



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

Appeal Number: AA/00216/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 October 2014**

**Decision and Reasons  
Promulgated  
On 12 November 2014**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**J C  
(ANONYMITY ORDER IN FORCE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah, Counsel instructed by Jeya and Co  
Solicitors

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 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 this order because this is an international protection case and it is possible that the appellant could on some future occasion be at risk because of publicity arising from this Decision.
2. This is an appeal by a citizen of Sri Lanka, born on 5 January 1981, against a decision of the First-tier Tribunal dismissing his appeal against the decision of the respondent on 23 December 2013 to remove him from the United Kingdom. It is his case that he is a refugee or otherwise entitled to international protection. His appeal was dismissed by the First-tier Tribunal in a determination dated 26 May 2014 but that decision was set aside for error of law by Upper Tribunal Judge King TD who gave a Decision and Reasons dated 15 September 2014.

3. Judge King set aside the determination of the First-tier Tribunal because parts of the reasoning were explained inadequately. He was particularly concerned that no clear findings had been made about the veracity of correspondence from a lawyer in Sri Lanka confirming that there was a warrant issued for the appellant's arrest.
4. Judge King decided against re-determining the appeal immediately even though he noted many findings had been made in the appellant's favour. He adjourned the case to give the parties an opportunity to produce further evidence if they so wished.
5. Before me there was some further evidence from the appellant but no fresh material from the respondent.
6. The evidence from the appellant comprised a letter from the British Tamils' Forum dated 20 October 2014 confirming that the appellant had joined the forum and a letter from a Sri Lankan solicitor from an address in Vavuniya dated 23 October 2014 written in response to a letter dated 25 September 2014 requesting clarification of his earlier letter of 12 March 2014. The author, Mr P Anton Punethanayagam said:

"I confirm that as per the records and according to my Junior Mr Thiruarul, Attorney-at-law, Mr J... C... was arrested on 16 April 2012 on suspicion of being an LTTE member. We requested for him to be released on bail. The police raised objection that they need more time for further investigation and the judge agreed and refused the bail. On 1 May 2012 based on our submission to grant bail with a condition, the judge granted bail on the condition to report at Vavuniya Police Station every three months."
7. The letter is signed by P Anton Punethanayagam. The letter is computer generated and includes an unremarkable letter heading using what appears to be a font commonly available on word processors. It does however bear a red ink circular stamp identifying the writer as "Justice of the Peace and an Unofficial Magistrate, Attorney-at-Law, Notary Public and Commissioner for Oaths". Ms Jegarajah explained, and I accept, that an "Unofficial Magistrate" in Sri Lanka is the broad equivalent of a Deputy District Judge in England and Wales.
8. Ms Jegarajah decided not to call further evidence. She set out to prove her case from submissions and the facts already established before the First-tier Tribunal.
9. As I am engaged in a continuance hearing I incorporate into this determination Judge King's decision which highlights the areas where binding findings have been made. It is set out at Appendix 1.
10. It is for the appellant to prove his case but it is sufficient if he proves that there is a real risk of his being persecuted or otherwise ill-treated in the event of his return.
11. Although human rights are no doubt a consideration they really add nothing to this case. If the appellant is in trouble at all it is because he risks persecution for a Convention reason and it was not suggested that removing him would be an unlawful interference with any private and family life he has established in the United Kingdom.

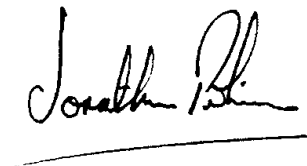
12. I confirm that I made no findings until I had reviewed the evidence as a whole and if a comment I make on the evidence or the order in which I have considered the evidence creates a contrary impression then that impression is wrong.
13. Mr Wilding took no point on the very late submission of the letter from the Tamil Attorney. In my judgment it is a letter that adds little to the whole. It is exactly the kind of letter that could be expected if the appellant is making up evidence to suit his case or if he is telling the truth.
14. There is nothing about the rubber stamp on the letter to give it any kind of official quality. It appears to be a straightforward office stamp which no doubt is readily available from commercial stationers to legitimate and dishonest customers alike.
15. I similarly find that the appellant's membership of the British Tamils' Forum to be unhelpful. Again his membership, proved by the document, is entirely consistent with a person genuinely concerned about the plight of the Tamils or mischievously concerned to produce further evidence to bolster an unmeritorious claim. Again Mr Wilding took no point on the very late production of the document. It is of very limited evidential value.
16. The appellant travelled from Sri Lanka to the United Kingdom arriving in Heathrow in July 2012. He claimed asylum on 23 January 2013. The respondent accepted the appellant is a Sri Lankan of Tamil ethnicity.
17. The respondent did not accept that the appellant had worked for the LTTE.
18. Neither did the respondent accept that the appellant's brother was a Major in the political wing of the LTTE. Curiously at paragraph 27 of the decision letter this was attributed to his being "internally consistent". However there was no external evidence to substantiate the claim.
19. The respondent did not accept the appellant's claim to have been arrested on three occasions but did accept that he had been arrested.
20. The respondent also accepted that the appellant had been tortured whilst in detention.
21. It was further accepted that he was released from detention by paying a bribe.
22. The respondent however found that the appellant had not proved the case in the way the Rules said it should have been proved and so concluded that it was not satisfied the appellant's brother was a Major in the political wing of the LTTE or that his brother had been arrested.
23. The Secretary of State found that even if the appellant had shown that he was a member of the LTTE he had not shown he would have been of interest to the authorities in the event of his return now.
24. I have looked particularly carefully at the letters from P Anton Punethanayagam. The letter dated 12 March 2014 confirms that there is an open warrant for the arrest of the appellant and that a person the lawyer was prepared to identify as the appellant's brother was arrested on 28 January 2008 on suspicion of possession and transporting explosives.

25. Mr Wilding submitted that the appellant was not to be believed.
26. He said that the lawyer had not provided evidence of the reason for the appellant being the subject of an arrest warrant. It could be that he was wanted for criminal activities which in no way were connected to the LTTE.
27. In his interview in answer to question 164 the appellant talked about being stopped at a checkpoint in Vavuniya where he had inadequate identification.
28. Mr Wilding also drew my attention to an alteration that was not initialled on the lawyer's letter where the typed date "28 January 2009" had been altered to say "28 January 2008". He submitted this detracted from the credibility of the letter. The claim that there was a warrant for the appellant's arrest was not supported, for example by evidence that there was a case involving the appellant before the Magistrates' court. That, he submitted, was the kind of evidence that a lawyer might have been expected to have produced.
29. It was the appellant's case that he had signed something that he was not able to read. I am satisfied that this was likely to have been a confession or other incriminating document.
30. Ms Jegarajah reminded me that there is evidence that communications are intercepted in and out of Sri Lanka and that the solicitors instructing her were cagey about what they actually asked from the Sri Lankan attorney.
31. As is so often the case in asylum appeals this is not a matter where I feel able to give an entirely satisfactory answer to the questions prompted by the evidence or raised in submission.
32. The Home Office had not made any enquires about the lawyer's letter. They could, for example, have confirmed from their contacts that the firm is practising and they could have perhaps asked for confirmation that the letter does come from the firm. However, as these things were not really in issue they would have been of limited value. I am not criticising the Secretary of State for not doing any more than she did. Rather I make the point that there was not very much she could do.
33. In his determination Judge King has pointed out how Mr Punethanayagam has made a good impression on the Tribunal on another occasion when he gave evidence. This is far from conclusive proof that he is reliable on this occasion but it is a pointer in favour of accepting what he has to say.
34. I find it probable that the lawyer's letter is written as it is because the appellant is subject to an open arrest warrant and is the brother of an LTTE activist as Mr Punethanayagam asserts. I have already addressed myself on the standard of proof. I do not have to be satisfied that the account is probably right but I am satisfied it is probably right. It is the best explanation I can give for that strand of evidence.
35. Unlike the Secretary of State I think there is a broad degree of plausibility about the appellant's story. He is a Tamil. He has done things for the LTTE. He has got away from Sri Lanka. He returned to Sri Lanka from India and attracted attention because it was at a time when the Sri Lankan

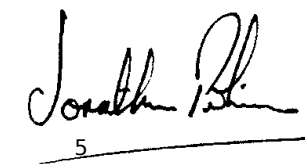
may well have had genuine concerns about how much LTTE activity was going on in India.

36. I think I must accept Ms Jegarajah's submission that the lawyer in Sri Lanka may have had some concerns about his post being read by people who should not see it. Nevertheless, he would have had no reason to say that the appellant is the brother of a person who was in trouble in 2009 unless he was being mischievous, or careless, or knew that to be the case. He was not questioned before me but I think it likely he made reference to the appellant's brother because that is who he thought the person was and he was likely to think that because he had a reason to think it.
37. The medical evidence clearly supports the appellant's claim to have been tortured.
38. I reflected very carefully on Mr Wilding's submission that the reason for the appellant being on an open arrest warrant is uncertain. Ms Jegarajah speculates that it is because the authorities have discovered something about the appellant and are anxious to see him. Mr Wilding speculates that the reasons are not explained because they are not to the advantage of the appellant's case. Each of these explanations could be rights. I find this is an excellent illustration of why asylum appeals have to be allowed if they are proved to the real risk standard. The appellant has produced evidence that I cannot properly discount. That evidence supports his case.
39. Putting everything together I find the appellant is a person who is at risk. He is actively wanted by the authorities now. He has been ill-treated in the past. He is related to an LTTE activist of some prominence.
40. He has proved his case. In the circumstances I allow the appeal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



Dated 4 November 2014



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# APPENDIX 1

IAC-FH-AR-V1

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

Appeal Number: AA/00216/2014

## THE IMMIGRATION ACTS

**Heard at Field House**

**Determination  
Promulgated**

**On 19 August 2014**

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**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**J... C...**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

### **Representation:**

For the Appellant: Miss S Jegarajah, Counsel, instructed by Jeya and Co  
For the Respondent: Mr C Avery, Home Office Presenting Officer

## **DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka, born on 5 January 1981.
2. He claimed asylum on 23 January 2013 which was refused in a decision of 23 December 2013. The appellant sought to appeal against that decision which appeal came before First-tier Tribunal Britton on 16 May 2014.

3. Although the evidence of the appellant's three detentions would seem to have been accepted, it was not accepted by the Judge that the appellant had such a profile as to render him at risk on return. In those circumstances the appeal was dismissed as to asylum and in all other respects.
4. Grounds of appeal were submitted against that decision contending that the Judge's rejection of the evidence as to a warrant was unreasoned and in error. Also that adequate reasons were given for finding a lack of credibility or for rejecting the account of the appellant's profile.
5. Permission to appeal was granted. Thus the matter comes before me in pursuance of that grant.
6. It was the case as advanced on behalf of the appellant that he had been involved with the LTTE until 2004. Further his brother had a significant profile for the LTTE.
7. The appellant claimed that he had been detained on three occasions whilst in Sri Lanka. The first occasion was that in December 2005. He was arrested at his aunt's house in Colombo but had not registered to live and work in Colombo. He was ill-treated and detained for one day. Thereafter he went to India, returning to Sri Lanka in September 2011.
8. He was detained at the airport for overstaying in India and questioned about his involvement with the LTTE. He was detained for seven days, questioned and tortured in the terms as set out in the report prepared by the Medical Foundation which is in the bundle of documents. He was released from that detention on 20 September 2011.
9. Thereafter he went to his aunt in Colombo where he continued to work. In April 2012 he went to Vavuniya and was stopped at a checkpoint. He did not have an identity card with him so he was taken to the police station and questioned. He was further detained and not ill-treated. He went to court and was subsequently granted bail to attend court three months later. He decided to leave the country thereafter. He did not attend the subsequent bail hearing.
10. Evidence was produced at the hearing from an attorney-at-law Mr P Unethanayagam, summarised in a letter of 12 March 2014 together with a letter from attorney-at-law Thiruarul, dated 3 March 2014. Such letter indicated that searches had been made of the relevant court records and that an open warrant for the appellant's arrest was in existence because of a bail report to the police station after three months as required. It also confirmed the arrest of the appellant on 16 April 2012 and his detention until 1 May 2012.

11. It is clear from the determination that the three detentions of the appellant were accepted. It was also accepted that during the second detention the appellant was raped, kicked and beaten in the terms as set out in paragraphs 57 to 61 of the medical report.
12. So far as the warrant was concerned, the Judge dealt with that aspect at paragraph 42 in these terms:

“The appellant said he stopped working for the LTTE in 2000, he was never a member of the LTTE. I accept he was a supporter and find he had nothing to do with the LTTE since 2000. The appellant has to produce an arrest warrant. The appellant has not produced a letter from a lawyer in Sri Lanka who is said to have examined the court records and an open warrant has been issued for the appellant's arrest. Without a copy of the arrest warrant I am not satisfied that such a warrant is outstanding. In any event if there is one in existence, it does not amount to persecution. The appellant would be in breach of his bail conditions imposed by the court.”
13. Miss Jegarajah who represents the appellant submits that that is a wholly inadequate way of dealing with important or potentially important evidence.
14. In her grounds of appeal she cites paragraph 10.13 of the BHC letter of 14 September 2010 which indicates that it is difficult for an accused to be able to obtain a copy of his/her own arrest warrant. When an arrest warrant is issued a copy is kept on a legal file and the originals handed to police. The accused cannot apply for copies of an arrest warrant to the relevant court. In practice forged documents are easily obtainable throughout Sri Lanka.”
15. She submits that it is perhaps to the credit of the appellant that no warrant has been produced given the difficulties of obtaining them. That explains entirely the reason why it is necessary to instruct an attorney-at-law to make those enquiries.
16. My attention was drawn to the case of **CJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. My attention was drawn in particular to paragraphs 146 and 275 of that decision. Reference is made to Mr Punethanayagam in that decision as a wide data base of some 3,000 clients provided certain information to the Tribunal from that data base. At paragraph 275 it is recorded that that attorney's evidence is of a practitioner who has dealt with 3,000 cases of detainees in Colombo and Vavuniya. The Tribunal found his evidence on the processes of bribery to be particularly useful. They did not have the opportunity of hearing him give oral evidence they found much of his evidence to be useful and reliable.



17. Miss Jegarajah submits that it is wholly inadequate to dismiss a statement from such a witness without giving any reasons at all as to why that evidence should not be accepted. It was his firm that had represented the appellant before the court and had obtained bail for him. It is therefore entirely understandable why it would be that that lawyer was motivated to make the statement that was made.
18. In relation to the other aspect of the matter, namely that it was immaterial whether there was a warrant or not, my attention was drawn to paragraph 356(7)(d) of **CJ and Others**.
19. That sets out the current categories of persons at risk of persecution or serious harm on return to Sri Lanka. Such includes:-

“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.
20. She submits that if an open warrant is in existence then the appellant will be on a ‘stop list’ and will therefore fall within the category of individual at risk on return. Thus she submits that the comments made by the Judge are without legal foundation.
21. She invites me to note the contents of the lawyer’s letter as to the profile of the appellant's brother which she submits is a real risk factor facing the appellant in any event.
22. She also contends that the approach taken by the Judge to the appellant's profile lacks clarity and reason. Indeed it matters little whether the appellant has an actual profile or whether it is perceived that he has one for the principles of protection. He was stopped on returning from India and questioned about his involvement with the LTTE precisely because many of the LTTE fighters took refuge there. Even without the authorities knowing the existence of his brother he was ill-treated and tortured as has been accepted.
23. She submits that the fact that the appellant was not ill-treated in the last detention is to a large extent irrelevant because the risk of ill-treatment must always remain an unpredictable environment.
24. She also submitted in her grounds that the Judge erred in the approach taken to the involvement of the appellant in the United Kingdom which was much greater than was thought to be the case. It is also that the error as to the warrant covers the finding made in paragraph 45 of the determination where the Judge does not find that the appellant is on a

'stop list'. Clearly that is in error in the light of the findings set out by the Tribunal in **GJ**.

25. Mr Avery relies upon the Rule 24 response written on 24 July 2014. The appellant was not aware that arrest warrants were not given out and that would tend not to support the suggestion that a warrant existed. If the appellant had been of any interest to the authorities any event such as to require him to be released on bail after having been stopped at random and detained. Thus it does not seem to me that those matters go to the heart of the issue which I have to determine at this stage. It is far from clear from reading the determination as a whole whether or not the Judge accepted the release on bail. By implication of the wording of paragraph 42 that would seem to have been accept.
26. Mr Avery submits that the profile of the appellant is of importance to his continued safety. It is not accepted that he had any significant profile in the LTTE otherwise he would not have been released so easily. He was not ill-treated in the last detention and there is little reason to believe that he would be ill-treated were he to be arrested at the airport for breach of bail.
27. Miss Jegarajah in reality relies upon the wording of **CJ** and of the risk of being arrested at the airport presents.
28. It seems to me that the grounds of appeal have considerable merit in this case. There was on the face of the matter two statements from lawyers who had dealings with the appellant, setting out the investigations which they made to locate the warrant. The evidence is detailed. Or course it is open to a Judge to reject that evidence, reasons for doing so have to be given. In this case no such reasons were given. I find that it could be safely concluded that because no warrant was produced the evidence of the lawyers must therefore be a force.
29. Equally I accept the argument that has been advanced that if a warrant is in existence it constitutes a risk factor to the safety of return. The Judge has not analysed the risk categories set out in **CJ** with particular care even though the aspect of risk from Tamils and others is cited at paragraph 45 of the determination.
30. It is also a matter of some concern to me that at paragraph 49 the Judge finds that the core of the appellant's account of persecution lacks credibility and is a fabrication. It is not entirely clear from that what aspects are said to be false and what are not false. Given the acceptance by the Judge of what may be argued is in reality the core of the claim, namely the torture, ill-treatment in 2011. It would ... more to conclude that that is itself an accurate statement of the position and it seems to me in those circumstances that there are clear errors of law in the approach taken by the Judge such that the decision should be set aside to be remade.

31. Miss Jegarajah is content for the Upper Tribunal to determine the matter upon any rehearing and indeed invites me to find that such a rehearing is unnecessary in the circumstances of the case. There is no reason to reject the credibility of the lawyer as to the existence of the warrant. In such circumstances irrespective of the profile of the appellant and that given his credibility he will be at risk of arrest at the airport and of ill-treatment. She invites me to find therefore that even on that narrow basis it would be entirely proper for me to allow the appeal outright.
32. Mr Avery submits that that is a simplification of the issue. It is far from clear on what basis the appellant was detained on the third occasion, given that he was not ill-treated, it is highly unlikely, he submits, that it was anything to do with the LTTE, rather not having an identity card. He submits that this is therefore prosecution not persecution and that the appellant's arrest at the airport without any significant profile in the eyes of the authorities is unlikely to result in any significant ill-treatment. He invites me to find therefore that it is entirely appropriate to evaluate the credibility of the appellant and of his profile in the eyes of the authorities.
33. Miss Jegarajah points out that initially the lawyers sought bail on 17 April but it was not until 1 May that bail was obtained. She submits that that in itself is indicative of a profile. She invites me to find however that in the light of **CJ** the concerns raised by Mr Avery are of little consequence.
34. I recognise in the principle of fairness that both the appellant and the respondent have a right to be heard as to their respective arguments and develop matters according to the way in which each wishes to present the case. With some reluctance, therefore, I have come to the conclusion that the fairest course is to list this matter for a rehearing, any fact to be preserved in fairness to the appellant is a finding as to his torture on the second detention and an acceptance that he was detained on three occasions. The cause of those detentions may be a matter of further evidence or not.
35. In that connection I note that the attorney who wrote the letter represented the appellant, or least his subordinate did. No doubt in those circumstances the reasons for his detention can be clarified with the attorney as also the reasons why bail is objected to on 17 April and granted on 1 May. Equally it is open to the appellant to adduce further evidence as to the profile, particularly his activities in the United Kingdom.
36. It is unclear whether the appellant would be required to give any further evidence and in those circumstances those acting for the appellant should notify the Tribunal within three weeks of this decision as to whether or not an interpreter in the Tamil language is required.
37. I recognise that it is the case for the respondent that no warrant has been issued. However if it is found that such a warrant is in existence I would

expect the respondent to be in a position to argue therefore that would not bring the appellant within the risk categories of **GJ** and why therefore **GJ** should not be acted upon in those circumstances.

Signed Upper Tribunal Judge King TD