



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09771/2013

THE IMMIGRATION ACTS

Heard at Field House
On 14th February 2014

Determination Sent:

Before

UPPER TRIBUNAL JUDGE RENTON

Between

N P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Nicholson, Counsel instructed by Soma & Co. Solicitors
For the Respondent: Ms P Hastings, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant is a male citizen of Sri Lanka born on 3rd December 1972. The Appellant arrived in the UK in January 2001 when he applied for asylum. The Appellant absconded, and his application was not finally decided until 15 October 2013 when it was refused for the reasons set out in the Respondent's letter of that date. The Appellant appealed, and his appeal was heard by Judge of the First-tier

Tribunal Halliwell (the Judge) sitting at Newport on 27th November 2013. He decided to allow the appeal on asylum grounds for the reasons set out in his Determination dated the following day. The Respondent sought leave to appeal that decision, and on 19 December 2013 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge allowed the appeal because he found the Appellant to be a truthful witness. His findings of fact were that the Appellant had been a member of the LTTE as a combatant for a period of seven years from 1987. The Appellant had been detained on two occasions in 1995 and in 2000 when he had been severely ill-treated in a manner amounting to persecution. The Appellant had attended demonstrations in London which had taken place during a visit of the Sri Lankan President. Applying this matrix of facts to the country guidance case of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**, the Judge found that there was a real risk that the Appellant would be persecuted on his return to Sri Lanka. The Judge took into account the Appellant's past persecution, and found that as the Sri Lankan authorities had a sophisticated security apparatus, the Appellant's sur place activities in the UK would be known to them. The Judge found that the Appellant came within the risk category identified at paragraph 7(a) of the headnote to **GJ**.
4. At the hearing, I heard submissions from both representatives. Those submissions are recorded in the Record of Proceedings and I will give only a summary of them below.
5. Ms Hastings referred to the grounds of application and submitted that the Judge had erred in law in coming to his decision. The Judge had given insufficient reasoning for his conclusion, and had not taken into account the passage of time since the Appellant's experiences in Sri Lanka, and the fact that the Appellant upon his own evidence had only a low profile. The Judge had failed to apply the decision in **GJ** correctly. He had not explained why an Appellant with such a low profile came within the risk category identified at paragraph 7(a) of **GJ**, and the Judge had failed to consider the caveat contained in paragraph 8 whereby the Appellant's past history would only be relevant to the extent that it was perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan State or the Sri Lankan government.
6. In response, Mr Nicholson referred to the Rule 24 Response and his Outline Submissions. He argued that there was no error of law in the Judge's decision. The Judge's decision had been based upon findings of fact which had not been challenged in this appeal. Those findings were that the Appellant had been an active combatant for the LTTE for as long as seven years who had been detained and tortured twice. In more recent times, the Appellant had engaged in sur place

activities in demonstrating against the President of Sri Lanka, and it was known as decided in **GJ** that the Sri Lankan authorities took great interest in diaspora activities. It therefore could not be said that the Appellant had a low profile. In any event, the risk category identified at paragraph 7(a) at **GJ** did not require a significant profile. There was good reason for the Judge to conclude that the Appellant would be considered to be a present risk by the Sri Lankan authorities. The Appellant's sur place activities indicated that he wished to continue the struggle against the Sri Lankan State. The important issue was how the Appellant would be perceived by those Sri Lankan authorities.

7. I find no error of law in the Judge's decision. The Judge made clear findings of fact which have not been disputed in this appeal. He applied those facts to the current country guidance case and came to a decision which was open to him. I find no misinterpretation of the decision in **GJ**. It was not perverse of the Judge to find that the Appellant came within risk category given at paragraph 7(a). It was not disputed that the Appellant's sur place activities in protesting against the visit of the President of Sri Lanka to the UK would be known to the authorities in Sri Lanka, and bearing the Appellant's history as an LTTE combatant who had been detained and tortured on two occasions, regardless of how long ago those detentions had been, it was open to the Judge to find that the Appellant would be perceived to be a continuing Tamil separatist and therefore a threat to the integrity of Sri Lanka as a single State. It was open to the Judge to find that those sur place activities, coupled with the Appellant's history, gave him a sufficient profile to be of concern to the Sri Lankan authorities. In any event, following the recent comments of the Senior President of Tribunals, Sullivan J, it would not have been an error of law for the Judge not to confine himself to a strict interpretation of the risk categories given in **GJ**.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal made an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Upper Tribunal Judge Renton