



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

Appeal no: **PA/06336/2016**

THE IMMIGRATION ACTS

At **Royal Courts of Justice**
on **23.04.2018**

Decision & Reasons
Promulgated
On 26.04.20180

Before:

Upper Tribunal Judge
John FREEMAN

Between:

Kamsan [S]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Philippe Bonavero* (counsel instructed by Gurney Harden, Ashford)

For the respondent: Mr Tom Wilding

DECISION AND REASONS

This is an appeal, by the respondent to the original appeal against the decision of the First-tier Tribunal (Judge Madeleine Colvin), sitting at Taylor House on 1 December 2017, to allow an asylum and human rights appeal by a Tamil citizen of Sri Lanka, born 1993. The appellant had arrived on 28 September 2011 on a student visa, valid till 2014; but on 28 February 2012 he was arrested in possession of false documents on his way to France, he said because he had been advised to claim asylum there, for which he was sentenced soon after to 12 months' imprisonment. Following notice of intention to deport in April, he claimed asylum on 7 May. This was refused, and the decision served with a deportation order on 13 April 2013.

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.

(2) persons under 18 are referred to by initials, and must not be further identified.

2. In November 2013 the appellant gave evidence for the prosecution at the trial of those responsible for the illegal movement of him and others. The five accused convicted received sentences of over 23 years between them, and a detective-sergeant in the case wrote to the appellant on 31 January 2014, saying this:

‘I hope you are satisfied with the sentences that have been passed, and I would like to take this opportunity to thank you for your support throughout this investigation. Without brave individuals such as yourself, it is sometimes very difficult to get the perpetrators of these crimes brought to justice.’

3. At the hearing of the appellant’s appeal on 16 June 2014, the judge queried the circumstances under which the authorities had put the appellant forward as a witness of truth at the trial, but apparently not accepted his account of his own history. That led to the decision under appeal being withdrawn and reconsidered; meanwhile the appellant applied to the Criminal Cases Review Commission for his conviction to be reviewed, but they refused. On 3 June 2016 a fresh decision was made on his asylum claim, but to the same effect as before, the decision under appeal in this case.

4. The judge allowed the appeal on three grounds: the Convention risk on return for the appellant, both from the Sri Lankan authorities and from the people-movers and their associates; and the ‘very compelling circumstances’ which she found on the deportation appeal, arising from the risk from the people-movers and the circumstances in which he came to face it. As it was agreed before me that this added nothing to the protection claim on that basis, I need say no more about it.

5. The judge said a good deal about the appellant’s claim for protection from the people-movers, and I shall come back to it. On the risk from the authorities, the relevant country guidance was to be found in GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC), to which the judge referred rather briefly at 13. This is the potentially relevant part of the judicial head-note:

(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.*

...

(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.*

- 6.** This appellant's history in Sri Lanka was limited, on the judge's findings at paragraph 8, to this:

"His father and his cousin had indirect involvement with the LTTE and as a result his family were known to the Sri Lankan authorities. On a regular basis he would be approached by the authorities who would ask him for information about the LTTE. One day in September 2009 after a bomb blast he and his father were arrested and detained by CID police. He was ill-treated during the detention before he was released and later his father was also released. His brother was abducted from school in February 2011 and has not seen his brother since then.

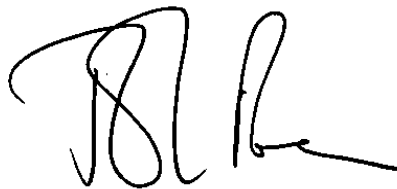
His family feared that the same would happen to him and they found an agent to take him to the UK by obtaining a student visa and paying a bribe to pass through the airport. It was mentioned by the CID officer at the airport that there was a record on him on the system."

- 7.** There is no possible basis on which that history could lead to any Convention risk under paragraph 7 (a) of the guidance in *GJ*. So far as 7 (d) is concerned, Mr Bonavero argued that the appellant must have been on a 'stop' list for the police officer to say what he did to him at the airport in 2011, and there was no evidence that this state of affairs had changed.
- 8.** However, there is nothing whatsoever to explain why this appellant, released in 2009 and not troubled since by the authorities, whatever might have happened to his brother, should have been on a 'stop' list in 2011, without any steps having been taken to pick him up from home, where he had been living all along. It is on the other hand entirely possible that the police officer mentioned the record against the appellant merely as a ruse to shake down someone who could afford to travel to this country as a student for a bribe, in which he succeeded. At paragraph 35, the judge quite uncritically accepted the inference invited by Mr Bonavero, who did not refer me to any further material to justify her decision on this point, which must be set aside.
- 9.** So far as the claimed risk from non-state agents, in the form of the people-movers and their associates, was concerned, it is easy to see why the judge was sympathetic to the appellant. He had done his best to co-operate with the law enforcement authorities in this country, and been rewarded by having the details of his asylum claim disclosed to those defending the men against whom he had given evidence. This should never have happened, at least without an application to the trial judge to authorize it, on which the appellant should have had an opportunity to be heard.
- 10.** I have carefully considered what the judge said on this part of the appellant's claim. Clearly she was fully entitled to accept at 31 that he had a 'genuine concern' on this point, in other words a subjectively justified claim: the question is whether on her findings some objective justification was shown for it. Mr Bonavero invited me to conclude that there was, on the basis that the appellant's family's history and general whereabouts would have been disclosed with the rest of his claim, and that the people-movers formed, according to a Home Office press release at the time of

the trial (see 30) an 'international organised crime gang' for whom revenge would have been easy on his family or him.

- 11.** Mr Wilding however pointed out that the judge had made no attempt to deal with the question of whether the intelligence available to the people-movers would have made the details of his return known to them; or whether he would have been able to enlist the protection of the authorities against them, once returned. It also seems (see the judge's 36) that the appellant's family had meanwhile moved to India.
- 12.** The judge herself recognized at 31 that more needed to be said about the appellant's 'genuine concern' about the people-movers, and promised to return to it. However, as it turned out, she did no more than make a general reference to the submissions on his behalf on this point, in the last sentence of 35, and to say at 36 that she had accepted them, without giving any further reasons for that.
- 13.** This was not giving the losing side any proper explanation of why they had lost, the single most essential component of any judicial decision, and so was wrong in law. That is not to exclude the possibility of the appellant succeeding on this point, in a properly reasoned decision; nor to cast any doubt on the judge's credibility findings on it. For those reasons, the judge's decision is set aside; but there will be a further hearing at which she will be able to reconsider the non-state agents protection claim only. The Home Office may wish to reconsider their own decision in advance of that, in view of what I have said at **9**, and at least offer the appellant some form of discretionary leave to remain; but that is up to them.

**Home Office appeal allowed: first-tier decision set aside
Further hearing on non-state protection claim only, before Judge
Colvin at Hatton Cross**



(a judge of the Upper
Tribunal)

Date: 26 April 2016