



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

Appeal Number: AA/06347/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 5 January 2016**

**Decision and Reasons
Promulgated
On 19 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**BN
(ANONYMITY ORDER)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms. K. Wass, Counsel, instructed by Hanson Young Solicitors

For the Respondent: Mr S. Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against the decision of the First-tier Tribunal dismissing the appeal of Mr BN, a citizen of Sri Lanka against the respondent's decision to refuse his application for asylum and to remove him from the UK.

2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order.

Background

3. The appellant was born on 7 August 1992. He applied for asylum in the United Kingdom on 19 December 2013 and the respondent refused that claim by way of a decision dated 26 March 2015.
4. The appeal against that decision came before First-tier Tribunal Judge Flower on 17 July 2015. In a decision promulgated on 30 July 2015, the appeal was dismissed on all grounds.
5. Permission to appeal to the Upper Tribunal was sought on the following grounds: firstly the judge erred in failing to follow the Country Guidance decision of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC); and secondly that the judge's general credibility findings were flawed given in particular that the judge had found that the documentation provided was genuine and that the appellant had made efforts to substantiate his claim.
6. Permission was granted and the appeal came before me.

Ground 1

7. The judge at [14] noted that it had been conceded by the respondent that the Sri Lankan documentation produced by the appellant was genuine and that it had been appropriately verified. The judge found at [25] that directions had been issued for the appellant and another individual 'to be taken into custody if they pass through the airport in Sri Lanka'. The judge found at [27] that:

"Essentially, the documentation which has been provided to me confirms that the appellant is wanted in Sri Lanka for offences relating to credit card fraud. He chose to leave Sri Lanka rather than face prosecution. If he returns by air through a main airport he will be detained by the Sri Lankan police in connection with those matters"

8. The judge set out the head note in GJ and others and I do the same:
 - (1) *This determination replaces all existing country guidance on Sri Lanka.*
 - (2) *The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.*
 - (3) *The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any*

similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.

(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.

(6) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.

(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.

(8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.

(9) The authorities maintain a computerised intelligence-led "watch" list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working 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. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.

(10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the "Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", published by UNHCR on 21 December 2012.

9. It was the appellant's contention that having found that the appellant had provided genuine documentation 'appropriately verified by a credible source' and having found therefore that the appellant 'is wanted in Sri Lanka for offences relating to credit card fraud', if he returns by air through a main airport he will be detained by the Sri Lankan police in connection with these matters, the judge should have found that the appellant therefore fell within the GJ and others risk categories.
10. SG (Iraq) v SSHD [2012] EWCA Civ 940 endorsed the country guidance system and reminded that Tribunals must take Country Guidance determinations into account:

"... decision makers and tribunal judges are required to take Country Guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so."
11. It was the judge's findings however that the appellant's general credibility was not established and that his claims in relation to alleged association with the LTTE was 'false and weak' and that he

was in the UK because 'he is seeking to avoid the criminal justice system in Sri Lanka'.

12. The judge considered that the evidence shows that the conditions in Sri Lankan prisons and detention centres was such that the Country of Information Service information confirmed that they are 'likely to reach the Article 3 threshold and a grant of humanitarian protection may be appropriate'. It was the judge's findings in relation to his finding that the appellant was wanted for credit card offences that he had not been convicted of anything and it was not certain he would go to prison.
13. Ms Wass relied on the concession made by the respondent in GJ and others (paragraph 168) that 'individuals in custody in Sri Lanka continue to be at risk of physical abuse, including sexual violence, and that such risk is persecutory'. I accept Mr Whitwell's point that GJ and others very much relates to the Sri Lankan authorities concern generally in relation to those wishing to promote Tamil separatism and preventing any resurgence in such activity and that the case takes a narrow view of the perceived threat to the integrity of Sri Lanka from returned asylum seekers. However it remains the case that GJ and others confirms that there is a risk 'if a person is detained by the Sri Lankan security services' and if a person appears on a 'stop' list which includes those against whom there is an 'extant court order or arrest warrant'. Notwithstanding the clear context of GJ and others neither of those risk categories was qualified with a requirement that detention and/or the arrest warrant had to be in the context of Tamil separatism or associated issues. There was no specific exclusion of those detained and/or for whom there was an arrest warrant for criminal matters.
14. Mr Whitwell submitted that this interpretation could not be correct as 'anyone with a criminal record' in Sri Lanka would therefore be entitled to protection. That is not correct. It is not a criminal record per se that creates a risk, but rather the arrest warrant/detention by the Sri Lankan security services.
15. The judge found, and Mr Whitwell did not dispute, that this appellant despite not being credible about his asylum claim had produced genuine court documents showing that he would be arrested on return to Sri Lanka through a main airport, in relation to alleged credit card offences.
16. The respondent's Sri Lanka Operation Guidance Note (OGN) 2013 concluded at 3.16.10 that conditions in prisons and detention centres remain poor and that a grant of humanitarian protection may be appropriate (which the judge repeated at [47]). At 3.16.11 the OGN goes on to cite GJ and others and 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. 3.16.11 goes on to state that there may be a heightened risk for those perceived to be

connected with Tamil separatism and/or LTTE. This confirms that those detained, per se, are at risk of ill-treatment with those with perceived or actual Tamil/LTTE connections being at 'heighted risk'.

17. The OGN at 3.16.12 sets out that the individual facts of the case must be considered that a custodial sentence is not mandatory in all instances. This was echoed to some extent in the judge's consideration at [48] to [50] where he found that the appellant had not shown that 'the offences for which he is wanted in Sri Lanka place him at risk of conviction and a subsequent sentence of imprisonment in conditions which could mean that the article 3 threshold is breached and a grant of humanitarian protection would be appropriate'.
18. Where the judge erred however, was that the judge had already found, at [24] to [27] that the appellant would be detained at the airport on return to Sri Lanka. It was not disputed that this would be on foot of a genuine arrest warrant. There is no qualification in GJ and others or indeed the respondent's OGN that states those for example remanded in custody prior to for example bail/trial, are not at risk. Neither is there any qualification in GJ and others that, for example, only arrest warrants relating to Tamil/LTTE issues would put individuals at risk.
19. Paragraph 228 of GJ and others discussed the legal framework including that the previous Tribunal decisions in *TK* and *LP* had identified twelve risk factors including 'previous criminal record and/or outstanding arrest warrant'. Although Mr Whitwell suggested that the lack of any specific mention in GJ and others of criminality meant that this did not now apply, that is to confuse criminal record with an arrest warrant. Whilst the former does not now give risk to a freestanding risk, it is notable that previous guidance also cited an arrest warrant as an alternative risk factor to a criminal record, again without any qualification in terms of a need for the appellant to be wanted in relation to perceived Tamil/LTTE issues. The fact that those with a criminal record are now no longer at risk per se, does not as Mr Whitwell suggested mean that those with a criminal arrest warrant (as it was accepted the appellant had) would not be at risk.
20. In light therefore of GJ and others, as discussed above, this appellant, on the basis of the judge's specific findings that he would be detained at the airport on return, would be at risk of serious harm and a grant of humanitarian protection is therefore appropriate.

Ground 2

21. As I indicated at the hearing, there is no merit in this ground. Although it was argued that the judge had erred in finding the appellant not generally credible, given that the judge had found that the appellant had made efforts to substantiate his claim and had produced genuine documentation, the judge made reasoned findings including a detailed assessment of the evidence in the round. The

judge gave cogent reasons for making adverse findings on the appellant's general credibility at [28] through to [40]. I do not accept that the judge made any error in relation to the appellant's brother's trial. The judge was clear that it was 'still ongoing'. The fact that the documentation provided showed that the trial was due to take place after the appellant's appeal does not negate the judge's findings that an 'update' could have been provided by the appellant. Even if I am wrong, any error is not material given the judge's overall findings. The judge's findings of fact and credibility together with his dismissal of the asylum claim are all preserved.

22. However, as noted the appellant's appeal succeeds in relation to Ground 1.

Decision:

23. The appeal is allowed. The making of the decision of the First-tier Tribunal involved an error of law and is set aside to the extent set out above. I remake the decision allowing the appellant's appeal on humanitarian protection and human rights grounds.

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 their 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:

Dated: 8 January 2016

Deputy Upper Tribunal Judge Hutchinson