



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

Appeal Number: AA/11223/2015

THE IMMIGRATION ACTS

Heard at Field House, London

**Decision & Reasons
Promulgated
On 1st June 2016**

On 20th May 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

**SK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) I make an anonymity order. Unless the Upper Tribunal or Court orders otherwise, no report of any proceeding or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst other, all parties.

Representation:

For the Appellant: Ms S Anzani, Counsel instructed by Nag Law Solicitors, London

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka whose date of birth is recorded as [] 1983. On or about 1st March 2015 he made application for International

Protection as a refugee asserting that he was at risk of persecution were he to be returned to Sri Lanka because of his association with the Liberation Tamil Tigers of Elam (“LTTE”). On 30th July 2015 a decision was made to refuse the application. The Appellant appealed. On 19th February 2016 his appeal was heard by Judge of the First-tier Tribunal Mays, sitting at Harmondsworth. Judge Mays dismissed the appeal on all grounds.

2. Not content with that decision, by Notice dated 30th March 2016 the Appellant made application for permission to appeal to the Upper Tribunal.
3. In the grounds the Appellant identified a number of positive findings made by Judge Mays these were:
 - (a) He joined the LTTE in December 2003;
 - (b) He undertook three months of training and thereafter was sent to work for the LTTE in Colombo in March 2004;
 - (c) He worked at the Apollo Hospital and was tasked with gathering intelligence and procuring medicines to supply the LTTE;
 - (d) He did this for a period of three years before leaving Sri Lanka in 2009;
 - (e) He also occasionally arranged accommodation for LTTE members visiting Colombo;
 - (f) He was not identified as LTTE prior to departing Sri Lanka for the United Kingdom in 2009;
 - (g) It may be, that if returned to Sri Lanka, the authorities would come to know of the Appellant’s previous involvement with the LTTE;
 - (h) If questioned by the Sri Lankan authorities he will be perceived to be a person who has in the past been involved with the LTTE.
4. The grounds then focus on part of paragraph 62 of Judge Mays decision being:

“...I do not find, if the Appellant was detained at the airport and questioned or later visited at his address in Sri Lanka and provided with the information relating to his past activities in Sri Lanka, that the Sri Lankan authorities would perceive him as currently being a threat to the integrity of Sri Lanka as single State. He did not have a significant role in the LTTE and has had no significant role in relation to post-conflict Tamil separatism within the Diaspora. While the Appellant may be subject to monitoring by the Sri Lankan authorities on his return to Sri Lanka, this would not be sufficient to amount to persecution”.

5. The grounds suggest that Judge Mays was at least accepting a reasonable risk of the Appellant being detained at the airport and being questioned

about his past activities or in the alternative a reasonable risk that the Appellant would be visited at home. It is further submitted in the grounds that Judge Mays had accepted that were that to happen and once the Appellant disclosed the extent of his involvement he would be perceived as being a threat to the integrity of Sri Lanka with the Judge having failed to appreciate, it is submitted, the risk apparent to the Appellant during his detention while such enquiries would be carried out.

6. The grounds go on to make reference to passages from the Country Guidance case of **CG and Others (Post - Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** and in reliance on the various passages referred to in the grounds it is submitted that Judge Mays erred in finding that the Appellant had failed to show a well-founded fear of persecution in Sri Lanka.

7. There is a second ground based upon Judge Mays finding said to be at paragraph 46 (sic) but in fact paragraph 47 which reads:

“...Given the fact that the Appellant left Sri Lanka openly using his own passport the Sri Lankan authorities records would show that he had left Sri Lanka in 2009. The Sri Lankan authorities would have no need to attend at the Appellant’s home and ask his parents and brother where the Appellant was”.

8. The second ground submits that the finding of the Judge was purely speculative with their being no background material to support the notion that the Sri Lankan authorities keep a record of all individuals who exit Sri Lanka. Further, and in any event, the grounds submit that the Appellant had provided an account of having been assisted in leaving Sri Lanka by an agent. Reference is made to paragraph 170 of the Country Guidance case of **GJ** in which it was said that, “Given the prevalence of bribery and corruption in Sri Lanka, having left Sri Lanka without difficulty was not probative on the lack of adverse interest in an individual”. It was submitted therefore that the Appellant’s account was not at odds with the Country Guidance.

9. On 12th April 2016 Judge of the First-tier Tribunal Pooler granted permission on all grounds thus the matter comes before me.

10. The Secretary of State filed a response pursuant to Rule 24 of the Upper Tribunal Procedure Rules 2008 submitting that the findings were open to the Judge and there was no error of law.

11. It was common ground that the Appellant left Sri Lanka in November 2009 on a student visa and travelled to the United Kingdom as set out in Judge Mays’ Decision and Reasons at paragraph 16. It was no part on his case that he ever returned but rather in November 2012 received a telephone call from his father informing him that the Sri Lankan authorities were looking for him, the Appellant with the Sri Lankan authorities having shown the Appellant’s father a copy of the form which the Appellant had

completed when he joined the LTTE and that the authorities wished to speak to him, the Appellant. In January 2013 the Appellant received a further telephone call, this time from his mother telling him that his father had been arrested, detained for two days and questioned about the Appellant's whereabouts. The Appellant's case was that his father was physically ill-treated by the authorities and only released when it was discovered that he, the Appellant's father, was a civil servant. Then in February 2013 the Appellant's father told the Appellant that his brothers had been arrested and detained for five or six days by the Sri Lankan authorities. One brother had been beaten during his time in detention and was unable to walk. That brother was only released when his father secured the services of the general staff servicemen and the authorities were informed that the Appellant was residing in the United Kingdom. The Appellant's father and brother are now required to sign on at the local police station every month and the Appellant's home address in Sri Lanka has been searched again by the authorities. Such was the case as advanced before Judge Mays.

12. On behalf of the Appellant it was submitted that Judge Mays had accepted that the Appellant's activities with the LTTE had not been identified by the authorities prior to him coming to the United Kingdom. On the point made by Judge Mays that the Sri Lankan authorities' records would show that the Appellant left Sri Lanka in 2009, Mr Bramble accepted that there was no background material to support the notion that the Sri Lankan authorities records would show that the Appellant left in 2009 but in answer to the contention that somehow there was an error of law in that, Mr Bramble reminded me that it was the Appellant's case that it was not until late 2012 that the authorities showed any interest in the Appellant so that nothing turned on the Appellant having left Sri Lanka in 2009. Further Mr Bramble drew my attention to the answers given by the Appellant in interview to the Secretary of State, from question 76 onwards. The Appellant confirmed that he left Sri Lanka in 2009 and that he had no problems up to then. He confirmed that he left Sri Lanka on his own passport with a visa which he had obtained through an agent. Mr Bramble's point was that in relation the assertion that the prevalence of bribery and corruption in Sri Lanka meant that having left Sri Lanka without difficulty was not probative of a lack of adverse interest in an individual was not a point open, on the evidence to this Appellant. That was because on the evidence the use of an agent was not in the context of passing through the airport or any passport control but in the context of having obtained his student visa. Ms Anzani accepted that the Appellant's witness statement only went to that point and she was right to do so because the Appellant's witness statement at paragraph 22, which statement was relied upon in the First-tier Tribunal reads as follows:

"I was told by my superiors there would be a risk for me if I remained in Sri Lanka. I was told to get out of Sri Lanka. That is why I applied for a Tier 4 Student Visa to come and study in the United Kingdom. The arrangements took some time. I was assisted by an agent but I needed to secure a college and ensure I had the necessary funds".

13. The principal focus of Ms Anzani's submissions, which she said went to the core of the decision such that if I were with her on the ground, I should remake the appeal in the Upper Tribunal with the Appellant being entitled to succeed outright was the implicit finding, in her submission, that the Appellant would be at risk of being questioned and detained after return, whereas with respect to the "2009" issue, were the Appellant successful on that point, there would need to be, she suggested a "re-consideration".
14. It remained Ms Anzani's submission that Judge Mays had accepted that the Appellant was someone who was likely to be questioned on return.
15. Ms Anzani placed before me the latest Country Information and Guidance for Sri Lanka dated May 2016, without objection from Mr Bramble. At 6.5 under the heading Treatment of Tamil Returnees reads as follows:
 - 6.5.1 *"The Society for Threatened Peoples, written statement submitted by the Society for Threatened Peoples, a non-governmental organisation in special consultative status to the UN Human Rights Council, ongoing oppression of minorities in Sri Lanka, for September 2015, stated that: "Returning Tamils from abroad continue being arrested at the airport. The surveillance of the civil society in the North and East is remaining high".*
 - 6.5.2 *The Immigration and Refugee Board of Canada reported in February 2015 that: "Sources report that individuals returning from abroad are particularly subject to screening". A July 2015 International Truth and Justice Project (ITJP) Sri Lanka report on Sri Lanka's survivors of Torture and Sexual violence 2009 to 2015 stated that: "A security force insider testified since the presidential election in 2015 that military intelligence officials from Joseph Camp were actively looking for any Tamils returning home from abroad in order to interrogate them. The witness stated that the intention was to abduct, detain and torture them."*
 - 6.5.3 *In May 2015 it was reported that at least 16 Tamil men from the Batticaloa District had been arrested at Katunayake International Airport over a period of around a hundred days after returning from working abroad at Middle-eastern countries. TamilNet reported that, "Almost all victims were ex-LTTE members who had gone sl military "rehabilitation" and released earlier" adding that: "Tamil National Alliance (TNA) Parliamentarians PON Selvarasa told journalists in Batticaloa that he had requested Sri Lankan Minister of Public Order to release all Tamils who had been subjected to long-term detention of the TID [Terrorist Investigation Department].*
 - 6.5.4 *In June 2015 30 year old Tamil and ex-LTTE member Conesapillai Kugadasan was arrested having returned from Bahrain and detained for rehabilitation.*
 - 6.5.5 *The International Crisis Group noted in August 2015 report that: "Tamils returning from abroad continue to be arrested under the PTA [Prevention of Terrorism Act] on suspicion of old LTTE involvement. According to some reports, after police detention, many are sent to the military-run rehabilitation program".*

16. Ms Anzani pointed to the fact that this Appellant had not undergone any rehabilitation because he had not been identified as LTTE pre-flight.
17. Then turning to paragraph 168 of the Country Guidance of **CJ**, Ms Anzani pointed to the following:

“The 11,000 LTTE cadres who underwent the re-education process known as “rehabilitation”, were detained for at least two years and some for as long as four years. Mr Hall accepted that there appeared to be no statutory underpinning for the rehabilitation process: to the extent that “rehabilitation” was based on the detention powers in the PTA, even without any evidence of physical or sexual abuse, he accepted the detention without judicial supervision for such lengthy period amounted to persecution”.

18. For the Secretary of State, Mr Bramble submitted that Judge Mays had not found what Ms Anzani was inviting me to imply. The starting point, in Mr Bramble’s submission was not paragraph 62 of the decision and reasons but rather paragraph 61 which reads as follows:

*“The question which arises is whether the Sri Lankan authorities would perceive the Appellant to be a risk to the integrity of Sri Lanka simply on the basis of his membership of the LTTE and due to the activities which he carried out for the LTTE in Sri Lanka. While the Appellant’s name is not on a stop list I accept that forced returnees can expect to be asked questions about their family’s LTTE connections and sympathies (paragraph 308 of **GJ**)”.*

19. Paragraph 308 of **GJ** reads as follows:

“During the re-documentation process in the United Kingdom, or at the airport on return, a forced returnee can expect to be asked about his own and his family’s LTTE connections and sympathies”.

Mr Bramble’s submission was that in the context of paragraph 308 which is all Judge Mays was referring to, that was the extent of any questioning that is to say the family’s LTTE connections and sympathies. Judge Mays of course, quite properly had accepted that were the Appellant to be asked questions he could not be expected to lie but looking to the remaining part of paragraph 61 there was nothing sufficient in the findings of Judge Mays that entitled the Appellant to assert that Judge Mays had implicitly accepted that he was at some risk. Paragraph 61 continues as follows:

“I also accept that the Appellant cannot be expected to lie about his past involvement which includes his activities with the LTTE and the fact that his father’s cousin’s brother was a senior figure in the LTTE. I find therefore that it may be that, if he is returned to Sri Lanka, the authorities would come to know of his previous involvement with the LTTE. The Appellant has not taken part in any LTTE activities since he left Sri Lanka in 2009 and he is not in contact with any LTTE members. The Appellant’s immediate family have no connection with the LTTE. The Appellant has a Sri Lankan passport and so would not require travel documents”.

20. The findings of Judge Mays are to be seen in the context of the Guidance in **GJ**, helpfully set out in a head note:

“(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."

21. In short Mr Bramble's submission was that there was no reason why the Appellant would be detained at the airport. It was not suggest that he was on a stop list [see headnote 6 in **GJ**]. The Judge found at paragraph 61 that the Appellant was not on a stop list and the Judge has clearly had regard to the extent of the questioning.
22. The next question therefore is whether the authorities would see the need further to investigate the Appellant. Judge Mays dealt with that point in the latter part of paragraph 62 in which she said:

"I do not find, if the Appellant was detained at the airport and questioned or later visited at his address in Sri Lanka and provided the information relating to his past activities in Sri Lanka, that the Sri Lankan authorities would perceive him as currently being a threat to the integrity of Sri Lanka as a single State. He did not have a significant role in the LTTE and has no significant role in relation to post-conflict Tamil separatism within the diaspora. While the Appellant may be subject to monitoring by the Sri Lankan authorities on his return to Sri Lanka, this would not be sufficient to amount to persecution".

23. So it follows that any detention at the airport would be short-lived in the context of the sort of questions identified at 308 and it is clear that Judge

Mays found that there would be no reason for the Appellant to be taken into detention even if he were questioned further in his home area.

24. I do not find that the interpretation which Ms Anzani invites me to place on the findings of Judge Mays leads to the inference that Judge Mays accepted implicitly by those findings that the Appellant was a risk of persecution because of some implicit risk of detention. In my judgment Judge Mays has considered the entirety of **GJ** by her approach to the decision not only by reference to the case but because of the application of the relevant subparagraphs of the Country Guidance to the facts as found. Any inference to be drawn is that Judge Mays found contrary to what is being submitted by Ms Anzani. The Appellant would not be detained but rather following **GJ** would be asked some questions at the airport, the answers to which would not be sufficient for the Appellant to be transferred at that stage into detention. Any subsequent questioning would again not lead to the Appellant being detained. Those appear to me clearly to be the findings and were findings that were open to Judge Mays.
25. As to paragraph 47 and the “2009” issue I find that there is nothing material in that. The part of the grounds which points to the use of an agent and the prevalence of bribery is a little misleading though I do not for one moment suggest that Ms Anzani intended it to be so but it was no part of the Appellant’s case that he left Sri Lanka by being assisted through the airport by an agent. On the Appellant’s case his parents have been interviewed, certainly his father, and it is known that the Appellant left Sri Lanka in 2009. I appreciate that Judge Mays appeared nevertheless to have taken a credibility point against the Appellant in questioning whether the Sri Lankan authorities would have had to attend upon his parents if in fact they had known that the Appellant had left Sri Lanka in 2009, but Judge Mays has set out sufficient other reasons for questioning the Appellant’s credibility on the issue as to why suddenly, in 2012 the Sri Lankan authorities have come looking for the Appellant. Those other matters set out at paragraph 48 in relation to the timing of the provision of documents and inconsistencies in them, as well as there being no mention of the Appellant’s brother requiring treatment in the letter from the Appellant’s father, taken together with the letter from the village general staff servicemen, with observations made with respect to that letter dated 10th February 2016 was sufficient reasons in any event for the Judge to question the Appellant’s credibility on that point of his case.
26. Still further in questioning the overall credibility of the Appellant in those matters which were not accepted by Judge Mays, she took into account, as she was entitled to, the late application for International Protection as a refugee made only after his Tier 4 (General) Student Leave to Remain application was refused on 14th November 2014. The finding therefore at paragraph 54 that it was not established that the Sri Lankan authorities attended at the Appellant’s home in Sri Lanka in 2012 looking for the Appellant with his LTTE membership card in their possession was a finding open to Judge Mays, as was her finding that it had not been established

that her brother had been arrested or detained for five days nor beaten. Those findings are not challenged in any event in the grounds.

27. There is no doubt whatsoever in my mind that even if Judge Mays had not had that “2009” point in her mind, given the other reasons which are fully set out, she would inevitably have come to the conclusion that the Appellant had not established that the Sri Lankan authorities attended at the Appellant’s home in Sri Lanka in 2012 looking for him. There is simply no sufficient basis for me to interpret the findings the way in which Ms Anzani would invite me to do and therefore the question of “rehabilitation” does not arise. The Appellant would answer his questions and would go on way without being detained. Those were the findings of Judge Mays and those were the findings that were open to her. There was nothing perverse or irrational in the findings. Those were findings that were available on the evidence and therefore in all the circumstances this appeal falls to be dismissed.

Notice of Decision

The appeal to the Upper Tribunal is dismissed.

Signed

Date 1st June 2016

Deputy Upper Tribunal Judge Zucker