



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

Appeal Number: PA/01257/2016

THE IMMIGRATION ACTS

Heard at Field House

On 4th April 2017

**Decision & Reasons
Promulgated
On 2nd May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

[T K]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Proudman of Counsel instructed by Biruntha Solicitors

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant a national of Sri Lanka appealed to the First-tier Tribunal against a decision of the Secretary of State dated 29th January 2016 to refuse his application for asylum and humanitarian protection in the UK and deciding that his removal would not breach the UK's obligations under the European Convention on Human Rights. First-tier Tribunal Judge

Moran dismissed the Appellant's appeal and the Appellant now appeals to this Tribunal with permission granted by Upper Tribunal Judge Canavan on 20th February 2017.

2. The background to this appeal is that the Appellant claims that he was working for a travel agency in Sri Lanka and that a friend transferred money into his account over a four month period beginning in December 2006. The Appellant left Sri Lanka in October 2007 and entered the UK with a student visa. He extended his leave to remain on a number of occasions until October 2014. In August 2014 his application for further leave to remain as a student was refused and he appealed against that decision. On 31 July 2015, before his appeal was heard, he was arrested for working illegally and he claimed asylum. The Appellant produced a number of documents which he says establishes that the police in Sri Lanka have been looking for him on suspicion of aiding and abetting an LTTE member by collecting funds for the LTTE. It is claimed that the police came looking for the Appellant at his father's address on three occasions and that his father attended the local police station on three occasions and was told that the Appellant risks arrest in Sri Lanka on the basis of suspicion that he was supporting an LTTE member.
3. The First-tier Tribunal Judge reviewed the evidence including the Appellant's screening and asylum interviews, witness statement, oral evidence, the medical evidence and other supporting documents. The judge concluded that the delay in the Appellant seeking asylum seriously undermined his credibility. The judge considered the documentary evidence and noted that the Appellant's evidence in relation to how the money was provided to him by his friend was not consistent and undermined his credibility [26]. The judge went on to analyse the decision in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** and the groups of people at risk. The judge concluded that it was not credible that the Sri Lankan authorities would perceive the Appellant to be an ongoing risk. The judge said:

"The height of the allegations against him appear to be that nearly ten years ago he obtained some visas for people and allowed his bank account to be used for money to be passed on to those allegedly in the LTTE. He has not been in Sri Lanka since 2007 and does not claim to have been involved in any diaspora activities. His involvement even back in 2007 could not be said to be high profile or critical to the LTTE's activities. Whilst there was some suggestion and argument that **GJ** did not accurately represent the true position in Sri Lanka I was not presented with any sound basis for displacing its thorough analysis of risk. I therefore find that **GJ** fundamentally undermines the core of TK's account as it is not credible that there would be such interest in someone who played the role he allegedly did so long ago". [27]

The judge concluded that the Appellant had not established that he is at risk on return to Sri Lanka.

4. The renewed Grounds of Appeal to the Upper Tribunal contend that the First-tier Tribunal Judge erred in failing to take account of the documentary evidence and failing to give adequate reasons for her decision in relation to that documentary evidence. In granting permission to appeal Upper Tribunal Judge Canavan said that it is at least arguable that the judge may not have made sufficiently clear findings relating to the evidence from the Appellant's father and the Sri Lankan attorney and that that may impact on the judge's conclusions in relation to risk on return with reference to the country guidance decision in **GJ**.
5. At the hearing before me Ms Proudman submitted that the judge failed to say whether she was attaching any weight to the report from the police station, the Sri Lankan attorney's statement or the Appellant's father's witness statement. She referred to paragraph 23 of the First-tier Tribunal decision where the judge referred to the letter from the Sri Lankan attorney: the judge simply says that she considered the documents from the attorney in the round. Ms Proudman submitted that the judge made no other mention of this crucial piece of evidence and did not make clear whether or not it is accepted. She submitted that this letter was material to the Appellant's claim of involvement with the LTTE and his claim to be on a stop list. She submitted that it could be implied from this evidence that as a result of the ongoing police interest in the Appellant his name would be on a stop list. Ms Proudman relied on the decision in **MK (Pakistan) [2013] UKUT 00641** relying on paragraph 13 of that decision to submit that it was incumbent on the Tribunal to explain why the letter from the attorney was not afforded any weight
6. Ms Proudman submitted that the judge also erred at paragraph 24 of the decision in her approach to the internal police document. The judge concluded that she had not been provided with any explanation as to how this internal document could have come into the Appellant's possession and concluded that it was improbable that it could have done so. Ms Proudman submitted that the judge had not given a clear explanation as to whether she attached any weight to that document and it was not clear where it factored into her reasoning.
7. Ms Proudman submitted that the judge had failed to take into account the witness statement from the Appellant's father. It does not factor at any point in the decision. She submitted that this is material because in that statement the Appellant's father said that the police came looking for the Appellant three times since he has come to the UK and his father attended the police station three times and that there is a suspicion that the Appellant would be arrested for supporting an LTTE member. She submitted that this shows that the Appellant may be on a stop list and would therefore be at risk for this reason. She submitted that the judge failed to direct herself to that document. In her submission the judge had failed to consider these three pieces of evidence and that this was a material error.

8. In his submissions Mr Tarlow relied on the Rule 24 response dated 2nd March 2017 where the Secretary of State noted that neither the attorney's letter nor the Appellant's father's declaration are capable of rebutting the Respondent's assertion that the alleged police document could not have come into the hands of the Appellant and the judge was entitled to agree with the Respondent's position in these circumstances. At the hearing Mr Tarlow referred to the judge's conclusions at paragraph 27 in relation to **GJ** and submitted that this analysis was sufficient to dispose of the appeal. He noted that **GJ** highlights the risk to people who are suspected of being involved in actions contrary to those of the state. At paragraph 27 the judge took the Appellant's case at its height, noting that the Appellant had undertaken no diaspora activities and that even in 2007 his activities were not a threat to the state. He therefore submitted that, even if the judge had not dealt sufficiently with the letter from the attorney and the Appellant's father's statement, the analysis of paragraph 27 is sufficient and any errors are not material.
9. In response Ms Proudman submitted that any errors are material because the judge failed to properly analyse three pieces of documentary evidence which support the contention that the Appellant is likely to be on a stop list given the ongoing police enquiries. Had the judge considered this evidence it could have changed her decision in relation to the analysis of **GJ**.

Error of Law

10. The police report and translation is dated 20th October 2012 and is entitled "Message Form" and indicates that the Appellant is to be informed that he should present to the police station on 24th October 2012 for an inquiry to be held by the officers of the terrorist investigation division. The judge dealt with this report at paragraph 24, noting that she had not been provided any explanation as to how this internal document had come to be in the possession of the Appellant. I note that the Appellant's father's statement does not deal with that document and does not specifically refer to anything occurring in October 2012. I note that the letter from the Sri Lankan attorney refers to an inquiry on 20th October and an attendance at the police station on 24th October 2012 but does not refer to the internal document. The Appellant's witness statement dated 12th July 2016 makes no reference to that document. The judge's summary of the Appellant's claim at paragraph 12 of the decision makes no reference to that document. In my view it was therefore open to the judge to conclude at paragraph 24 that no explanation had been put forward as to how this internal document had come into the Appellant's possession.
11. The judge dealt with the letter from the attorney at paragraphs 16 and 23. At paragraph 16 the judge set out a summary of the contents of the letter from the attorney. It is clear from paragraph 23 that the judge considered the letter from the attorney and attached some weight to that document. It is also clear from the consideration of the internal police document at paragraph 24 and all of the other evidence that the judge attached some

weight to the letter from the attorney taking it into account in the round in considering all of the other evidence.

12. It is further contended that the judge failed to take into account the Appellant's father's statement dated 5th October 2015, the same date as the attorney's letter. The judge summarises the contents of the Appellant's father's affidavit at paragraph 12. The judge further notes at paragraph 16 that the originals of these documents were produced at the hearing and refers there to the documents at pages 5 to 8 of the Appellant's bundle which includes the letter from the Sri Lankan attorney and the affidavit from the Appellant's father. It is clear in reading paragraph 23 along with paragraphs 12 and 16 that the judge referred to the documents emanating from the attorney as including the Appellant's father's affidavit. In these circumstances I do not accept that the judge failed to consider this document at all. It is clear that the judge had this document before him and considered it in the context of the attorney's letter.
13. I am satisfied that reading the decision as a whole that the judge attached significant weight to the Appellant's delay in claiming asylum, the lack of evidence as to the origins of the police report and the inconsistencies in the Appellant's account in relation to the transactions through his account from his friend and the Appellant's failure to address this issue in his evidence. Accordingly I find that the judge made no material error in his treatment of the documentary evidence.
14. In any event I accept Mr Tarlow's submission that the judge properly considered the Appellant's case in the context of **GJ** at paragraph 27 of the decision. It is right to say that the height of the Appellant's case is that nearly ten years ago he obtained some visas and allowed his bank account to be used for money to be passed on for those allegedly involved in the LTTE. The judge notes the Appellant has not been in Sri Lanka since 2007 and has not been involved in any diaspora activities. In those circumstances it was open to the judge to conclude at paragraph 27 that the Appellant does not come within the risk categories set out in **GJ**.
15. Although Ms Proudman submitted that the Appellant would be at risk through being on a stop list there was no evidence that there is an extant court order or arrest warrant in respect of the Appellant. The internal police document produced, and rejected by the judge, does not purport to be an arrest warrant. The judge therefore made no error in his assessment of any risk to the Appellant in accordance with the guidance in **GJ**.
16. In these circumstances I am satisfied that the judge did not make any material error of law in his consideration of the documentary evidence and in his assessment of the risk to the Appellant upon return to Sri Lanka in the context of the risk categories set out in **GJ**.

Notice of Decision

17. The First-tier Tribunal Judge did not make a material error of law. The decision of the First-tier Tribunal shall stand.

18. No anonymity direction is made.

Signed

Date: 28th April 2017

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

There is no fee paid, therefore there can be no fee award.

Signed

Date: 28th April 2017

Deputy Upper Tribunal Judge Grimes