



IAC-AH-KRL-V1

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

Appeal Number: DA/01541/2014

**THE IMMIGRATION ACTS**

Heard at Royal Courts of Justice  
On 18 April 2016

Decision & Reasons Promulgated  
On 13 May 2016

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

[K T]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr M Blundell, Counsel

For the Respondent: Mr N Bramble, HOPO

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka born on [ ] 1982. He has been granted permission to appeal the decision of First-tier Tribunal Judge J Robertson dismissing

his appeal against the respondent's decision of 3 March 2014 to refuse him asylum under paragraph 336 of HC 395 (as amended) and on 7 May 2014 to make a deportation order against him by virtue of Section 32(5) of the UK Borders Act 2007.

2. The appellant arrived in the UK on 18 July 1999. He claimed asylum but was refused in October 1999. He was granted exceptional leave to remain for one year. On 23 March 2000 he was granted indefinite leave to remain. Following a sentence of six years' imprisonment he was served with a liability to automatic deportation. On 11 December 2012 he made a fresh application for asylum which was refused on 3 March 2014 and certified under Section 72 of the Nationality, Immigration and Asylum Act 2002.
3. In 2003 the appellant was convicted of two counts of possessing offensive weapons in a public place. In 2008 he was convicted of resisting or obstructing a constable. In 2011 he was convicted of assaults occasioning actual bodily harm, robbery, conspiracy to rob and false imprisonment. He was sentenced to six years' imprisonment.
4. In appealing against the respondent's decision, the appellant submitted that his removal from the UK would breach his rights under Articles 3 and 8 of the ECHR.
5. The appellant's evidence is that he returned to Sri Lanka on 9 January 2006 to get married. He was arrested at the airport and questioned about his involvement with the LTTE. A glass of water was thrown at his head and he was scarred as a result. He paid 3 lakh and was released with reporting conditions with which he failed to comply. He fears that he will be suspected as a terrorist if he returns.
6. On 23 August 2014 the appellant married his wife at a religious ceremony in the UK. She came to the UK in January 2013 and has been granted asylum. Their first child was born on 13 August 2015. The appellant's claim under Article 8 of the ECHR was dismissed. He was not granted permission to appeal the judge's decision on Article 8 grounds.
7. The judge dismissed the appellant's asylum and Article 3 ECHR appeals.
8. The judge held as follows:

"19. With regard to his humanitarian protection claim it was submitted that the appellant will be in a category of persons at real risk of persecution as set out in the case of **GJ and Others (post-war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**

(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*

20. The submission is primarily based on the appellant's previous detention in 1997/98 prior to his leaving for the UK and events when he returned in 2006. On that occasion

he reports that he was questioned at the airport for a few hours and assaulted, only being released after payment of a bribe. He subsequently failed to report as agreed and left the country.

21. I do not accept on the evidence before me that the appellant is likely to be perceived as being involved in the post-war LTTE sur place activity. He does not claim any involvement in the activities of the LTTE and felt able to return to Sri Lanka in 2006. Any interest the authorities may have in the appellant are likely to be from his failure to comply with reporting conditions rather than any perceived threat. The main motivation appears to be financial. He had no difficulty leaving the country."
9. The grounds submitted by the appellant argued that the judge erred in respect of her assessment of the appellant's claim under article 3 because she failed to engage with the entirety of the appellant's case. Designated First-tier Tribunal Judge McCarthy granted the appellant permission to appeal. He found that the Article 3 arguments were made out because consideration of the factual matrix was confined to paragraph 20 of the judge's decision. Within that paragraph it would appear that the judge accepted the appellant had encountered persecutory treatment in 1997/98 and in 2006. Although there has been a material change in the situation in Sri Lanka since the LTTE collapsed it is clear from the country guidance case CG that those formerly linked with the LTTE might still face a real risk of serious harm on return, particularly a person who has previously been on reporting restrictions. DIJ McCarthy went on to say that it is arguable therefore that the judge has either failed to explain that she rejected the truthfulness of the appellant's account (and he noted that there was no application of paragraph 339L of the Immigration Rules) or she has failed to explain why the past persecution encountered by the appellant was not a strong indication of future risk (as per paragraph 339K of the Immigration Rules). DIJ McCarthy said that these factors suggested that the judge may have failed to engage with the evidence.
10. At the hearing before me Mr Bramble accepted that in the absence of a challenge by the respondent, the judge's findings at paragraph 20 are to be taken as an acceptance of the appellant's previous detention in 1997/98 and his detention in 2006 following his return to Sri Lanka and what happened to him subsequently.
11. It appeared to me that in assessing risk on return to Sri Lanka, the judge focused solely on the authorities' perception of the appellant as being involved in post-war LTTE sur place activity. Indeed in the respondent's response to the grounds of appeal under Rule 24, Mr T Melvin of the Specialist Appeals Team accepted that the judge's findings were sparse and Mr Bramble said the same.
12. Mr Blundell submitted that there was before the judge a skeleton argument by the appellant's Counsel below. Paragraph 2 of the skeleton argument and repeated at paragraph 3 of the grounds, other factors were mentioned as likely to put the appellant at risk and which were not considered by the judge. These other factors are that after his departure from Sri Lanka in 2006, the authorities went in search of the appellant at his home address but he had already left the country. His mother

was arrested and detained by the authorities. The appellant feared returning to Sri Lanka due to his previous failure to comply with reporting conditions and due to his sur place activity here in the UK. Mr Blundell submitted that the authorities have a historical family interest in the appellant because his father had a history of association with the LTTE, as well as his brother-in-law, which prompted the authorities to arrest him on the two occasions.

13. Mr Blundell relied on the decision of First-tier Tribunal Judge Landes in the appeal of the appellant's wife. The judge accepted the history given by the appellant's wife who had been tortured and raped in detention in October 2012. She left Sri Lanka unlawfully. The judge accepted that the authorities had been to her home and asked of her whereabouts. FtTJ Landes applied MP [2014] EWCA Civ 829 in which the Court of Appeal highlighted that although the Upper Tribunal had concluded that diaspora activism, actual or perceived was the principal basis on which the authorities would regard a returning Tamil as posing a threat, it was not the only basis on which a returning Tamil might be regarded as posing such a threat. Even if such activity would usually be the touchstone, that was not the absolute prerequisite for protection. Ultimately it was a question of fact. Mr Blundell submitted that the judge attached weight to the appellant's wife being sought after after her departure from Sri Lanka and being involved in diaspora activities while she was here.
14. Mr Blundell submitted that were the appellant to be questioned by the authorities on his return to Sri Lanka, the questions at the airport would be based on biographical details, including family members. This was what the Tribunal in CJ accepted in the light of a letter from the respondent's own staff at the Sri Lankan Embassy, Mr Lewis, who had first hand experience of the return process from the UK to Sri Lanka. Based on the respondent's evidence before GJ, it is clear that the starting point is that the appellant will be asked for details of his family. In light of the historical association by family members with the LTTE, the appellant is likely to be at risk on return to Sri Lanka.
15. Mr Bramble responded by saying that the judge did not find that the appellant had engaged in sur place activities. Furthermore it was not the appellant's evidence that there was a court order against him or a warrant for his arrest. He accepted that the judge's findings were sparse but relying on GJ, and irrespective that the judge found the appellant credible, on the specific claim made by the appellant, he did not find that he would be at risk on GJ principles.

### Findings

16. I find that the judge in assessing risk on return to Sri Lanka, the judge erred in focusing solely on the authorities' perception of the appellant as being involved in post-war LTTE sur place activity. She failed to consider the other factors raised in the skeleton argument and identified by Mr. Blundell as likely to put the appellant at risk. This error meant that the judge's decision cannot stand and I set it aside in order to remake it.

17. It has been accepted by Mr Bramble that the judge accepted that the appellant was detained in 1996/1997 prior to his departure from Sri Lanka. The judge also accepted that when he returned to Sri Lanka in 2006 he was detained, questioned and assaulted by a police officer. His mother paid a bribe and he was released. He did not comply with reporting restrictions and left the country. The other evidence, which has not been disputed, is that his mother was arrested and detained by the authorities when they went to his house in search of him and found that he had left the country.
18. I find that having been detained twice before, and not having complied with reporting restrictions, the appellant is likely to be detained on his return to Sri Lanka. Based upon the questions that he will be asked, it will become apparent that other family members have a historical association with the LTTE. Mr Blundell drew the attention of the court to the appellant's supplementary statement in which he said that in 2008/9 he used to accompany his father to demonstrations in Westminster. This evidence was acknowledged by the respondent at paragraph 19(k) of her supplementary refusal letter dated 7 May 2014. While this may not be heavy duty diaspora activity, it needed to be assessed in consideration of risk on return. I rely on what the Court of Appeal said in MP. The appellant's diaspora activity may not of itself be sufficient to put him at risk. However, when all the evidence is taken together, I find that the appellant is likely to be at risk of persecution on return to Sri Lanka.

**Notice of Decision**

19. Accordingly, I allow the appellant's appeal.

No anonymity direction is made.

Signed

Date: 6 May 2016

Upper Tribunal Judge Eshun