



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

Appeal Number: PA/00960/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 September 2017**

**Decision & Reasons  
Promulgated  
On 13 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**V M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr R Spurling of Counsel instructed by A & P Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Beach promulgated on 21 March 2017.
2. The Appellant is a citizen of Sri Lanka, born on [ ] 1987. He arrived in the United Kingdom on 17 June 2012 and claimed asylum. On 20 July 2012 his application for asylum was refused. He appealed to the IAC; on 18 September 2012 his appeal was dismissed for reasons set out in the decision of First-tier Tribunal Judge Bryant (reference AA/07352/2012). Applications for permission to appeal were refused both by the First-tier Tribunal and the Upper Tier Tribunal and the Appellant became 'appeal rights exhausted' on 8 January 2013. Thereafter the Appellant made

further submissions in respect of his asylum claim, which in due course led to the decision of 18 January 2017 that is the subject of the appeal herein. The Appellant's further submissions in large part drew on findings that had been made in the successful appeal of his brother heard on 3 October 2012 by First-tier Tribunal Judge Aziz (reference AA/08153/2012).

3. The Respondent's decision of 18 January 2017 refusing the Appellant's protection claim was appealed to the IAC. The appeal was dismissed for reasons set out in the decision of Judge Beach.
4. The Appellant sought permission to appeal which was granted by First-tier Tribunal Judge Lambert on 31 July 2017. The grant of permission to appeal was limited to two grounds: one in respect of the standard of proof; the other in respect of consideration of the risk factors identified in the case of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
5. The Respondent has filed a Rule 24 response in these proceedings dated 15 August 2017 which essentially asserts that the challenge brought by the Appellant amounts to a disagreement with the findings of the Judge, and that the Judge properly considered the **GJ** risk factors without falling into any error of law.
6. Before turning to the substance of the challenge it is perhaps helpful and appropriate to have some further regard to the history of proceedings and the manner in which the Appellant's claim has been advanced.
7. The substance of the Appellant's asylum claim as made upon his arrival, and in the course of his first appeal, is summarised both in the 'reasons for refusal' letter of 20 July 2012 and in the decision of First-tier Tribunal Judge Bryant. In substantial part the Appellant claimed that there had been a raid on the family barber shop in Kandy in 2009 when the authorities had been looking for a former employee; at this time his brother 'V' was detained - the Appellant seemingly claims he only avoided detention because he was not present at the time of the raid and did not go to the premises. However, the Appellant claims that some two years later in 2011 - after having been studying for approximately two years in Colombo during which time he travelled on a number of occasions to and from Kandy - he was arrested and detained for one year and one month. Upon his release arrangements were made for him to come to the United Kingdom to seek asylum. Judge Bryant did not accept the credibility of the Appellant's account. Amongst other things he found "*the Appellant to be vague in his account of his and his family's involvement with the LTTE*" (paragraph 58). Judge Bryant also considered that there was "*a clear*

*discrepancy between what the Appellant says in his witness statement and what he says in his asylum interview as to the reasons for his father's death", and also considered the lack of evidence from the Appellant's younger brother or from his uncle to undermine his credibility (paragraph 59).*

8. The Appellant had also related as part of his history the fact that another brother, 'J', had married the niece of a person with a significant role in the LTTE. Judge Bryant gave consideration to this at paragraph 60 and concluded *"On the evidence before me I do not find it proved that the marriage of [J] has, or would, cause the Appellant to be of interest to the authorities in Sri Lanka"*. Judge Bryant rejected the Appellant's account of his own movements following his brother's detention (paragraph 61), and also in turn rejected the Appellant's evidence in respect of his own detention (paragraph 62). At paragraph 63 Judge Bryant said this:-

*"On considering the totality of the evidence before me, I find the Appellant to lack credibility to the extent that I do not believe his account of his and his family's history in Sri Lanka. I do not find he proves, even to the low standard required, that his father was an LTTE supporter and was tortured and subsequently died as a result of his injuries; that the Appellant's shop was raided and that his younger brother was detained and tortured; that the Appellant was of interest to the authorities and that he was in fear of the authorities when undertaking his computing course in Colombo; that he was ever detained, tortured and released from that detention by his uncle by way of a bribe; and that he fled to the United Kingdom in fear of persecution in Sri Lanka. Although there is some confusion in the Appellant's account as to precisely who his brother [J] married, I do find it proved that he did marry the daughter of a man who had close connections with the hierarchy of the LTTE."*

In this latter regard, however, as observed above Judge Bryant was not satisfied that J's marriage had ever given, or would likely in the future give, rise to any adverse interest in the Appellant on the part of the authorities in Sri Lanka.

9. It may be seen from the foregoing that one of the matters that troubled Judge Bryant in reaching his conclusion was that the Appellant's brother - V - who was present in the United Kingdom and pursuing his own asylum case, had not given evidence in support.
10. V was in due course successful in his own appeal heard by Judge Aziz shortly after the hearing in the Appellant's own case.

11. Judge Aziz's Decision gives a little more detail in respect of some aspects of the claimed shared history. In this regard I pause to note that although some of their respective histories are common, they have of course individual aspects to their cases. Most particularly it is the Appellant's case that he was detained some considerable period after his brother had been detained - and indeed some considerable period after the raid on the family premises in 2009. It is indicated in Judge Aziz's decision that although the family were originally from Jaffna they had moved to Kandy in 2001 where they owned a barber shop.
12. The Appellant's brother J married the niece of a significant player within the LTTE in 2003. It appears that J and his wife left Sri Lanka for Canada in 2005. It is not clear in the accounts of either the Appellant or V that the circumstance of J being married to the niece of a significant member of the LTTE was an issue that attracted any particular attention or concern in itself. Rather, however, it is said that because of the 'closeness' of the family to the LTTE in consequence of J's marriage, the barber shop became a place where members of the LTTE would visit and stay. In particular an individual called 'BK' stayed at the barber shop in the period 2004-2007; it was the supposed association with BK that in due course triggered the adverse interest of the authorities in the barber shop.
13. In this latter regard I note that it is the Appellant's evidence that at the time of the raid he himself was in overall charge of the barber shop, but it was V's misfortune to be arrested because he was at the premises.
14. I pause to observe - very much parenthetically given that this is not presently a fact-finding forum and I have received no evidence and heard no submissions on the point - that it seems surprising to me that there was no apparent consideration of this circumstance in the decisions of any of Judge Aziz, Judge Bryant or Judge Beach. In circumstances where it was the Appellant's case that he was essentially the proprietor of the barber shop, I would have expected some exploration and consideration as to why there was seemingly no attempt to detain or question the Appellant subsequent to the raid. On his evidence it was not until 2011 that he had any difficulties personally and directly with the authorities; and even then - on the findings of Judge Beach - this was in the nature of a round-up rather than because the Appellant had been personally targeted by reason of his connection to the barber shop, or by reason of family connections, or otherwise.
15. Be that as it may, as noted above Judge Aziz reached a conclusion favourable to the V in his appeal. Particularly relevant are paragraphs 106 onwards of Judge Aziz's decision.

16. Judge Aziz found that the elder brother, J, had married the daughter of a man who had close connections with powerful figures within the LTTE, and that consequently the family became involved in helping the LTTE (paragraph 106). Judge Aziz also found that the barber shop had been raided in September 2009, and found that V had been detained at this time for a period of two months - during which he was tortured and questioned about family links with the LTTE - before being released in November 2009 after the payment of a bribe, whereupon arrangements were made for V to flee to the United Kingdom.
17. At paragraph 107 Judge Aziz considered the risk factors identified in the case of **LP (LTTE area: Tamils Colombo: risk) Sri Lanka CG [2007] UKAIT 00076** and identified that of those risk factors seven were present in respect of V: he was ethnically a Tamil; there was likely a previous record of him being suspected as an LTTE member or supporter by reason of his detention in 2009; he had 'escaped' from custody after the payment of a bribe and as such his records might show that he had escaped from custody; he had scarring on his body; he would be returning from London, being a centre of LTTE activity or fund raising; he had made an asylum claim abroad; and he had relatives in the LTTE. In those circumstances Judge Aziz was satisfied that the Appellant's brother had established a risk within the parameters identified in **LP** - which was the applicable country guidance at that time. V's appeal was allowed accordingly.
18. As noted above, it was in particular reliance upon the favourable outcome in V's appeal that the Appellant advanced his 'fresh claim' to the Respondent.
19. In due course, therefore, Judge Beach came to consider the Appellant's case in light of the favourable findings in his brother's appeal. Judge Beach reminded herself of the guidelines set out in the case of **Devaseelan** on the approach to be taken in second appeals. Judge Beach considered the case as presented to her: clearly on the face of it, she reached different conclusions on some of the facts from those determined in the first instance by Judge Bryant.
20. Judge Beach summarises the potential factors that might support the Appellant's claim in these terms (paragraph 59):

*"I must therefore assess the risk to the appellant. I assess this risk, taking account of the following findings which I have made regarding the appellant:*

*(a) that his family had some LTTE connections*

- (b) *that his family assisted the LTTE*
- (c) *that his brother was detained, ill-treated and released on payment of a bribe*
- (d) *that the Appellant was detained for a short period of time, ill-treated and released (possibly on payment of a bribe)*
- (e) *that the Appellant has been involved in some low level diaspora activity in the UK”.*

21. Judge Beach took these matters forward into her evaluation of risk - an evaluation that, unlike V's case, was not to be conducted by reference to the country guidance case of **LP**, but with particular reference to the country guidance provided in **GJ**. The Judge's conclusions in this regard are set out over the course of paragraphs 60-62 in the following terms:

*“60. The detention of both the appellant and his brother took place a considerable time ago. The appellant's brother was detained in 2009 and the appellant was detained in 2011. There is no evidence before me that the authorities have been looking for the appellant since he left Sri Lanka. The appellant was detained for a relatively short period of time and was released from detention. Even if he was released on payment of a bribe this does not mean that he remains of interest to the authorities. There is no evidence before me to suggest that the appellant was recorded as having escaped from detention rather than simply being recorded as having been released. There has been a deterioration in the situation in Sri Lanka to some extent according to the background evidence and there is evidence to suggest that the Sri Lankan authorities conduct some intelligence regarding those who participate in diaspora activity. Nevertheless, a large number of Sri Lankans participate in such activity and it is not suggested that all of those would necessarily be at risk on return to Sri Lanka. The fact that the appellant's elder brother is married to a relative of a high profile LTTE member may mean a slightly higher suspicion on the part of the authorities but the appellant's activities have been low level and primarily amount to protest rather than active activities in support of forming a separatist Tamil State in Sri Lanka. The judgment in **UB** did criticise the Respondent for failing to provide evidence relating to TGTE activities in the UK but it also stated:*

*‘In truth, consideration of the risk to the Appellant turns not merely on him showing that he was actually a member of the TGTE, but relies on his membership being detected on arrival in Sri Lanka. There is no suggestion that this Appellant is on any list of individuals of interest to the authorities in Sri Lanka. The objective findings by the FTT are clear that any activity by the Appellant in this country, even if observed or recorded, was low level and not likely to*

*carry risks. That activity itself would not demonstrate membership of the TGTE. In addition, I bear in mind the very clear findings that the Appellant lied and exaggerated in alleging mistreatment during his last visit to Sri Lanka, and thus his credibility is low.'*

61. *There is insufficient evidence before me to show that the appellant is an active member of the TGTE. He has attended some events but this does not equate to him either being a member of TGTE or being considered to be of a particularly high level. There is no evidence before me to show that the authorities are actively seeking the Appellant or that they are aware that he has attended any events in the UK. The letter from the British High Commission states that returnees from the UK 'may' be questioned and 'may' be detained. The Appellant's activities are of a low level. His previous detention and that of his brother were now many years ago. There is no suggestion that his elder brother is active in agitating for the resurgence of the LTTE. It does not seem to me that the Appellant is likely to be on any watch list or stop list in Sri Lanka. There is also no evidence before me to show that his low level activities would be known to the Sri Lankan authorities. The evidence does not state that every returnee will be questioned nor that all those who admit some low level activities will be detained by the authorities. Whilst I bear in mind the lower standard of proof in asylum claims I find that there is insufficient evidence to show that there is a real risk to the Appellant on the basis of his background and his low level activities in the UK.*

62. *Having considered the whole of the evidence in the round, I find that the appellant has not discharged the burden of proof of having a well founded fear of persecution for a Refugee Convention reason and that the appellant's removal would not cause the United Kingdom to be in breach of its obligations under the Refugee Convention."*

22. Against this background, I turn to the Appellant's challenge to the decision of Judge Beach. I deal first with the ground of appeal in respect of the standard of proof.

23. The ground, upon which Mr Spurling amplified during the course of the hearing, is set out at paragraph 7 of the Grounds of Appeal and pleads, with reference to paragraph 61, that the Judge misapplied the applicable standard of proof. The written ground puts the matter this way:

*"At paragraph 61 she noted that the evidence before her confirms that returnees may be questioned and may be detained. However*

*she noted that the evidence does not state that all returnees will be questioned and detained. In order to establish that someone is at risk on return, it is submitted that it is only necessary to show that he may be detained and not that everyone is detained. To require that the evidence shows that all returnees will be detained is to impose the wrong standard of proof. If there is a risk, there is a risk and that sufficient to establish that the Applicant is entitled to protection”.*

24. I do not accept that that there is anything in the passages identified at paragraph 61 (or elsewhere) that is indicative of the Judge misunderstanding or misapplying the standard of proof. It seems to me the contrary is manifest.
25. The Judge very clearly sets out the applicable burden and standard of proof at paragraph 8 of the Decision. In my judgement when the Judge refers to the Appellant not having “*discharged the burden of proof of having a well-founded fear of persecution*” (paragraph 62) she is to be understood to be recalling her self-direction.
26. This matter is underscored by the fact that in the body of the decision the Judge elsewhere refers to findings made by reference to the appropriate standard of proof. For example: the Judge says “*I find that there is a reasonable likelihood that the Appellant’s family as a whole were involved in assisting the LTTE*” (paragraph 59). The reference to “*reasonable likelihood*” is repeated at paragraph 51. Even in the paragraph that is the subject of criticism in the grounds of appeal, paragraph 61, the Judge expressly states “*I bear in mind the lower standard of proof in asylum claims*”.
27. It seems to me that in the passages alighted upon by the drafter of the Grounds, Judge Beach was doing no more than recording her interpretation of the evidential material - and was not thereby indicating anything about the standard of proof that she was applying in the case.
28. In the course of submissions Mr Spurling sought to highlight that perhaps in this regard the Judge had misunderstood the supporting background country information, and in particular my attention was directed to the citation taken from the case of **UB** and reproduced at paragraph 38 of the Judge’s decision in respect of a letter from the British High Commission dated 25 July 2014. This letter in part refers to information acquired by the writer from the Sri Lankan Department of Immigration & Emigration, and in part information from a spokesperson for the Sri Lankan Secret Intelligence Service. The following two extracts from that citation are pertinent to Mr Spurling’s observations:



*“The spokesperson from the DIE stated that returnees may be questioned on arrival by immigration, CID, SIS and TID”; and “The spokesperson from the SIS said that people being ‘deported’ will always be questioned about their overseas activities, including whether they have been involved with one of the prescribed organisations”.*

29. It may be thought that there is a tension between the position indicated by each of these spokespeople - one using the phrase *“may be questioned”*, and the other using the phrase *“will always be questioned”*. If it is now to be argued that the Judge has failed to resolve this ambiguity, then that is to pursue a different point from that pleaded in the Grounds. No challenge has hitherto been raised in this regard; permission to appeal was not based on any suggestion of such an error.
30. In any event, it seems to me that at best what might be said is that the Judge has failed to identify, or has misunderstood, the potential ambiguity in the evidence of the letter of 25 July 2014. However, it also seems to me clear that what the Judge is saying in substance is that the evidence does not demonstrate that everybody being returned to Sri Lanka is likely to be questioned, and therefore it is necessary for her to evaluate whether this particular Appellant might reasonably likely be questioned - and that, in my judgement, is precisely what this Judge goes on to evaluate by reference to all of the factors that the Appellant relied upon and the applicable country guidance. As may be seen in paragraph 60 there is consideration given to the Appellant’s history of detention, there is regard to his diaspora activities, and there is reference to his family circumstances.
31. In my judgement it is absolutely clear that the Judge understood and applied the relevant standard of proof throughout. Indeed, it seems to me that to peruse a decision for examples of passages which taken in isolation may appear to be bald assertions not obviously consistent with the applicable standard of proof, and then to rely merely upon such passages without regard to the approach manifest in the wider decision as evidence of a misunderstanding or a misapplication of the appropriate jurisprudence, is an exercise that is not to be encouraged in drafters of grounds.
32. I conclude that the Appellant has not made out the first ground of challenge.

33. The second ground of challenge is to the effect that the Judge has misapplied the **GJ** country guidance guidelines, in particular in respect of the Appellant's diaspora activities.
34. It is observed at paragraph 9 of the grounds of appeal that in **GJ** the Upper Tribunal concluded that in light of the sophisticated intelligence and monitoring of the Sri Lankan authorities it was reasonably likely that the authorities would be aware of an individual's attendance or involvement in diaspora activities, and would be able to distinguish between those perceived to be seeking to destabilise the integrity of Sri Lanka and those not. Criticism is then made of Judge Beach for saying at paragraph 61 that there was no evidence that the Appellant was known to the Sri Lankan authorities in respect of his diaspora activities.
35. I am not persuaded that the challenge herein identifies a material error of law. It seems to me that in substance the Judge has appropriately had regard to the criteria of risk identified in **GJ** and reached sustainable conclusions. - albeit I acknowledge that there might be something clumsy in the way that this is expressed at paragraph 61.
36. In substance the Judge has made clear findings as to the nature of the Appellant's activities in the UK. In particular at paragraph 58 the Judge notes that there are no photographs supporting the Appellant's involvement, and that although he claims to be very much involved he had no letters of support from the organisations who arranged the events which he attended. It was also noted that he referred to having attended approximately six events from December 2015, which would be a little under one every two months. The Judge concludes:
- "I find that the Appellant may well attend events but that his level of involvement is relatively recent and that he does not hold any particular role within the diaspora other than attending some events".*
37. It may also be seen from the quotation from paragraph 60 set out above that the Judge also characterised the Appellant's activities as being "*low level and primarily amount to protest rather than active activities in support of forming a separatist Tamil State in Sri Lanka*".
38. In this context the risk categories or criteria identified in **GJ** are to be recalled, in particular with reference to those matters in the head note at paragraphs (3), (7)(a), and (8). Those likely to be at risk are described in these terms:-

*“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”.*

39. It seems to me it was eminently open to the Judge to conclude that the Appellant’s limited and low-level actions in the United Kingdom fell well short of indicating that he either had, or was likely to be perceived as having, such a role. To this extent, even if the Judge may have misunderstood or been in error in concluding that there was no evidence that the authorities might have gathered intelligence on him, had they gathered such intelligence it would have shown him to have the sort of role the Judge found him to have - and therefore to indicate nothing of any particular risk. It seems to me that whilst it might be said that there was a possible ‘aggravation’ by reason of the family background, and in particular the marriage of the Appellant’s older brother to the niece of a significant LTTE activist as long ago as 2003 - a matter which the Judge accepted *“may mean a slightly higher suspicion on the part of the authorities”* - there was nothing in the materials before the Judge to conclude that this would have made a material difference to the risk faced by the Appellant to such an extent that he was entitled to international surrogate protection. The Judge took into account the circumstances of J. There was no evidence before the Judge of continuing activism on the part of J, his wife, or her family members.
  
40. I find it was open to the Judge to conclude that there was nothing to portray the Appellant as somebody who might be perceived to have any significant role in diaspora activities. The re-recitation of the Appellant’s history and circumstances at paragraph 9 of the Grounds in this regard - family history, familial links, past detention, diaspora activity - in substance amounts to an attempt to re-argue the case put to the First-tier Tribunal, notwithstanding that the Judge has dealt adequately with all such matters.
  
41. I find accordingly that there is nothing of substance in the second line of challenge.
  
42. Ultimately it seems to me that the simple reality is that whilst favourable findings have been made in the Appellant’s brother’s appeal, which put a different perspective on certain matters relating to the family circumstances and the narrative of a raid in 2009 at which the Appellant’s brother was detained, it did not assist directly in answering some of the discrete difficulties identified by First-tier Tribunal Judge Bryant at paragraphs 61 and 62 of his decision. The best that might have been said on the Appellant’s behalf is that his account of being detained and ill-

treated needed to be re-evaluated on the premise that there was a background of family support for the LTTE. However, in this regard Judge Beach concluded no more than that the Appellant may have been detained for a short period of time in a round-up. The Judge has otherwise evaluated the Appellant's case in accordance with the applicable jurisprudence taking into account her sustainable findings both in respect of events in Sri Lanka and diaspora activities.

**Notice of Decision**

43. The Decision of the First-tier Tribunal contains no error of law and accordingly the decision of the First-tier Tribunal stands.

44. The Appellant's appeal remains dismissed.

**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 his 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:

Date: **9 November 2017**

**Deputy Upper Tribunal Judge I A Lewis**