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

Appeal Number: AA/12387/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 30 March 2016**

**Decision & Reasons  
Promulgated  
On 12 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**M E  
(ANONYMITY DIRECTION MADE)**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

Respondent

**Representation:**

For the Appellant: Ms Wass, counsel

For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka who appealed against the decision to refuse his asylum claim. His appeal against that refusal was dismissed by Judge of the First-tier Tribunal Reid in a decision promulgated on 19 January 2016.
2. I maintain the anonymity direction made in the First-tier Tribunal.

3. Permission to appeal was granted by First-tier Tribunal Judge Landes on 18 February 2016 as follows:
  - “2. This was a very clear and careful decision by the judge and I grant permission only with some hesitation. I do however consider it arguable that the judge erred as set out at paragraph 8 grounds. The judge finds that the authorities may want to question the appellant further, but when she explains at [39] why it is that she considers the appellant’s fear of repetition of ill-treatment is not well founded she does not return to her findings at [35] and explain why it is that if the authorities questioned the appellant further he would not be at risk given what **GJ** says about risk in detention.
  3. I do not limit the grounds which may be argued given the anxious scrutiny which should be given to a case where a judge has found that an appellant with serious mental health problems was ill-treated in detention only just over a year ago. However paragraph 9, in effect the second part of the grounds, does not reflect the judge’s findings entirely correctly. The judge explained clearly that she considered the appellant would not be perceived to be a threat because he had played a role in the past and the information he had to give was only historic information. On that basis he would not fall within the risk categories in **GJ**. It may be that there is a contradiction between the judge’s findings that the authorities want to question the appellant further and that they had already perceived him not to have a significant role but even if this is the case it does not follow that the judge erred in her finding that the appellant would not be at risk rather than her finding that the authorities retained an interest in the appellant by wanting to question him further.”
4. Thus the appeal has come before me.
5. Ms Wass, for the appellant, pointed out that the FTTJ, having largely accepted the appellant’s account, had found that the authorities may want to question him further on return [35]. She further noted the FTTJ found [22] that the appellant had important information which could still be of interest to the authorities for many years to come. The FTTJ had also accepted that the appellant’s home had been visited by the authorities after his release from detention. These findings, she submitted, were at odds with the finding [39] that the appellant’s fear of repetition of detention and beatings was not well founded. She submitted that the Judge’s findings demonstrated a continuing interest in the appellant on grounds similar to those leading to his detention and torture in December 2014.
6. It was submitted that the FTTJ focuses [35] on the notion of the appellant playing a significant role in the diaspora but fails to apply her earlier findings in her considerations at paragraph 39. She fails to set out the nature and form of the questioning he may face (according to her finding

at [35]). Would it, for example, take place in detention? If it had been the case that this appellant had not previously been questioned and detained about a specific subject, it might be possible that he did not meet any of the risk categories, but the FTTJ had accepted the appellant had been detained for a specific reason, questioned about a specific subject and tortured. Ms Wass submitted, further, that the FTTJ accepted that the authorities' concern over buried weapons had not gone away with the passage of time (paragraph 22). The appellant's case is that the FTTJ failed to take into account her background findings when reaching her decision on the risk on return, particularly given her acceptance that the appellant had previously been detained and tortured for specific reasons. If she accepted that he may be questioned on return, why did she not also find that he would be detained again and mistreated?

7. I also take into account the ground (albeit no reference was made to this in Ms Wass' oral submissions) that an appellant's ability to leave Sri Lanka "without difficulty was not probative of a lack of adverse interest in the individual" (paragraph 170 of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**).
8. Ms Wass submitted that, given the FTTJ's findings, the appellant had demonstrated he would be perceived by the authorities as having a significant role (paragraph (7)(a) of the headnote to **GJ**).
9. I invited Ms Wass to clarify the link between being questioned and detention, given that, according to **GJ**, all asylum seekers are questioned on return, whether at the airport or subsequently at their home address. Ms Wass said that the appellant's previous experience of questioning in detention suggested that he would be questioned in detention on return. She accepted that not all those who were arrested and detained fell within the **GJ** risk categories but submitted that the appellant, given his background, had demonstrated that his former role as a driver would lead the authorities to perceive him as having a significant role. She relied on the findings at paragraph 22 to support this submission. It is also relevant that, according to sub-paragraph (4) of the headnote to **GJ**, detention gives rise a real risk of harm requiring international protection.
10. Mr Duffy relied on the Rule 24 response to the effect that the FTTJ had explained clearly that the appellant would not be at risk on return because of his past role or his having given historic information to the authorities; he did not fall within the risk categories within **GJ**. The FTTJ had given adequate reasons for her findings. Read as a whole, he submitted, the decision was clear and without material errors of law. With regard to paragraph 35 and the finding that the appellant may be asked questions on return, **GJ** suggested that all forced returnees were questioned on return either at the airport or in their home area. He submitted that this was an attempt by the appellant to re-argue the matter.
11. The nub of this appeal is the suggestion that there is a conflict between the FTTJ's finding at paragraph 35 that the authorities "may want to question him further" and the finding at paragraph 39 that the appellant

has given information to the authorities, the lack of any arrest warrant and his release without charge, and the appellant's fear of further mistreatment is not well founded. The FTTJ makes no reference in her findings at paragraph 39 to the possibility of the appellant being questioned further. However, this is a detailed decision and reasons which should be read as a whole. Even if the FTTJ had referred in her findings [39] to the appellant being questioned further, she would only have reiterated her earlier findings [33] to the effect that the "two visits [to the appellant's home] since the original detention in December 2014 is [sic] consistent with making further enquiries and wanting to speak to the Appellant further, rather than the Appellant having got out of custody on payment of a bribe and designated an escapee or **being of real interest**" (my emphasis). Furthermore, **GJ** makes it clear (paragraph 169) that it is accepted by the respondent that forced returnees are visited by the police or CID in the days following return. Such visits do not necessarily lead to detention (a risk category per **GJ**). Similarly, the mere fact of the possibility of further questioning, without more, given the lack of an arrest warrant and designation as an escapee and the release of the appellant without charge would not put the appellant in one of the **GJ** risk categories. Whilst the appellant has a history of being questioned and detained in the past, the FTTJ gives adequate reasons for considering similar ill-treatment would not occur again: he was not of real interest to the authorities [33].

12. It is submitted that the appellant, being a former driver for the LTTE and a person who has been questioned and seriously beaten in detention in December 2014 would be perceived by the authorities as having a "significant role in post conflict Tamil separatism within the diaspora and/or a renewal of hostilities". I do not accept this submission. The reason for interest in the appellant in December 2014 was related to historical matters. It is submitted that the findings at paragraph 22 are that the appellant has "important information which could still be of interest to the authorities for many years to some [sic] and in particular during 2014 in the light of concerns about the re-emergence of the LTTE ..." However, this finding was made in relation to consideration of the appellant's claim to have been a tractor driver for the LTTE in around January 2007 and of interest to the authorities in December 2014 when he claimed to have been detained and questioned with regard to the location of arms. This is not a finding with regard to the appellant's claim that he continued to be of adverse interest at the date of hearing. Furthermore, as the FTTJ makes clear, on reasonable grounds, she finds that the authorities' interest in these historical matters has been addressed as a result of the appellant's interrogation in detention in December 2014.
13. The FTTJ has set out in detail her findings as to why the appellant has not demonstrated he falls within any of the risk categories identified in **GJ**. She notes [34] that the context for the categories is whether the individual is a destabilising threat in post conflict Sri Lanka per **GJ** paragraph 311. There is no challenge to this statement. The FTTJ has reasoned carefully her finding that the appellant is not, as claimed, perceived to have a significant role in post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities. She has considered carefully the appellant's

circumstances, including the possibility of being questioned by the authorities and her reasoning is unassailable, based as it is on her earlier findings. The mere fact the appellant has been detained in the past and provided information about the location of arms caches is not sufficient to demonstrate a current involvement in post-conflict Tamil separatism, even taking into account the FTTJ's finding that he may be questioned again on return. It does not follow that, because he was interrogated in detention in the past, he would be detained again in connection with "further enquiries" in circumstances where he is not of "real interest" to the authorities [33].

14. Whilst the FTTJ does not specifically address the issue of whether or not questioning would take place in detention (thus putting him at risk on return, per **GJ**), it is implicit that this would not be the case because the FTTJ finds [33] that the visits to the appellant's home are for the purpose of "making further enquiries and wanting to speak to the Appellant further, rather than the appellant having got out of custody on payment of a bribe and designated an escapee or being of real interest." The FTTJ gives adequate reasons for concluding the appellant is no longer of adverse interest to the authorities. The FTTJ's findings are not in conflict with paragraph 325 of **GJ**:

"It is not established that previous LTTE connections or sympathies (whether direct or familial), are perceived by the GOSL as indicating now that an individual poses a destabilising threat in post-conflict Sri Lanka; as indicated in the UNCHR Guidelines and in the evidence before us, the extent to which past links predict future adverse interest will always be fact specific."

15. The FTTJ's findings with regard to the risk on return are adequately reasoned and set out in paragraph 39. She takes into account the appellant's previous adverse involvement with the authorities and whilst she does not specifically mention that they may want to question him, given her earlier findings [33] that this would be in relation to general enquiries and not on account of his "being of real interest", her failure to mention this in paragraph 39 is not a material error.
16. I give due regard to the guidance in **GJ** with regard to the ability of a person of adverse interest to leave Sri Lanka without coming to the attention of the authorities. However, the FTTJ has made it clear in her decision that she does not find the appellant's evidence to be wholly credible (paragraphs 30 and 32, for example). It was thus open to her to draw the conclusions she did about his departure from Sri Lanka.
17. For these reasons, I find there is no material error of law in the FTTJ's decision.

## **Decision**

18. The making of the decision of the First-tier Tribunal did not involve the making of a material error on a point of law.

19. I do not set aside the decision.

Signed **A M Black**

Date 1 April 2016

Deputy Upper Tribunal Judge A M Black

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

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 **A M Black**

Date 1 April 2016

Deputy Upper Tribunal Judge A M Black