



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

Appeal Number: AA/05833/2015

THE IMMIGRATION ACTS

Heard at Field House, London

On 20th May 2016

**Decision & Reasons
Promulgated**

On 1st June 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR MAKINTHAN PALKANES
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman (Counsel)

For the Respondent: Mr E Tufan (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Grimmett, promulgated on 15th March 2016, following a hearing at Birmingham Sheldon Court on 11th March 2016. In the determination, the

judge allowed the appeal of the Appellant, whereupon the Respondent Secretary of State applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sri Lanka, who was born on 30th August 1991. He appealed against the decision of the Respondent dated 13th March 2015, to refuse to grant him asylum and to remove him from the United Kingdom under Section 10 of the immigration and Asylum Act 1999.

The Appellant's Claim

3. The Appellant's claim is that he left Sri Lanka on 22nd November 2013 and arrived in the UK some eleven days later using a false passport. He states that in January 2009 he was taken by force by the LTTE who required one member from each household to join them. The Appellant's elder brother had been told to join but he ran away from the LTTE and the Appellant was taken instead. He underwent basic training. He was content to provide food, weapons and carry those who were injured. He ran away in March 2009 because he saw people being injured. He was shot at but managed to escape and returned home. He had no further involvement with the LTTE but in October 2013 he was arrested by the authorities because his father had had an argument with a neighbour and as a result of which the neighbour alleged to the CID that the Appellant had been in the LTTE. The Appellant was detained for a month and questioned about the LTTE. He denied being with the LTTE until he was tortured where he admitted it after about ten days in detention. He was seriously ill-treated. He was released after his uncle paid the CID 2,000,000 rupees. The Appellant had scars on his back from ill-treatment.

The Judge's Findings

4. The judge, in what is a comprehensive and detailed determination, considered the refusal letter and observed how the Respondent had accepted that there was external evidence to suggest that if the Appellant's brother escaped from the LTTE then the Appellant would have been recruited. Curiously, the refusal letter goes on to say that, nevertheless, there should be "particular information relating to the circumstances you describe" (paragraph 10). The judge held that "the Secretary of State overlooks the detailed information provided by the Appellant in his interview" (paragraph 10), and that the refusal letter was "poorly drafted" (paragraph 11). The judge then added substance to this conclusion by observing that the Secretary of State "makes no reference to the interview and the detailed information provided by the Appellant of how he got to the place where he was detained, the state of the room he was in, the time he was there, what he was asked and what was done to him" (paragraph 12). The judge also had regard to the fact that the Appellant

“has now produced a scarring injury report from Professor Lingam in which he says that although the Appellant did not claim to have been burnt there were scars that were from burning and it is usual for a patient not to be aware when being burned and beaten in view of the agony” (paragraph 13).

The judge recorded the Appellant’s GP stating that the Appellant was “having nightmares in which he saw his parents being tortured” (paragraph 14). A psychiatrist’s report was also taken into account (paragraphs 16 to 17). The evidence of the two witnesses was significantly noted (paragraphs 18 to 19). In the end, the judge took the view that, “looking at the evidence in the round” it was clear that the Appellant had been forcibly recruited and ill-treated, and whatever was stated by the Respondent as forming the basis of the rejection of the claim, “the Appellant has however dealt with ... those matters explaining that he was forcibly recruited to the LTTE because his brother ran away and his claim is supported by his witness whose evidence was unchallenged” (paragraph 20). In the end, the judge came to the firm view that, “I am satisfied that were the Appellant to be returned it is likely that he would be detained on arrival not least because of his current fragile mental state which would bring him to the attention of those at the airport” (paragraph 20).

5. The appeal was allowed.

Grounds of Application

6. The grounds of application state that the judge erred in failing to give any reference to the country guidance case of **GJ (Post Civil War Returnees) Sri Lanka CG [2013] UKUT 00319**.
7. On 6th April 2016, permission to appeal was granted on the basis that, “it is generally an error of law to fail to follow country guidance case ...” (paragraph 4).

Submissions

8. At the hearing before me on 20th May 2016, Mr Tufan, appearing on behalf of the Respondent Secretary of State stated that there was no evidence provided that the Appellant came within a particular risk category as set out in **GJ (Sri Lanka)** and the judge herself did not decide what particular risk of categories the Appellant fitted into, and in these circumstances there had to be a finding of an error of law, such that the decision could be set aside, for a re-making. The very fact that the authorities maintained a computerised and intelligence-led “watch” list did not mean that the Appellant would be at risk. All that the watch list meant was that he will

“Be monitored by the authority services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist seeking 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” (see head note 9 of **GJ**).

9. Therefore, simply to have allowed the appeal on the basis that the Appellant would come to attention on return, given his fragile mental state, did not lead to compliance with the risk categories in **GJ**.
10. For his part, Mr Coleman submitted that this was a very sound determination and there was no error of law at all. There is no rule of law that a country guidance case needs to be referred to in name. What is important is that the judge has followed the guidance set out in the country guidance case. There was nothing in the determination to suggest that the judge had done anything other than to apply the guidance in **GJ**. Certainly, it could not be said that the judge had gone contrary to the guidance in **GJ**. The judge had observed early on (at paragraph 5) that the Appellant was “a low-level member of the LTTE.” The judge had then proceeded along a root and branch analysis of the evidence before her. Eventually she had concluded (at paragraph 20) that the Appellant’s claim that he had been forcibly recruited to the LTTE because his brother ran away, was supported by a witness whose evidence was unchallenged. In 2013, well into the ceasefire, the Appellant had been subjected to a five week detention period, with ten days of torture (see paragraph 20). The evidence comes from the interview and it was summarised in the refusal letter itself. The Appellant was then released upon payment of a bribe from his uncle of a very substantial amount of money. There were two witnesses, one of whom was a member of the LTTE, and his evidence had not been contraverted.
11. As far as the interview was concerned, at question 186 the Appellant stated that he signed a blank piece of paper and the judge accepted this. At questions 203 to 205, the authorities were said to be looking for the Appellant, and they visited his home some five or six times, and arrested his father, and this is ample proof that there was ongoing interest in the Appellant. This evidence was accepted by the judge. All of this is set out at paragraph 21 of the determination. Another way of looking at this is to say whether there would be any difference at all if the judge had expressly referred to the country guidance case of **GJ**, but had not believed a word of what the Appellant had said, because the judge could not then have allowed the appeal, simply because reference was made to the country guidance case of **GJ**. It might have been desirable for the judge to have referred to **GJ** but a failure to do so was not an error given that the substance of the decision had been followed.
12. Finally, what was clear was that the Appellant would be stopped at the airport because of his fragile condition and the fact that he is so distracted and so disorientated. The judge gives reasons for why the Appellant would be stopped at the airport. If that is the case then he is clearly going to be on a stop list and all of this is set out properly by the judge at paragraph 21. Indeed, the judge ends by making it quite clear why the Appellant

would be at specific risk when she observes that, “it is reasonably likely that he would be questioned on arrival and if questioned in the light of his previous ill-treatment it is reasonably likely he would be detained and further ill-treated ...”

13. The reason for this is that it is particularly the case that, “at the current time he finds it very difficult to give an account of himself because of his mental health issues” (paragraph 21). No one could say, and no one has so done, that this was a conclusion that the judge could not properly have arrived at. My attention was drawn to paragraphs 49, 57, and 65 of the refusal letter which shows how the case of **GJ** would fit into the circumstances of this particular Appellant’s case.
14. In reply, Mr Tufan submitted that previous membership of the LTTE did not put a person at risk. In order to be on the stop list there had to be an extant government order and there had to be an arrest warrant. Neither of these were present in this case.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of **TCEA [2007]** such that I should set aside the decision). My reasons are as follows. In what is a careful, detailed, and comprehensive determination, the judge has clearly applied the substance of **GJ**, as the country guidance case to the circumstances that the Appellant now finds himself in. It is not the case, as the grant of permission states, that “it is generally an error of law to fail to follow the country guidance case” (paragraph 4) because there is no evidence at all that this is a case where the judge has so done. In fact no aspect of the judge’s findings on the facts here can be said to be at variance with the risk factors set out in **GJ**.
16. First, the Appellant’s evidence that he was visited five or six times at his home, with his father being arrested, formed part of the interview record (which was never referred to in the decision making process), and which the judge finds to be incontrovertible evidence. Second, the evidence that has been given has been backed up by two witnesses and by other objective evidence that has been put forward. Third, the essence of the claim that the Appellant’s brother ran away leading to the Appellant’s forcible recruitment to the LTTE, or supported by his witness, and that evidence was unchallenged. The judge’s clear findings (at paragraph 21) was that the Appellant was likely to be questioned “in light of his previous ill-treatment” and it was then likely that he would be detained and “further ill-treated on return” and this was particularly because “he finds it very difficult to give an account of himself because of his mental health issues” (paragraph 21). This would fit in with the risk factor in **GJ** set out at head note 4 which reads that, “if a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.” The judge’s finding was that the Appellant would likely be detained quite simply because he would be unable to give

an account of himself because of his mental health issues, on account of his previous ill-treatment, and this being so there would remain according to **GJ** “real risk of ill-treatment or harm requiring international protection.” The Appellant is also at risk under head note 7(a) because he is an individual who would be perceived to be a threat to the integrity of Sri Lanka as a single state because he will be

“Perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora ...,”

quite simply because he would be unable to give an account of himself upon return from the United Kingdom, in circumstances where the authorities would know that he had been ill-treated previously, and on a lower standard of proof, he would be covered by the risk factors in **GJ (Sri Lanka)**.

17. There are, therefore, a number of ways in which the Appellant plainly fell within the risk factors set out in **GJ** and if this matter were to be returned back to the First-tier Tribunal, upon a finding of an error of law, it is difficult to see how, with Judge Grimmett’s findings on credibility being what they are, that another judge was likely to conclude that, upon application of the case of **GJ (Sri Lanka)**, this appeal fell to be refused. On the contrary, it would be allowed.

Notice of Decision

There is no material error of law in the original judge’s decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

31st May 2016