



IAC-AH-LEM-V1

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

Appeal Number: AA/06461/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 4<sup>th</sup> February 2016**

**Decision & Reasons Promulgated  
On 15<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**[ P T ]**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Denholm of Counsel

For the Respondent: Mr S Staunton, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a Sri Lankan national who was born on [ ] 1973.
2. The appellant appeals to the Upper Tribunal with permission of Upper Tribunal Judge Bruce who, on 5 October 2015, thought it arguable that the First-tier Tribunal (FTT) had failed to consider adequately the cumulative risk to the appellant of forced return to Sri Lanka.

**Background**

3. The appellant first came to the UK on 29 September 2013 using a German passport which he claimed belonged to him. He claimed asylum on the first day. A screening interview was conducted on 18 November 2013 but following a full interview on 12 March 2015 the appellant's application for asylum was refused.
4. The appellant appealed the refusal to the FTT on the grounds that in her decision dated 24 March 2015 the respondent had failed adequately to consider the Sri Lankan government's likely pursuit of Tamils such as the appellant who would be at real risk of ill-treatment or harm requiring international protection if he were returned to Sri Lanka. The appellant claims to have been tortured and when looked at as a whole the appellant's previous role in the LTTE would give rise to the significant risk identified.
5. The FTT heard the appellant's appeal on 21 July 2015 and Judge of the First-tier Tribunal Birk (the Immigration Judge) decided to dismiss the appeal on 24 July 2015. He also dismissed the claim to humanitarian protection and for protection under the European Convention on Human Rights (ECHR).

### **The Upper Tribunal Proceedings**

6. The appellant appealed to the Upper Tribunal following service of a notice of appeal dated 9 September 2015. In his grounds the appellant claimed that the Immigration Judge had accepted the appellant had been involved in activities against the Sri Lanka government, for example, he had a Facebook page showing himself at a demonstration against the president of Sri Lanka. The Immigration Judge was criticised for reaching the view that because the appellant had not been visited at home since September 2013 this meant that the appellant was not on a "stop list". The appellant's *sur place* activities were sufficient to bring him to the attention of the authorities.
7. Standard directions were sent out indicating that the Upper Tribunal would not receive new evidence which was not before the FTT unless it was served no later than 21 days prior to the hearing indicating why it was not produced below.
8. The respondent issued a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008, indicating that the respondent considered the decision of the FTT to be "appropriate". The Immigration Judge had made appropriate findings including a finding that there was no warrant or court order against the appellant. There was no reason for overturning the decision which contained no material errors of law.
9. At the appeal hearing submissions were made by both representatives. The appellant's representative, Mr Denholm, said that the Immigration Judge had misunderstood or misapplied the test in the case of **GJ**. The grounds relied on the appellant's activities since he arrived in the UK as

well as the fact that the appellant had been detained for anti-government activities in the past and had failed to report/absconded. These were risk factors for the purposes of the country guidance case law.

10. The appellant also argued that most of his account had been accepted and 339K of the Immigration Rules found that the fact that a person had been subject to past persecution or serious harm or had received direct threats of such persecution or harm would be regarded as a serious indication of a “well-founded fear of persecution” or the real risk of suffering harm in the future.
11. I was then taken to a number of passages in the decision. It was submitted that paragraphs 16 onwards found the appellant’s account to be broadly credible. Paragraph 18 of the decision accepted the appellant’s account of bribing his way out of a camp. Paragraph 20 noted the findings of scarring on the appellant from intentional burns and other signs of torture. Paragraph 23 contains a finding that the appellant was detained and questioned in 2013 for assisting the LTTE in 2007. Paragraph 25 contained a finding that the appellant had a Facebook page making reference to attending a demonstration against the Sri Lankan president Mr Srisena. Paragraph 28 found that the photographic evidence produced showed that the appellant had attended at least one demonstration since coming to the UK.
12. I was then referred to **GJ**. Although the individuals targeted are those perceived to be a threat to the integrity of the Sri Lankan state, past harm was a serious indication of that. I was also referred to a case called **Demirkaya [1999] 0144**. Paragraph 20 of that decision indicates that the past ill-treatment of the appellant had been a very material factor in deciding the “well-foundedness” of the claim. Unless the claim was manifestly ill-founded it ought to have been accepted by the respondent and by the Immigration Judge. The payments of bribes were highly relevant factors along with the *sur place* activities in the UK. The judge had been wrong to find that the appellant was not on a “stop list”. The fact that the appellant had not been “there” when the authorities had visited his home did not mean he was not on a stop list. I was also referred to paragraph 13 of the renewed grounds which state that the appellant would be targeted for his *sur place* activities if not his activities in Sri Lanka.
13. I then heard from the respondent, who argued that the grounds summarised by Mr Denholm were mere disagreements with the findings. The Immigration Judge had given full consideration to the **GJ** decision but rejected the appellant’s account that he would be at risk on return. Mere Tamil ethnicity was not enough. There was no court order against the appellant and no evidence of any visits by any authorities. The possibility of interference or interest from the authorities was not enough. The determination of the Immigration Judge accepted that the appellant had been of interest but that did not mean he would be regarded as a threat. Paragraph 29 of the decision made a clear finding that the appellant was

unlikely to be detained on return. The Immigration Judge fully engaged with the **GJ** decision but following his findings it followed that the appeal should be and was correctly, dismissed.

14. By way of reply Mr Denholm reiterated a number of points he had already made and submitted that his client would be at risk from his past activities.
15. At the end of the hearing I reserved my decision as to whether there was a material error of law in the decision of the FTT and if so what steps should be taken to rectify this.

## **Discussion**

16. The Immigration Judge reached her decision on 24 July 2015 and it was promulgated on 30 July 2015. There were two subsequent applications for permission to appeal, the second of which was successful. The respondent opposes the appeal on the grounds that the Immigration Judge reached appropriate findings having ascertained that the appellant's profile was insufficient to pose a threat to the security of the Sri Lankan state.
17. The grounds allege that the Immigration Judge misapplied the case of **GJ** and failed to appreciate the full extent of the risk factors. In granting permission to appeal Upper Tribunal Judge Bruce said that the cumulative effect of the favourable findings made by the Immigration Judge may have been enough to show that the appellant did in fact have a significant role in Tamil separatism which may lead to a different result if these facts are properly analysed.
18. As well as giving an account which was partially accepted by the Immigration Judge it is noteworthy that the appellant's story is to some extent corroborated by scars found on him which were found to be consistent with the account he had given. The Immigration Judge accepted that he had been released from custody following the payment of a bribe and that following his release from custody there had been at least one visit to his house in September 2013. The Immigration Judge found that the appellant may be on a watch list and this meant that he might be subject to face recognition technology. However, the Immigration Judge's overall conclusion was that the authorities would not trouble with the appellant to any greater extent than that they may put him on a watch list. He would be unlikely to be detained in the airport and it was not likely, in the Immigration Judge's view, that the appellant would be regarded as a person who had a significant role in Tamil separatism.
19. I have considered very carefully the submissions made and consider this case to be finely balanced. I would highlight some key points in the Immigration Judge's decision:
  - (1) that there was no court order or warrant for the appellant's future arrest;

- (2) that the authorities did not discover any weapons in the box that the appellant was required to carry – any other conclusion, as the Immigration Judge pointed out, would be “speculative”;
- (3) the authorities had made only one visit to the appellant and that was more than two years ago;
- (4) it was also speculative to think that the authorities would have taken any further interest in the appellant following the one visit referred to;
- (5) the Immigration Judge found significant discrepancies as to dates and did not accept all the visits referred to;
- (6) whilst the appellant may be monitored in the future he would not be likely to be subject to arrest, detention or ill-treatment.

### **Conclusions**

20. It is only if the Upper Tribunal were to find a material error of law in the decision of the FTT that it would be able to interfere with it. The Immigration Judge made careful and comprehensive fact-findings and considered the risk factors identified by the Upper Tribunal in the case of **GJ**. She also fully considered the appellant’s *sur place* activities in paragraphs 28 and 29 of her decision. These findings were open to the Immigration Judge who had the opportunity to fully evaluate the evidence. She reached clear conclusions which cannot properly be the subject of attack in this Tribunal. It would be fair to describe the appellant as a person of no more than “passing interest” rather than a threat to the unitary state. As paragraph 9 of the head note of **GJ** makes clear, “a person whose name appears on a ‘watch’ list is not reasonably likely to be detained but will be monitored”.
21. In the circumstances, the decision of the FTT does not contain any material error of law such as would justify interfering with it.

### **Notice of Decision**

I find no material error of law in the decision of the First-tier Tribunal.

This appeal is therefore dismissed. The respondent’s decision to refuse asylum/human rights protection and to remove the appellant from the UK stands.

### **Anonymity**

No anonymity direction was made by the FTT and I make no anonymity direction.

Signed

Date

Deputy Upper Tribunal Judge Hanbury

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date

Deputy Upper Tribunal Judge Hanbury