



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03590/2017

THE IMMIGRATION ACTS

Heard at Field House
On 24 January 2018

Decision & Reasons Promulgated
On 14 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

NS
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muqit (counsel)
For the Respondent: Ms N Willock-Briscoe (Home Office Specialist Appeals Team)

DECISION AND REASONS

1. This is the appeal of NS, a citizen of Sri Lanka born 22 February 1950, against the decision of the First-tier Tribunal of 1 June 2017 dismissing her appeal on asylum and human rights grounds, itself brought against the refusal of her Refugee and Human Rights Convention claims on 29 March 2017.
2. The essence of her asylum claim is set out in the decision below. She was born in Trincomalee. She married in 1974. She and her husband had a daughter, with whom she now lives in the UK. NS lived in Sri Lanka until 1990, helping the LTTE for some years in the 1980s.
3. An attack on her home village and her husband's arrest (she had not seen him since) left her displaced. She began to assist the LTTE with their injured, cooking and nursing them, though not providing medical care; they then asked her to

move her to India with her daughter, and she did so.. She remained in a refugee camp until the LTTE found her a house; her daughter entered school there. The Appellant continued to care for their sick and injured, and they stored goods (she did not know what) at her home.

4. Her daughter was married in 2003, and joined her husband in the UK in 2008; her son-in-law and her daughter supported her thereafter. The situation in Sri Lanka seemed to improve thereafter, and she returned there, passing through immigration controls at the airport, to manage the properties she and her husband had previously owned together in their home village, living off the rent.
5. In October 2015, she was informed on to the security forces by a person called Kugan, who used to work for the LTTE alongside NS. The Appellant was arrested, interrogated as to whether she had returned to Sri Lanka to help the LTTE regroup, and beaten. Her cousin paid a bribe to secure her release, and subsequently helped her to leave the country. She had attended some demonstrations in the UK after claiming asylum, but had not maintained her attendance. The Appellant's evidence was supported by her daughter, who explained that she remembered her mother helping the LTTE wounded when they lived in India. Mr DV gave evidence, saying that the Appellant was not aware of what the LTTE stored at her house; it was in fact medical supplies. Neither he nor the daughter could not remember meeting anyone called Kugan, though people had come and gone at their home in India.
6. The First-tier Tribunal generally accepted NS's account of historical facts, being impressed by the consistency and detail of her oral evidence, supported as it was by her daughter. It accordingly accepted she had provided basic assistance to the LTTE by way of cooking and caring for their casualties, which did not extend to membership, or involvement in active battle, intelligence operations or acting as either a courier or informant.
7. However, the First-tier Tribunal did not accept that she was informed on by anyone called Kugan; even had that happened, then it would only have been the fact of her low-level involvement that they would have passed on. It accepted that the authorities had treated her with suspicion, having been established as a returnee from India: the August 2016 *Tamil Separatism* Guidance showed this was a possibility. Her release in the circumstances claimed was inconsistent with the likely behaviour of the authorities had she been seen as posing a threat to the country's integrity. It cited Underhill LJ in *MP* [2014] EWCA Civ 829 §50, summarising the import of the Country Guidelines in *Gj*:

“The clear message of the Upper Tribunal's guidance is that a record of past LTTE activism does not as such constitute a risk factor for Tamils returning to Sri Lanka, because the Government's concern is now only with current or future threats to the integrity of Sri Lanka as a unitary state; and that that is so even if the returnee's past links with the LTTE were of the kind characterised by UNHCR as "more elaborate".”

8. Accordingly, NS did not fall into a category of returnee now at risk. Nor would her occasional attendance at demonstrations in the UK place her in any danger. Her asylum claim therefore failed. The mental health difficulties she suffered, the subject of a report by Dr Dhumad, were not such as to raise a real risk of an Article 3 violation. She was not receiving professional help, consistent with his conclusions that she suffered only from mild to moderate difficulties.
9. Grounds of appeal argued that the First-tier Tribunal had overlooked the acceptance by the Upper Tribunal in *GJ* that the fact bribery procured a release from detention was not necessarily indicative of the seriousness with which a person's case was viewed. Furthermore two separate issues were wrongly equated: the authorities' *potential* view of NS's revivalist activities with the LTTE notwithstanding her true level of involvement, and the reality of her actual involvement. It was irrational to find, on the one hand, that NS was detained and tortured in late 2015 notwithstanding her limited actual LTTE involvement and having regard to the sophisticated intelligence employed by the authorities, and yet on the other hand to then rely on those very factors to discount the future risk she might face.
10. Permission to appeal was granted on 17 October 2017 on the basis that it was arguable that the Country Guidelines had not been properly applied.
11. In the Rule 24 response the Secretary of State argued that the decision was consistent with the Country Guidelines decisions and that proper consideration had been given to the post-conflict evidence of detention.
12. Before me Mr Muquit submitted that the decision was plainly inconsistent with the recognition in the Country Guidelines decision that post-flight mistreatment could create relevant risks on a return. Furthermore, the First-tier Tribunal had accepted the evidence of the Appellant's uncle stating that "My uncle told me that he is [a] bit afraid to talk to me because the government authorities go to his house and question after my mother."
13. Ms Willock-Briscoe submitted that the evidence regarding the informer Kugan was not in fact accepted and that this rejection of one aspect of her case could be read as carrying over to the bribe, so one could not extrapolate wholesale acceptance of the Appellant's evidence. She was not found to be of interest based on intelligence-based activity.

Findings and reasons

14. This appeal turns squarely on the legitimacy of the approach taken by the First-tier Tribunal when applying the relevant Country Guidelines. The headnote of *GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)* sets out:

“(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. ...

(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.”

15. This passage is also relevant given the argument in the case, from the body of the judgment at §275: “We take particular account of his view that the seriousness of any charges against an individual are not determinative of whether a bribe can be paid, and that it is possible to leave through the airport even when a person is being actively sought.”
16. The Guidelines in *GJ* are to the effect that an individual's past history of mistreatment and detention is relevant in assessing future risk only to the extent that such a past shows that the individual is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government. Nevertheless, one should not view the categories of returnee at risk as set in stone: Underhill LJ stated in *MP (Sri Lanka) 2014*] EWCA Civ 829 at [50]:-

“...The clear message of the Upper Tribunal's guidance is that a record of past LTTE activism does not as such constitute a risk factor for Tamils returning to Sri Lanka, because the Government's concern is now only with current or future threats to integrity of Sri Lanka as a unitary state; and that that is so even if the returnee's past links with the LTTE were of the kind characterised by UNHCR as "more elaborate". I respectfully agree with the Vice-President that that is a conclusion which it was entitled to reach. It is also clear that the Tribunal believed that "diaspora activism", actual or perceived, is the principal basis on which the Government of Sri Lanka is likely to treat returning Tamils as posing a current or future threat; and I agree that that too was a conclusion which it was entitled to reach. But I do not read para. 356(7)(a) of its determination as prescribing that diaspora activism as the only basis on which a returning Tamil might be regarded as

posing such a threat and thus of being at risk on return. Even apart from cases falling under heads (b)-(d) in para. 356(7), there may, though untypically, be other cases (of which NT may be an example) where the evidence shows particular grounds for concluding that the Government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism.”

17. As shown by *MP*, where a person has credibly asserted they have suffered post-conflict detention and mistreatment amounting to serious harm, then it is perfectly possible that, for whatever reason, they *may* continue to face a real risk of being considered a threat to the state, even though their own profile would not otherwise have been expected to attract persecution when reviewing the case via the categories identified in *GJ*.
18. It seems to me that the First-tier Tribunal was perfectly aware of the need to carry out a case-specific evaluation of the background facts. The kernel of its reasoning is that the evidence that the Appellant was informed upon is speculative; given the lack of knowledge of her witnesses as to whether she had ever worked with a person called Kugan that was an unremarkable conclusion. The judge below went on to find that her profile was insufficient to put her at risk of persecution given she had not been involved in separatist activities in the modern era, and that the reason she may have come to attention was much more likely to be down to her status as a returnee from India (that being a characteristic which objective country evidence documented as raising potential suspicion), than for any other reason. The conclusion to which the Tribunal came was that this was a deeply unfortunate occurrence: but one that would not foreseeably recur, as the authorities’ suspicions had not borne fruit.
19. I conclude that the assessment of risk below was in fact a model application of the Country Guidance. The Tribunal was alive to the desirability of not treating the risk categories identified in *GJ* as a procrustean bed. It took account of the fact that the Appellant was not of a profile to attract suspicions of separatist sympathies once it was understood that it was likely that the Sri Lankan authorities would apply an intelligence-based approach to the desirability of interrogating her again. Given their interrogation of her did not establish that she presented a risk to the state’s interest on the last occasion, there was no reason to fear a recurrence of the serious harm she previously faced.
20. As to the submission that relevant evidence was overlooked showing interest in the Appellant since her departure, this has to be assessed in the context of the fact-finding below. Although most of the historical facts advanced by the Appellant and her witnesses were accepted, there were reservations: the claim that she had been informed against was rejected, and in those circumstances it seems to me that one cannot assume that any features of the evidence that are expressly unmentioned by the judge below, and relate to the consequences of her detention, were accepted. Accordingly I reject the submission that material evidence was

overlooked as to the visits to her uncle's home by the security forces asserted by one witness.

21. I accordingly find that the decision of the First-tier Tribunal should stand as it contains no material error of law.

Decision:

The appeal is dismissed.

Signed:

Date: 25 January 2018

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes