



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

Appeal Number: AA/06264/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On Tuesday 20 October 2015**

**Determination  
Promulgated**

**On Thursday 22 October  
2015**

**Before**

**UPPER TRIBUNAL JUDGE SMITH**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**MR S V**

[ANONYMITY DIRECTION MADE]

Respondent

**Representation:**

For the Appellant: Mrs Williock-Briscoe, Senior Home Office Presenting Officer

For the Respondent: Miss Seehra, Counsel

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity direction was made by the First-tier Tribunal. As a protection claim, it is appropriate to continue that direction.

**DECISION AND REASONS**

**Background**

1. This is an appeal by the Secretary of State for the Home Department. For ease of reference, I refer below to the parties as they were in the First-Tier

Tribunal albeit that the Secretary of State is technically the Appellant in this particular appeal.

2. The Appellant is a national of Sri Lanka. He arrived in the UK on 15 February 2012 and claimed asylum on 14 May 2012. His claim was rejected on 12 August 2014 and he was served with notice of removal as an illegal entrant. He appealed against the decision also on human rights (Article 8) grounds as his wife and daughter are in the UK.
3. The Appellant's appeal was allowed on both asylum and human rights grounds by First-Tier Tribunal Judge Wilsher in a decision promulgated on 13 July 2015 ("the Decision). The Respondent sought permission to appeal the Decision on the basis that the Judge wrongly applied the findings in GJ and others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 ("GJ") to the facts of the case. The Respondent does not challenge the allowing of the appeal on human rights grounds. Permission to appeal was granted by First-Tier Tribunal Judge Foudy on 9 September 2015 on the basis that the Judge had arguably misdirected himself as to the law given the risk categories as set out in GJ. The matter comes before the Upper Tribunal to determine whether the First-tier Tribunal Decision involved the making of an error of law.

### **Submissions**

4. Mrs Williocks-Briscoe submitted that the Judge had not given proper consideration to the Appellant's profile when applying the guidance in GJ. The Judge found that the Appellant would be on a "stop list". There was no evidence that a failure to report would lead to a person being included on a stop list. There was no evidence that the authorities have issued an arrest warrant or Court order against him (which might disclose a reason for the Appellant to be on a stop list). Nor is there any indication of any adverse interest being shown in him since he left Sri Lanka. Once it is accepted that there is no basis for this finding, it is unclear on what a finding of risk on return could be based. The Appellant surrendered to the authorities in 2009 at the end of the civil war. He was not targeted. He was not a LTTE member or combatant. The issue for the Judge is whether the Appellant would be perceived by the Judge to be a "de-stabilising influence" and therefore a current threat to Sri Lanka. There is no evidence that the Appellant has been active in diaspora activity. The Appellant relies in his Rule 24 statement on the observation in MP & Ors v SSHD [2014] EWCA Civ 829 that an asylum seeker could be at risk even absent diaspora activity but that comment related to an asylum seeker with a very different (and higher) profile than this Appellant.
5. Ms Seehra submitted that the Decision provides a detailed analysis of the claim. The Appellant has a complicated past. He was detained in 2000 and placed on reporting conditions. The finding that he would be at risk for failing to report relates to the fact that this is not the first time that the Appellant failed to report and when he did so in the past he was arrested on that account (in 2004). He has a profile of coming to the adverse attention of the authorities on four occasions. He has been detained in the past. It is

also the case that, when he surrendered himself to the authorities in 2009, he was detained for six months and then harassed by the authorities to identify LTTE members. The issue is not what involvement the Appellant had with the LTTE but what involvement the authorities perceive he had and the continuing adverse interest after his release from detention at the end of the war reflects their perception of him as someone of continuing interest. This coupled with his past detentions on four occasions and the fact that he might plausibly be on a stop list is sufficient to find that he is at risk on return. Even if the finding that the Appellant would be on a stop list was not open to the Judge due to a lack of evidence of an arrest warrant or Court order, the Appellant would still be at risk as GJ indicated that those on a watch list would still be monitored. That factor, coupled with the continuing adverse interest after the end of the war suggests that the authorities' perception of the Appellant would still be as a de-stabilising influence and he would still be at risk on that account.

### **Decision and reasons**

6. The Judge sets out at [2] of the Decision the details of the Appellant's claim and I do not repeat those details. In short summary, the Appellant was involved with the LTTE as a welder working on their vehicles from 1998 to 2000 in his home area. He was arrested in 2000 and detained. His arrest was due to him not being listed on the family registration for his wife's family home where he was then staying. He was detained for two and a half years until November 2002 when his father secured his release by payment of a bribe. He was ill treated during detention and he admitted during that period his involvement with the LTTE. The Appellant was placed on reporting conditions and signed for a few months but then ceased. He was arrested again in 2004 based on his failure to report. This was during the period of the peace process. He was detained for two and a half months and again released after paying a bribe and placed on reporting conditions. He was again arrested later in 2004 for a week and a half. In May 2009, he surrendered to the Sri Lankan army and stayed in the army camp for about six months after which he was told to report at the local EDP and PLOTE bases so that the authorities could maintain contact with him. He was questioned by them after his release about LTTE members. The Appellant came to the UK having discovered that his wife and daughter were here. They are both British citizens having been granted exceptional leave and then indefinite leave. As I note above, the Appellant's appeal succeeded on human rights grounds and the Decision is not challenged on that aspect.

7. The Judge sets out at [6] of the Decision, his findings in relation to the asylum claim as follows:-

"[6] The principal country guidance case on Sri Lanka is GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). The principal risk category that applies to the appellant is set out at paragraph 356 and in the head note 7(d), being 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 an arrest warrant. The overriding test is whether or not the government of Sri Lanka thinks that an individual may pose a genuine risk to the unity of the Sri Lankan state.

Given the findings of fact that I have made, it is plain that the appellant has been detained by the authorities on four occasions in 2002, 2004 twice and 2009. He has failed to continue reporting on at least two occasions. On a previous occasion when he failed to report he was re-detained. There is I find a real risk that his name would appear on a stop list because he has breached his bail conditions again in 2009. The appellant has been subjected to extensive questioning given his long term residence in a Tamil area and his activity as a support worker for the LTTE. His account of being an innocent person was disputed and the intelligence services wished to secure further information from him during the questioning that he underwent. For all these reasons I find that he would be at real risk of being either stopped at the airport or if he were allowed to pass through the airport being subject to further investigation and arrest once he was back in his home area. The local authorities are reasonably likely to have a record that he abandoned reporting conditions in 2009. If he were detained he would be reasonably likely to be tortured. The reason for the risk of torture is his imputed political opinion. This appeal therefore must be allowed on refugee grounds.”

8. I start with the issue of whether the Judge’s finding that the Appellant is likely to be on a “stop list” involves an error of law. The evidence in relation to “stop lists” in GJ appears at [309] where it said that a person will be on a stop list by reason of an outstanding Court order or arrest warrant which in turn emanates from a submission at [170] that the Sri Lankan authorities have two databases – a stop list and a watch list. No detail is given of why such an order or warrant might exist so as to lead to a person being placed on a stop list. There is some suggestion at [131] that an arrest warrant might be issued if a person was released informally from detention but this appears to be discounted as speculative. The Appellant does not rely on any evidence that there is a Court order or an arrest warrant in existence against him. However, the Appellant was re-detained previously on the basis of a previous failure to report and, in light of the lack of detail about when a Court order or arrest warrant might be issued, this was a finding which was open to the Judge on the facts of this case.
9. Even if the finding that the Appellant is likely to be on a stop list were not open to the Judge, I accept Ms Seehra’s submission that the Appellant is likely to be on a watch list (as the Judge found). In that event, the issue is whether the Appellant may be perceived by the authorities as a destabilising influence. Notwithstanding the lack of diaspora activity or high profile within the LTTE in the past, when the Appellant’s past history is considered as a whole and based on the reasoning at [6] of the Decision, the finding that the Appellant would be at risk on this account is one which was open to the Judge. I may not have reached the same conclusion on this evidence but I am not satisfied that the Decision misapplies the guidance in GJ to the facts of this case. Accordingly, I am not satisfied that the Decision contains a material error of law.

## **DECISION**

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

**I do not set aside the Decision**

A handwritten signature in black ink, appearing to read 'E. Smith', written in a cursive style.

Signed  
Upper Tribunal Judge Smith

Date 21 October 2015