



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/08896/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 24 February 2014

Determination Promulgated

Before

UPPER TRIBUNAL JUDGE KING TD

Between

VM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss S Anzani, Counsel, instructed by Nag Law Solicitors  
For the Respondent: Mr I Richards, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant, born on 4 February 1990, is a national of Sri Lanka. The appellant arrived in the United Kingdom in January 2011 on a visa valid until 29 July 2011. He

travelled on a passport issued in his own name by the Sri Lankan authorities. Subsequently he applied for an extension of leave to remain as a student but that was refused in January 2013. Thereafter he sought to claim asylum.

2. That claim was refused by the respondent which resulted in an appeal hearing before First-tier Tribunal Judge Walters on 10 December 2013. The Judge found the appellant to lack credibility in all respects and dismissed his appeal on all grounds.
3. Grounds of appeal were submitted that the Judge erred in his assessment of certain material facts including medical evidence and that accordingly the assessment of credibility and of risk on return was flawed.
4. Permission was granted particularly in the light of the grant of permission made by the Court of Appeal in respect of **GJ and Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**, circulated on 5 July 2013.
5. Thus the matter comes before me in pursuance of the grant of leave.
6. In essence the appellant's claim is that his brother was involved with the LTTE and was detained in 2006 before leaving the country and seeking asylum elsewhere. The appellant himself claims that he was arrested on 26 October 2006 and questioned by the authorities but that at the time he was only 16 years of age. His release was secured through the good offices of a teacher and the involvement of either his mother or father.
7. The next incident is said to have been in October 2009 when he was once again arrested and detained. He was released from that detention having been ill-treated by the authorities. He remained in Sri Lanka for a year or more following his release, thereafter coming to the United Kingdom.
8. The First-tier Tribunal Judge has made a number of findings in a detailed determination.
9. In respect of the detention in 2006, the Judge does not find that that took place. The Judge notes in particular the overall immigration history of the appellant and his delay in claiming asylum in the United Kingdom as undermining his credibility to some extent. In particular, so far as the events of 2006 are concerned, material inconsistencies in the accounts of the appellant and his elder brother and of his father are noted in paragraphs 51 to 54.
10. It is argued before me by Miss Anzani, who represents the appellant, that there are not in fact inconsistencies but merely an expanded account of involvement. It does not really matter whether the appellant's mother and a teacher secured his release or whether his father and teacher secured his release, what was important was that the evidence from his brother, the appellant and his father were largely consistent on

that point. I was asked to find therefore that it was unfair or unreasonable of the First-tier Tribunal Judge to dismiss the arrest simply on a very narrow basis.

11. Mr Richards, who represents the respondent, invited me to find that they were material inconsistencies particularly relating as these did to his release.
12. It seems to me, and I so find, that it was open to the Judge in the light of the context as a whole to make the findings which were made so far as 2006 is concerned.
13. Criticism is also made of the Judge's finding that the lapse of three years between 26 October 2006 and 8 October 2009 demonstrates a lack of interest in the appellant by the authorities. That is to ignore, it is submitted by Miss Anzani, the reality of the ceasefire and all that flowed from it. That may be so but the reality of the matter is that the appellant seemingly did not come to the attention of the authorities before 2009. In 2009, as has been recognised, there was renewed interest by the authorities making enquiries in relation to LTTE individuals and activities. That is an interest that has been highlighted in the case of GJ.
14. I have some concerns as to what the Judge is seeking to say in relation to the detention in 2009 and whether or not it is accepted that having taken place. It is not a finding that is necessarily clearly made, as can be seen from the context of paragraphs 65 and 66 of the determination. The fact of the detention would seem to be supported by a letter from an attorney, Kosala Wijayatilake, in a letter of 4 October 2013 written to the appellant's representatives in response to their previous request.
15. He indicates that he was instructed on 9 October 2009, a day after the appellant was arrested. He was instructed by the appellant's mother. The appellant was detained on suspicion of links with the LTTE and held in the headquarters of the Criminal Investigation Department. He was not formally charged with any offence nor was he brought before the courts, nor was he convicted of any offence. He was released on 4 January 2010 by the police. The lawyer was not aware of any condition attached to his release.
16. It is perhaps surprising what the letter does not say by way of detail, namely details of the allegations that were being made and the circumstances of his release. If the lawyer was instructed as claimed it is perhaps surprising that he did not know that. It is the case of the appellant that he was released by way of a bribe.
17. It is of course significant, if correct, that the appellant was in detention for approaching three months, which is a long time. It is surprising therefore that the lawyer who claims to have represented him over that period, did not give or volunteer any further detail.
18. The letter has significance in one way in that it is perhaps reasonable to expect that, if the appellant received the ill-treatment which he claims to have received at the

hands of the authorities, there would have been some reference made to it to his lawyer.

19. In his statement the appellant claims that he was questioned and tortured in detention. He was stabbed on the right knee with a bayonet. His left arm was hurt through beating and he believes that a bone was cracked. He was beaten and questioned at the beginning but when he denied things he was stabbed and ill-treated in ways as set out in question 4.1 of the screening interview. He said that that made him confess that he had helped the LTTE. He signed a confession to that effect.
20. It is perhaps surprising that if the appellant indeed had confessed to pro-LTTE activities he would have been released at all. There is a medical report prepared by Professor Lingam arising from an examination of the appellant on 30 October 2013. It is singularly uninformative as a report. The appellant indicated that he had been beaten in 2006 with wooden poles over the back of his head and all over his body and that his face had been banged on the table causing lacerations to the face and forehead. The response by Professor Lingam was to say

“clinically I would say that such lacerations on the face can be caused from wounds from accidents and traumas other than the trauma described by the patient. It is for this reason I have indicated that the findings here are highly consistent with the history acknowledging that any trauma can leave such scars.”

This is not perhaps the most helpful of statements.

21. However the doctor records the contention by the appellant that he was beaten with wooden poles on the second occasion, kicked with booted feet and stabbed with a bayonet of a rifle in the right knee.
22. It may reasonably be expected that the stabbing of the bayonet to the right knee would have been a significant injury to have focused upon. Professor Lingam says, however, “as regards the causation all I would say is that these scars are consistent with the history as any wounds from any cause can leave scars like this”. However the doctor goes on to note the problems with asthma and with fissures to his tongue. He seems not to offer any particular causation of such fissures.
23. The Judge in the determination notes the report of Professor Lingam in paragraph 63 and finds that it is not very helpful in the circumstances. Given the somewhat generalised comments that are made in the report there is perhaps some justification for that conclusion. However, as I have indicated, if such action had happened it would be reasonable to expect that the appellant would have mentioned it to his lawyer but nothing is said in the letter of the lawyer concerning such significant matters.

24. It seems to be accepted by the Judge that the appellant was detained but thereafter released. The appellant remains in Sri Lanka for a further year or so before coming to the United Kingdom.
25. It is not entirely clear from the determination, and particularly from paragraphs 75 to 78, whether the Judge specifically considered that three month period of detention in the context of a risk or potential risk on return. Nevertheless the Judge has indicated that he has taken account of any risk to the appellant in the light of **GJ and Others**.
26. The appellant left Sri Lanka on his own passport and the Judge considers that is significant as a feature indicating that he is not of any interest to the authorities. Challenge is made to that conclusion in the grounds of appeal on the basis that such documents can be obtained by bribery and that it is very easy for a person to leave even in their own identity to the airport. It is said that the Judge ought not to have given such weight to that factor as was given.
27. It seems to me that the Judge was looking at various factors for and against and that it is a factor which is properly to be relied upon in the overall context of the claim.
28. A matter of concern, however, is whether the Judge has articulated the three month detention in terms of risk on return.
29. It is to be noted in that context that the appellant remained thereafter in Sri Lanka seemingly left the jurisdiction without difficulty, thereafter failing to claim asylum, at a time when it would perhaps have been reasonable to expect him to have done so.
30. The risk factors are set out by the Tribunal particularly in its head note in **GJ**, particularly headnote 7(a) to (d). In considering those risk factors it is clear that those do not apply to the appellant. It is in that connection that the lawyer's letter is particularly unhelpful in not clarifying the nature and reason for the detention and the reason therefore for the release.
31. If the appellant had been suspected of being an LTTE activist in 2006 and again in 2009 it is surprising in the extreme that he would have been released in the circumstances which he claims to have been.
32. I recognise that leave has been granted against the decision of **GJ** and that it cannot simply be assumed that if a person is not within the specified risk categories of that case he or she would not otherwise be at risk upon return. The Judge notes, however, at paragraph 78 that the appellant has done nothing in the United Kingdom to draw attention to himself by the authorities and did not find that there is any profile adverse to the appellant which would place him at risk on return. That the appellant may have been detained for questioning without more even though such a lengthy period does not necessarily create a profile recognised or set out in **GJ**.

33. As Mr Richards submits, it is for the appellant to show why he would be of any risk upon return, particularly as the period of detention in 2009, even if accepted as taking place, resulted as the Judge found, in no ill-treatment and release.
34. It is to be noted that the appellant has subsequently claimed that his younger brother disappeared in June 2013 following his detention in May 2013. The Judge noted, however, that there was a lack of evidence on that matter and was not bound to accept what is said, given the findings of credibility that have been made.
35. I recognise in fairness to the appellant that it may have been somewhat of an oversight by the Tribunal Judge not to have specifically identified his findings as to the detention in 2009 and whether such standing by itself constitutes a risk to the appellant within in the ambit of GJ or elsewhere.
36. That having been said I do not find that the appellant's situation and circumstances is one which falls within GJ even with the caveat as addressed to it by the Court of Appeal.
37. Overall I find that the Judge made sustainable findings of fact that were not irrational or manifestly unfounded. I find that the Judge properly analysed the context of the claim and came to findings that were properly open to be made.
38. Accordingly the decision shall stand and the appellant's appeal before the Upper Tribunal dismissed.
39. The decision of Judge Walters shall stand namely that the appellant's asylum appeal is dismissed, the appeal for humanitarian protection is dismissed and the human rights appeal is also dismissed.

Signed

Date

Upper Tribunal Judge King TD