



IAC-AH-VP-V1

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

Appeal Numbers: AA/06494/2013
AA/06498/2013
AA/06501/2013

THE IMMIGRATION ACTS

**Heard at Bradford
On 14 January 2014**

**Determination
Promulgated
On 24 January 2014**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

**JH (FIRST APPELLANT)
FNH (SECOND APPELLANT)
HH (THIRD APPELLANT)
(ANONYMITY DIRECTION MAINTAINED)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Schwenk, instructed by Parker Rhodes Hickmotts,
Solicitors

For the Respondent: Mr M Diwnycz, a Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are citizens of Sri Lanka. The first appellant is the husband of the second appellant and the first and second appellants are the parents of the third appellant. They are subject to an anonymity direction in these proceedings. I shall refer to the first appellant as “the appellant”. By a decision dated 21 June 2013, the respondent refused the appellants’ applications to vary their leave to remain and issued directions requiring them to leave the United Kingdom. The appellants appealed against that decision to the First-tier Tribunal (Judge Saffer) which, in a determination which is dated 10 October 2013, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. Judge Saffer accepted the appellant’s account of past events in Sri Lanka. He found that the appellant had been ill-treated by the Sri Lankan authorities in 2008. The judge found that the injuries identified by the medical expert, Dr Lord, “were caused in the manner and at the time claimed by the first appellant.” [38]. The judge also found that the Sri Lankan authorities visited the appellant’s father’s home in 2008 and again in 2012. The judge recorded at [43], “Despite my accepting that it is reasonably likely the appellants have told me the truth regarding the past, they have failed to establish that they are currently refugees.” The judge had regard to the country guidance of *GJ and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 319 (IAC). Country guidance was summarised by the Tribunal at [356] as follows:

Having considered and reviewed all the evidence, including the latest UNHCR guidance, we consider that the change in the GOSL’s approach is so significant that it is preferable to reframe the risk analysis for the present political situation in Sri Lanka. We give the following country guidance:

- (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.

3. The judge concluded that the appellants had failed to prove that they would be currently perceived as a threat to the integrity of Sri Lanka as a single state or that they would have a significant role in relation to post-conflict Tamil separatism and renewal of hostilities within Sri Lanka [41]. The judge noted that, "This was because of a lack of evidence [the appellant] has done anything to support [such activities] since 2008. Sri Lanka has a sophisticated intelligence monitoring system both within Sri Lanka and the Diaspora." The judge found that there had been no visits to the appellant's father's home between 2008 and 2012 because "as it was known that [the appellant] was not in Sri Lanka given the computerised checks at immigration and as he used his own passport." [40].
4. The difficulty in the judge's findings arises, as Mr Schwenk submits, the failure of the judge to make a finding on the appellant's claim that his father's home had been visited by the Sri Lankan authorities in May 2013 and again only a week before the First-tier Tribunal hearing in October 2013. At [16] Judge Saffer had noted:

On 14/0513, which was about one week before his asylum application, people went to his father's home and said that the appellant must come to speak with them immediately and this put the appellant in fear. They came last week.

5. Whilst Judge Saffer made specific findings regarding the appellants' claims [accepting that these were true] he made no particular finding regarding the visits by the Sri Lankan authorities to his parent's home in May and October 2013. Mr Schwenk submitted that, at [43], that the judge had made a blanket acceptance in treating the appellant's evidence of past events (see above). I agree with that submission. I consider the judge's finding at [43] to be sufficient to indicate his acceptance of all of the evidence of past events given by the appellant, including the visits to his father's home in 2013. The consequences are accurately summarised in the grounds [5]:

The appellant does not claim to be a threat to the integrity of the Sri Lankan state or have a significant role in post-conflict Tamil separatism. However he does claim, and the judge appears to accept, that he is currently wanted by the Sri Lankan authorities. The appellant submits that the... evidence is clear that those detained by the Sri Lankan authorities (which the appellant clearly is reasonably like to be) are at risk of a breach of their protected rights. Indeed, the head note of **GJ** says this in terms: *(iv) if a person is detained by the Sri Lankan Security Services there remains a real risk of ill-treatment or harm requiring international protection.*"

6. Judge Saffer should have assessed the risk to the appellant on the basis that, as at the date of the hearing before him, the Sri Lankan authorities

still sought to arrest the appellant. As the Tribunal made it clear in **GJ**, “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.” The fact that the Sri Lankan authorities were still seeking to arrest the appellant immediately before his flight to the United Kingdom and after he had arrived in this country would indicate that the appellant does not fall into either of those categories (economic migrant/individual caught up in the LTTE struggle). The appellant does not suggest that he actually poses any risk to the unitary Sri Lankan state but, as the Tribunal made clear, what matters is whether he is perceived by the Sri Lankan authorities to pose such a risk. The fact that the appellant is still actively sought by way of arrest by those authorities indicate that it is reasonably likely that he would be stopped upon return to Sri Lanka and thereafter face interrogation and possible ill-treatment. Therefore, I find that the judge has erred in law by failing to consider in his assessment of risk the attempts made by the Sri Lankan authorities in 2013 to arrest the appellant (which the First-tier Tribunal accepted as true). Accordingly, I have set aside the determination and have remade the decision. Having regard to all of the evidence and to the guidance offered by **GJ**, I am satisfied that there is a real risk that the appellant will be stopped and arrested upon return to Sri Lanka and that he will thereafter be exposed to ill-treatment. For whatever reason, I find that the Sri Lankan authorities believe he continues to offer a threat to the Sri Lankan state. I therefore remake the decision by allowing the appeal on asylum and human rights (Article 3) grounds.

DECISION

7. The determination of the First-tier Tribunal is set aside. I have remade the decision. This appeal is allowed on asylum grounds. This appeal is allowed on human rights grounds (Article 3 ECHR).

Anonymity direction maintained.

Signed

Date 23 January 2014

Upper Tribunal Judge Clive Lane