboration the judge made his finding on the basis of the absence of any such evidence coupled with his disbelief of the appellant's account of events in Sri Lanka prior to his departure (there has been no appeal against those findings). The judge found that he was not able to accept even on the lower standard that the appellant had been involved in anything like the extent of diaspora activities he claimed in his witness statement. The case of **UB** is not relevant in light of the findings of the judge.

- 23.** With regard to the one event that the judge accepted that the appellant had attended he undertook a detailed analysis of the likelihood of the Sri Lankan authorities having an interest in the appellant arising out of his attendance and subsequent arrest at that event. Mr Lewis submitted that mere attendance at demonstrations alone was sufficient to create a risk. That is contrary to the findings at paragraph 336 of **GJ** where the Upper Tribunal held:

“...We do not consider that attendance at demonstrations in the diaspora alone is sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka”.

- 24.** Mr Lewis's submission was that in the case of **GJ** it was accepted that the Sri Lankan authorities would be monitoring events using sophisticated techniques that the conduct of the appellant was over and above mere participation as he was convicted of attacking someone and his profile would have been heightened. In **GJ** the Upper Tribunal set out the categories of those at risk on return to Sri Lanka. Of particular relevance are the following:

(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.

...

(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.

25. I note that the Upper Tribunal in **GJ** refers to those with a **significant role** in relation to post-conflict Tamil separatism as being at risk. The judge did not accept that the appellant was involved in demonstrations in London and it was conceded that the judge was entitled to so conclude.
26. In this case the only incident accepted by the judge is that at the Cardiff stadium. In approaching the significance of the appellant's involvement in diaspora activities and in assessing the weight to be attached to the appellant's wife's witness statement the judge commenced by considering whether or not the appellant's participation in the protest at the cricket ground in the UK would be reasonably likely to cause the Sri Lankan authorities to develop an interest in him.
27. The judge considered the evidence submitted in support at paragraph 57 noting that:

"The appellant's solicitors have located a single article from a local Cardiff newspaper (the Western Mail) in which this is described. The short article describes how a 42 year old Tamil man, not the appellant, had invaded the pitch during an international match because he believed that his father had been murdered by the Sri Lankan government. This individual carried a banner which bore the words 'for the 40,000 people killed by the Sri Lankan government' and a Tamil Eelam flag. The article continued to name others who had been charged with public order offence arising from the same incident. The part of the article which relates to the appellant is as follows:

An eighth man was admitted throwing a stone at a passing car outside the stadium, while a ninth man accused of common assault was unable to submit a plea as he could not understand the Tamil interpreter provided by the court. PE, of [] was told his case would be adjourned until July 23. [emphasis supplied]."

28. At paragraph 58 the judge recorded that it was confirmed that no other articles relating to the incident had been located and that there were no articles that bore the photograph of the appellant.

29. The judge, at paragraph 59, described the question as:

“Whether the appellant’s participation in this protest at a cricket ground in the UK would be reasonably likely to cause the Sri Lankan authorities to develop an interest in him, to the extent that they would arrest his wife and subject her to the appalling treatment which is described in his statement and in the statement that has been obtained from her.”

30. At paragraph 60 the judge set out that he attached no significance to the error in relation to the dates in the appellant’s wife’s witness statement giving the appellant the benefit of the doubt, and he proceeded on the basis that that error was merely an undetected error on the part of the appellant’s solicitors who drafted his statement and that of his wife. At paragraph 61 the Judge considered the authorities of **GJ and Others** and **MP and Others** particularly noting the statement of Underhill LJ that the Sri Lankan authorities might regard an applicant as posing a threat to the integrity of Sri Lanka as a single State even in absence of evidence that he or she has been involved in diaspora activities (paragraph 61). At paragraph 62 the judge states that he has taken into account all of the material (that he had set out) and made allowance for the fact that a repressive regime may not act in a manner considered rational or even explicable in the UK and set out:

“62...I do not consider it reasonably likely that the authorities would have sought the appellant, or arrested his wife, on account of his activities on 20 June 2013. The report from the Western Mail does not suggest that the appellant was involved in any particular activism on that day. The appellant merely states at [35] of his statement that he was participating in a protest which ‘urged the UK to sever [sic] all sporting ties for Sri Lanka which was committing genocide against the Tamils’. He gives no indication of his own role in the protest. There are no photographs, and no footage, showing his role. His criminal conviction is said to have arisen from his hitting a Sinhala man with a walking stick in self-defence.

63. I bear in mind, of course, that there may well have been people associated with the Sri Lankan authorities in the crowd. In that sense, the question is not what the authorities might have learned from the Western Mail article but whether what they might have seen, or being told by such informers, would be sufficient to arouse their interest in the appellant. I recall what Sedley LJ said in **YB (Eritrea) [2008] EWCA Civ 360** in that connection:

Where, as here, the Tribunal has objective evidence which ‘paints a bleak picture of the suppression of political opponents’ by a named government, it requires little or no evidence or speculation to arrive at a strong possibility – and perhaps more – that its foreign legations not only film or photograph their nationals who demonstrate in public against the regime but have informers among ex-patriot oppositionist organisations who can name the people who are filmed or photographed. Similarly it does not require affirmative evidence to establish a probability that the intelligence services of such States monitor the internet for information about oppositionist groups. The real question in most cases will be what

follows for the individual claimant. If, for example, any information reaching the Embassy is likely to be that the claimant identified in a photograph is a hanger on with no real commitment to the oppositionist cause that will go directly to the issue flagged up by Article 4(3)(d) of the Directive.

64. Approaching the matter thus, and in light of the sophisticated intelligence which is available to the Sri Lankan authorities about their nationals in the UK (**GJ and Others** refers at 87 and 354 in particular), I consider whether the authorities would seek the appellant, and arrest his wife in his stead because of his involvement in that single protest. I have no hesitation in concluding that they would not. I accept Ms Benfield's submission that it is the perception of the authorities which is all important but there is nothing in the papers before me which would support the view that the authorities would perceive the appellant's actions on 20 June 2013 as justifying an interest. He was a mere participant in a protest which turned violent, and he struck a Sinhalese man with a stick because he was in fear of attack. Even taking the up-to-date background material into account, I do not consider that the authorities would take an interest in a man such as the appellant, who has (on my findings) no prior personal or family association with the LTTE (whether in Sri Lanka or in the UK), and no history of difficulties with the authorities as a result.

65. In summary, therefore, having considered the evidence in the round and as a whole, I do not accept that the appellant has ever been of interest to the Sri Lankan authorities. I do not consider that he or his family have had any actual or perceived involvement with the LTTE. I do not accept the extent of the sur place activities described in his statement, and the single incident in which he did participate would not be such to generate any interest in him on the part of the Sri Lankan authorities. On those findings, therefore, I do not consider that the appellant falls within one of the risk profiles set out in the country guidance decision when read alongside the subsequent decision in **MP and Ors.**"

- 31.** I am mindful of the need for a judge to consider an asylum claim with the most anxious scrutiny. The judge has set out clearly the reasons that led to his findings and took into account the sophisticated methods used by, and the ability of the, Sri Lankan authorities to obtain information about their nationals in the UK. The judge did not hear oral evidence from the appellant but was able to consider his witness statement along with documentary evidence. The judge did not find the appellant's witness evidence credible with regard to his claimed activities and treatment in Sri Lanka. No appeal against those findings has been made. The issue came down to attendance at one single event in circumstances where the appellant has no previous 'profile'. Mr Lewis's submission that the conduct of the appellant was over and above mere participation on the basis of his arrest for an assault is not borne out. The judge found that the appellant gave no indication of his own role in the protest and there were no photographs, and no footage, showing his role. The report in the paper referred only to the appellant as being accused of common assault. On the basis of a single incident and with no detail from the appellant as to what role he undertook the findings of the judge are ones that were reasonably open to him. The Sri Lankan authorities in accordance with **GJ** are interested in those who have a **significant** role in

relation to post-conflict Tamil separatism. The significance of the appellant's involvement with Tamil diaspora organisations is very limited and there was no error in the judge's approach or findings.

- 32.** It is clear that the judge's rejection of the appellant's wife's witness statement was based on the reasons he set out regarding the level of participation in the event and of the coverage of the appellant in the press which led to his finding that the appellant would not be of any interest to the Sri Lankan authorities. On the basis of those findings it was open to the judge to place no weight on the appellant's wife's witness statement. The whole basis of that statement was to demonstrate that the appellant was of interest to the Sri Lankan authorities as a result of his attendance at the cricket match. The judge gave adequate reasons for rejecting the witness statement as corroborative evidence.

Ground 2

- 33.** It is asserted that the judge failed to apply the principles in **HJ (Iran)** to the appellant's claim. As the respondent pointed out this was not referred to before the First-tier Tribunal judge was not in the appellant's skeleton argument. It has not been pleaded that this is a **Robinson**¹ obvious point. Mr Lewis submitted that the appellant is clearly someone who is actively critical of the Sri Lankan government and his attendance at the cricket match indicates his clear political opinion in opposition to the Sri Lankan government.

- 34.** At paragraph 351 the Upper Tribunal in **GJ** concluded:

"Our overall conclusion regarding diaspora activities is that the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state. Attendance at one or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

- 35.** There is no presumption that attendance at a demonstration is evidence that a person is a committed Tamil activist. There was no finding by the judge that the appellant was politically active in the UK or that the appellant had a clear political opinion in opposition to the Sri Lankan government. The finding of the judge in relation to the appellant's participation in the protest at Cardiff Cricket Ground was that he was "*a mere participant in a protest which turned violent and he struck a Sinhalese man with a stick because he was in fear of attack.*" (paragraph 64). As set out above the findings of the judge were reasonably open to him. Given such a finding there would be no reason for the judge to consider the appellant's inability

¹ R v SSHD ex parte Robinson [1997] 3 WLR 1162

to express his political opinion in Sri Lanka owing to fear of persecution on the basis of the principles in HJ (Iran).

- 36.** In relation to ground 4 Mr Lewis indicated, in response to the Home Office representatives' comment that no submissions had been made by him in relation to ground 4, and her asking whether the ground was still being pursued, that it was not being pursued.

Conclusions

- 37.** The decision of the First-tier Tribunal in this case is very comprehensive, detailed and it is clear that the judge has taken into consideration all the evidence that was presented to him. He has also taken into consideration the relevant country guidance cases and relevant case law.
- 38.** Having considered the decision of the First-tier Tribunal judge bearing in mind the anxious scrutiny required when considering an asylum claim I find that there is no material error of law in the First-tier Tribunal judge's decision. The findings made were reasonably open to him. He gave adequate reasons for his findings and took into account all relevant material.

Notice of Decision

The First-tier Tribunal's decision contained no material error of law. The appellant's appeal is dismissed. The respondent's decision stands.

Signed P M Ramshaw

Date 11 February 2016

Deputy Upper Tribunal Judge Ramshaw