



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

Appeal Number: AA025352015

THE IMMIGRATION ACTS

Heard at Field House

**On 15 January 2016
and 5 May 2016**

**Decision & Reasons
Promulgated
On 25 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

**J R H
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Seehra (counsel instructed by Nag Law Solicitors)

For the Respondent: Mr S Kandola (Senior Home Office Presenting Officer)
(January

hearing)

Mr T Wilding (Senior Home Office Presenting Officer) (May
hearing)

DECISION AND REASONS

1. This is the appeal of JFH, a citizen of Sri Lanka born [] 1984, against the decision of the Secretary of State of 30 January 2015 to refuse his asylum claim; the appeal having been dismissed by the First-tier tribunal, he now appeals to the Upper Tribunal with permission.
2. His claim can be summarised as follows. He grew up in a village in a Tamil part of the country and after finishing school worked for an NGO relieving the hardship caused by the tsunami of 2004. He was kidnapped by the LTTE and forcibly recruited into their ranks, receiving weapons training and a LTTE name and number. He trained and served alongside one Mr T, from Killinochchi, who knew the nature of the work that he did with the LTTE.
3. He took the first safe opportunity that arose to escape from the LTTE on 25 December 2008, when he was assigned to the Salai Centre Point, and travelled through the jungle before swimming for some two hours to reach his cousin's home in [M]; he was then reunited with his mother and spent some months in [P], over the period in which the Sri Lankan army were rounding up the civilian population and ordering all LTTE cadres to surrender and register with the authorities.
4. Fearful of being informed on if he did not answer this order, he too surrendered on 20 April 2009. He was taken to Omanthai police station, finger printed and interrogated, tied to a table and tortured, receiving injuries. He told the authorities that he had been forcibly recruited but that he had never seen active service. He was taken to a court in Vavuniya on 29 April 2009 and told he would be released after a year of rehabilitation; he duly went through a year of forced labour for the army, though at the end of that period, rather than be released, he was taken to a number of rehabilitation centres, repeatedly interrogated about his activities for the LTTE, and ill treated. He was taken to Boossa Detention Centre, spending his time in an overcrowded cell with no toilet facilities, and repeatedly beaten. After about nine months there he was moved to a further place of rehabilitation, Maruthamadu, though again this comprised forced labour. He spent some four years in total imprisoned or conducting forced labour, before being released with around 130 other detainees on 14 January 2014.
5. He went to live with his mother in [V], returning to his studies and starting an accountancy course; he was regularly visited by the police and the Criminal Investigation Department over this period: they questioned both him and his neighbours. His mother and brother remain in Sri Lanka: the family received occasional visits from the security forces after he had left the country.
6. Mr T had never revealed his own LTTE activities to the authorities, having failed to surrender at the end of the war. He was concerned by news from Mr T's mother that her son had been recently arrested: Mr T

knew of the Appellant's LTTE training and that he had compiled maps and plans for the group using advanced information technology, this being a matter that the Appellant had not revealed to them during his past interrogations.

7. His case was supported by his GP, Dr Kugapala, who had referred him for mental health assessment believing him to be suffering from PTSD: she stated that deportation to Sri Lanka might lead to his death.
8. The First-tier Tribunal accepted the appellant's account of past events (as had the Home Office) as true given its consistency and detail, and plausible when read with the country evidence and the ample supporting documents.
9. The First-tier tribunal set out numerous extracts from the Country Guidelines *Gj and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 319 (IAC), of which the most relevant given the ambit of the appeal are these. From the headnote:

“(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.

(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.”

10. And from the text of *Gj*:

“306. The evidence before us indicates that any Tamil who seeks a travel document from the SLHC in London or another diaspora hotspot will have a file created in Colombo and will be interviewed in London before a decision is made to issue a TTD. By the time the DIE in Colombo emails a TTD to London to be issued to such an individual, the Sri Lankan authorities will know all they need to know about what activities an individual has undertaken outside Sri Lanka and, in particular, whether the returnee poses a real risk to the unitary Sri Lankan state or the GOSL on return.

307. Sri Lankans returning without a Sri Lankan passport will require an Emergency Travel Document for which they need to apply at the SLHC in London. Full disclosure of all relevant identity information is given in the process of obtaining a TTD. An applicant completes a lengthy disclosure form and is then interviewed at the Sri Lankan High Commission in London; the information received is sent to the Ministry of External Affairs and the Department of Immigration and Emigration in Colombo. Files are created and records verified; if the authorities agree to issue a TTD, the MEA in Colombo emails the document to the Sri Lankan High Commission in London where the TTD is stamped, a photograph added, and issued to the applicant.

308. During the re-documentation process in the United Kingdom, or at the airport on return, a forced returnee can expect to be asked about his own and his family’s LTTE connections and sympathies.

309. Those with Sri Lankan passports returning on scheduled flights will be able to walk through Colombo airport without difficulty, unless their names are on a “stop” list, by reason of an outstanding Court order or arrest warrant. Those on a “watch” list are not stopped at the airport but will be monitored and if considered to be a destabilisation risk, may be picked up from their home area.

310. There are no detention facilities at the airport. Although individuals may be interviewed at the airport by the security forces, the Sri Lankan authorities now aim to move returnees relatively quickly out of the airport and on their way to their home areas and to verify whether they have arrived there soon afterward. If the authorities have an adverse interest in an individual, he will be picked up at home, not at the airport, unless there is a “stop” notice on the airport computer system. There is no evidence that strip searches occur at the airport; the GOSL’s approach is intelligence-led rather than being driven by roundups and checkpoints as it was during the civil war. ...”

11. It also set out extracts from *Gj* directly addressing the question of rehabilitation, finding that there was limited information available about the programme’s operation, although detention of typically two years

was common without judicial oversight; the nuisance value of post-rehabilitation monitoring varied with the attitude of the local commander, and it did not amount to persecution, and at the time of that decision it appeared that the ongoing programme focussed on those seeking to establish contact with the leaders or activists in diaspora hotspots ([316]-[318]).

12. Evaluating the Appellant's claim in the light of those extracts, the First-tier tribunal found that the arrest of Mr T should not cause any significant difficulties for him on a return. There was no information available as to whether or not Mr T had in fact revealed his true activities to the authorities, and in any event the Appellant had been forced to admit (falsely) to being an active fighter during his interrogations, and had nevertheless been released from detention, the receipt of new information as to his involvement in map compilation using GPS was unlikely to lead to his future detention. The double contingency, of a relevant revelation by Mr T and of its leading to detention, was thought to be too remote a risk to reach the real risk standard: any dangers to him were "a very remote possibility", particularly given his lack of political activities in the diaspora.
13. The Tribunal nevertheless expressed its concern at the ongoing close monitoring of the Appellant, but considered itself bound by *GJ* that post-arrest monitoring would not in itself amount to persecution. It observed that he had been subjected to longer detention than the norm (*GJ* having styled two year spells as not unusual) but noted he was released together with a large batch of other detainees.
14. The Appellant's mental health problems would not themselves mean that the monitoring to which he would continue to be subject amounted to persecution: the GP's letter contained neither diagnosis nor prognosis, and the evidence did not suggest any real risk of suicide on removal or arrival.
15. Grounds of appeal against that decision argued that material considerations had been overlooked by the First-tier Tribunal: in particular that his vulnerable mental state might threaten his ability to withstand questioning and impact on how he presented himself to the authorities, that diaspora activity was not the sole matter that concerned the Sri Lankan authorities (as recognised in *MP* [2014] EWCA Civ 829 at [43], [50]) and that the likelihood of the Appellant's circumstances coming to light following Mr T's interrogation was significant given the known methods of the security forces and the fact that information from him would potentially demonstrate that the Appellant had not revealed the full scope of his own activities.
16. Permission to appeal was granted by the First-tier Tribunal on 5 November 2015 because it was considered arguable that inadequate

reasons had been given for the conclusion that there was only a remote possibility that Mr T's arrest would lead to the Appellant's re-detention.

Findings and reasons - Error of law hearing

17. The First-tier Tribunal made a fully reasoned decision with which it plainly took care. Nevertheless even a thorough decision is not necessarily immune from legal error: asylum appeals must be approached applying the appropriate anxious scrutiny, and as Carnwath LJ explained in *YH* [2010] EWCA Civ 116 that term "has by usage acquired special significance as underlining the very special human context in which such cases are brought, and the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account."
18. I ruled that there were in fact material errors of law, essentially because there were factors present that necessitated express treatment before the claim could safely be discounted, but which did not receive the necessary consideration. In particular the First-tier Tribunal had failed to adequately consider the possibility that the Appellant had been mistreated in detention *after* the authorities had received information leading them to believe him to be a fighter, which would accordingly indicate that the receipt of further information showing his involvement with the LTTE to have been greater than that previously appreciated might very well lead to a repeated risk of serious harm. Furthermore there was no consideration of the likelihood that Mr T would be ill-treated in detention and that in consequence would give the authorities information regarding the Appellant's true activities. Given these considerations, I found that the decision was flawed by material errors of law, because of the failure to take account of the material considerations identified by the Country Guidelines decision as set out above.

Findings and reasons - Continuation hearing

19. The proceedings before me were conducted with the greatest efficiency for which I am grateful to both Ms Seehra and Mr Wilding, the latter agreeing that the Secretary of State could not seriously resist the inference that, given the findings of primary fact made by the First-tier Tribunal, the Appellant was in truth at real risk of persecution for reasons of attributed political opinion. In those circumstances I shall express my reasons for considering that concession to be properly made relatively concisely.
20. Firstly, given the acceptance below that the Appellant had been seriously mistreated in detention over an extended period, there must be a real risk that at least some of that mistreatment took place after the authorities began to believe him to have played down his true involvement with the LTTE. Given that possibility, there must be a real

risk that the receipt of further intelligence to similar effect would put him in danger again. That of course seriously undermines the First-tier Tribunal's central thesis, which was that, had he been thought to have had a greater role than he had admitted, he would have suffered ongoing mistreatment rather than being released. On the contrary, there is a real risk that he suffered serious harm after having revealed information that gave him more of a profile than he had originally admitted, precisely the possibility that he now faces again.

21. Secondly, given the country evidence and Country Guidelines, there is a likelihood that Mr T would be ill-treated in detention once in the hands of the security forces: that, after all, is the starting point of risk assessment in *GJ*. It is very difficult to conclude that there is no real chance of him revealing the names of close colleagues such as the Appellant in those circumstances. *GJ* expressly notes the existence of "watch lists", beyond the "stop lists" held at the airport for those already subject to outstanding arrest warrants. The continued attention paid to the Appellant's family since his departure for this country shows that a watch has been kept on him.
22. Again, given that intelligence-based investigations might link the activities of LTTE operatives known to have served in the same area, it must be recognised that there is a real risk of the Appellant's name coming up in the course of Mr T's interrogation. At that point there must be at least some possibility that his true activities would come to light and that it would be noted that they were inconsistent with the information he had proffered to the authorities and indeed with the assumption they had made as to his being an active fighter: rather his was a role that involved mapping skills, the very kind of talent that might be of interest to those minded to ensure the LTTE remains a spent force. As identified in the UNHCR Guidelines cited in *GJ* at [290], factors that might give rise to a need for international refugee protection, depending on the specifics of the individual case, include former LTTE cadres "conducting functions within the administration, intelligence, "computer branch" or media (newspaper and radio)". The possibility of such individuals being at risk sits squarely alongside the observation of Underhill LJ in *MP & Anor v Secretary of State for the Home Department* [2014] EWCA Civ 829 that on a fair reading of *GJ* there may "be other cases ... where the evidence shows particular grounds for concluding that the Government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state."
23. Beyond this the Appellant's past experiences must be recognised as amounting to an individualised history of persecution, and paragraph 339K of the Immigration Rules states that "The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that

such persecution or serious harm will not be repeated.” Given that his abuse occurred after the end of the civil war, and in the context of a detention significantly exceeding the two-year norm noted in *GJ* for the rehabilitation process, one cannot be confident that his past experiences will not recur.

Decision:

The appeal is allowed because the immigration decision was contrary to the obligations of the United Kingdom under the Refugee Convention.

ANONYMITY ORDER

The Appellant has been accepted as a credible witness of past events and his claim to be a Convention refugee remains unresolved, and he has family members remaining in Sri Lanka. Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 24 May 2016

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes