



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

Appeal Number: PA/11508/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 21 June 2017**

**Decision & Reasons  
Promulgated  
On 29 June 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON**

**Between**

**PP  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms R Chapman, Counsel instructed by Cheva Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The appellant was born on 1 January 1983 and is a citizen of Sri Lanka. The appellant first entered the UK with a student visa granted on 31 August 2009 and was subsequently granted further leave until 30 March 2016. The appellant left Sri Lanka for the final time on 6 April 2015, returning to the UK. The appellant claimed asylum on 29 March 2016. The respondent refused that asylum claim in a decision dated 5 October 2016. In a Decision and Reasons promulgated on 21 April 2017, Judge of

the First-tier Tribunal Graham dismissed the appellant's appeal on all grounds.

2. The appellant appeals, with leave on the following grounds:

Ground 1

That the judge's findings were inadequate. The judge found the appellant credible at [38] and accepted that the appellant may be questioned upon return to Sri Lanka. It was unclear therefore why the judge did not accept that the appellant faced a real risk of persecution.

Ground 2

It was submitted that the judge had had no regard to the psychological report of Dr Rozmin Halari and the judge made no mention of this report which was material given the judge diagnosed the appellant with PTSD and it was submitted that the judge failed to consider the lack of available medical treatment in line with **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.

**Error of Law Hearing**

3. It was conceded before me on behalf of the appellant that the second ground was not being pursued given (as pointed out in the respondent's Rule 24 notice dated 31 May 2017) that the judge at [50] confirmed that the appellant was not pursuing Article 3 on medical grounds as indicated by the appellant's representative. That is also clearly the case in the Record of Proceedings before me. I therefore considered the only remaining ground to relate to the judge's findings and the application of **GJ and Others** to the findings of fact.
4. The judge's findings of credibility and fact are set out at [35] to [46] of the Decision and Reasons. In relation to credibility the judge found as follows:

"35. The appellant's credibility is in issue. I have determined the appellant's credibility by considering it in the round. I have found the following factors relevant to determining the appellant's credibility.

36. Whilst I have not found it credible that having come to the adverse interest of the authorities in 2006 which persuaded him not to engage in sur plas (sic) activities in the UK; and having returned to Sri Lanka on two previous occasions without incident, that the appellant would, almost nine years after he had ceased his political activity, become involved with Tamil students and encourage them to protest against the new Government in Sri Lanka. Also, the appellant's stated reasons for speaking to the students are contradictory and make no sense; either the new Government was sympathetic to Tamils in which case there would be no need to get involved in anti-Government protests; or

if the new Government was not following through with promises made, as the appellant claims, then there would appear to be no basis for the appellant's confidence.

37. In addition, given that this was a new Government, there was no way of knowing how the authorities would respond to anti-Government protests, the appellant was therefore at least reckless in speaking to and encouraging students to actively protest against the new Government.

38. However, there is support for the appellant's account in the form of letters between the appellant's representatives in the UK and lawyers in Sri Lanka (appellant's bundle 30-33 and 54-55) which confirm that his mother was interviewed by police about the appellant's actions. The Presenting Officer has not challenged the contents of these letters. Therefore, given this supporting evidence I find the appellant's account to be credible."

5. The judge set out at [35] that the appellant's credibility had to be considered in the round. She then went on to make a series of seemingly negative findings in relation to the appellant's credibility. However, that was balanced at [38] by the positive findings in the appellant's favour in relation to the documents provided, including from the appellant's lawyer in Sri Lanka, which supported the appellant's case.

6. The documents produced included a letter from the appellant's lawyer in Sri Lanka detailing the questioning by police of the appellant's mother, including that the police had claimed that the appellant:

"tried to regroup the LTTE members. The police further stated that P had induced a boy who committed suicide on 26.11.2016 at Kokkuvil. It was the date of birth of the LTTE's leader Velupillai Pirabakaran".

7. The letter went on to state that the appellant's mother had refuted the allegations but that the:

"police team claimed that P must be a diaspora activist. The police instructed my client that she should provide information to the Kopay Station if her son returns to Sri Lanka. Moreover, the police would notify the Department of Immigration and Emigration to detain P on arrival at the airport. The Grama Niladhari for her administrative area has also been notified that P has been a wanted person".

In addition there was a further letter from the lawyer who referred the appellant's mother to Mr Devapalan as well as letters in relation to the appellant's 2006 detention.

8. Although the judge's findings at [35] through to [38] might have been expressed in a clearer fashion I am satisfied, including that the judge directed herself that she had to consider the issues in the round, that the findings at [38] and following established that, despite the judge's

reservations at [36] and [37], the judge nevertheless found the appellant credible.

9. Having made this positive finding of credibility however the judge found that:

“Whilst accepting that the appellant may be questioned upon return to Sri Lanka I have not accepted that he faces a real risk of serious harm or persecution upon return”.

10. The judge went on to find that this was because a student had lost his life and other students had given the appellant’s name as having spoken to the boy shortly before his death. The judge was satisfied that the police were obliged to act, including to find out whether the appellant’s actions had induced the boy to commit suicide as set out in the letter (dated 9 September 2016) from Mr Devapalan, the appellant’s mother’s solicitor in Sri Lanka. The judge noted that the appellant’s mother had not been arrested and that her interview with the police had been pre-arranged. She had had the opportunity to take up legal advice from a retired judge and to instruct an attorney to accompany her. She was not detained nor were any conditions placed on her release. The appellant confirmed that she had not been interviewed again since February 2016 and had had no further contact with the police.
11. The judge found that given that the appellant’s mother had told the police that the appellant had a general chat with the students and was not involved in the boy’s death, coupled with her insistence that the appellant was not involved in politics, either in Sri Lanka or in the UK, and that the police had not contacted the appellant’s mother since the previous year, the judge was satisfied that they had accepted her account. The judge found it relevant that the authorities had not issued an arrest warrant against the appellant and were satisfied that whilst the police may want to question the appellant about the incident, there was no evidence to keep him politically active since 2006, either in Sri Lanka or the UK and the judge went on to find at [43] that “I do not accept that this questioning would lead to the appellant being detained for a lengthy period”.
12. Whilst the judge went on to find that the appellant’s detention in 2006 regarding his political activities then would not be of interest to the authorities, it was not contended that this in itself put him at risk, although it was argued that his previous activities might be a mitigating factor.
13. The country guidance of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** provides as follows in the head note:

*“(1) This determination replaces all existing country guidance on Sri Lanka.*

- (2) *The focus of the Sri Lankan Government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.*
- (3) *The Government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.*
- (4) *If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.*
- (5) *Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the Government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.*
- (6) *There are no detention facilities at the airport. Only those whose names appear on a 'stop' list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.*
- (7) *The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:*
  - (a) *Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single unitary 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.*
  - (b) *Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan Government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan Government.*
  - (c) *Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan*

*authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.*

*(d) A person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.*

*(8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.*

*(9) The authorities maintain a computerised intelligence-led 'watch' list. A person whose name appears on a 'watch' list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.*

*(10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the 'Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka', published by UNHCR on 21 December 2012."*

14. I accept that the judge found the appellant credible, with significant weight placed on the documents produced. In particular the letter from Mr Devapalan which confirmed that the police were aware of the appellant's

previous political activities in Sri Lanka and were interested in whether the appellant had induced the student to commit suicide.

15. However, I am not satisfied that the findings the judge reached were open to her given her positive credibility findings and the contents of the letter which she had accepted. These included that the police were seeking to establish that her son had been trying to encourage Tamil boys in Jaffna to restart anti-Government activities and was trying to regroup LTTE members and that they had induced a boy to commit suicide. The judge relied on the fact that the authorities had not contacted the appellant's mother in the last year and the fact that the appellant's mother had insisted that the appellant was not involved in political activities meant that the judge was satisfied that they had accepted her account. However the judge makes no mention of the fact that the letter explicitly states that the police team claimed that the appellant must be a diaspora activist and the police instructed the appellant's mother to provide information if her son returned and that they would notify the Department of Immigration & Emigration to detain the appellant at the airport. It was further stated that the authorities in the administrative area had also been notified that the appellant was a wanted person.
16. The judge appears to acknowledge this in her finding that she was satisfied "that the police may want to question the appellant about the incident". However, I am not satisfied that the judge adequately addressed the implications of her positive credibility findings..
17. The judge found that she did not accept that the questioning would lead to the appellant being detained for a lengthy period; sub-paragraph (4) of the head note of **GJ** indicates if a person is detained by the Sri Lankan authority security services "there remains a real risk of ill-treatment or harm requiring international protection".
18. Whilst Ms Isherwood submitted that the judge's findings meant in effect that the appellant would be questioned about the suicide but would not be detained, a proper reading of the judge's findings of fact in light of the background information and Mr Devapalan's letter, that the police believed the appellant to be a diaspora activist (albeit erroneously), does not support such a finding of questioning without detention. This is particularly the case given that Mr Devapalan stated the appellant would be detained on arrival at the airport and that the authorities were notified that he was a wanted person.
19. Although sub-paragraph (8) of **GJ** indicates that the approach of the Sri Lankan authorities is based on "sophisticated intelligence" as to activities within Sri Lanka and the diaspora, such sophisticated intelligence has not revealed thus far that the appellant is not involved in diaspora activities but has in fact resulted in the appellant remains a person of interest given both his previous activities in 2006, but specifically his alleged activities in 2016 in speaking to students.

20. Whilst it was also submitted that the appellant, given the contents of the letter from Mr Devapalan, could succeed under the category of the head note in **GJ** (7)(d) I am not satisfied that it has been identified that the appellant's name was on a computer stop list as there was no evidence to suggest that there was an extant court order or arrest warrant, despite the fact that the letter indicates that the authorities at the airport had been directed to detain the appellant.
21. Nevertheless, I am satisfied that given the judge's finding that she accepted the appellant's account as credible at [38], including the documents produced, it is not possible to reach any other conclusion other than that the appellant would be perceived, in line with (7)(a) of **GJ**, as an individual perceived to be a threat to Sri Lanka as he would be perceived to have a significant role in the renewal of hostilities within Sri Lanka.

### **Conclusion**

22. The decision of the Judge of the First-tier Tribunal contains an error of law such as the conclusion must be set aside. All findings of fact are preserved. I remake the decision as follows:

### **Notice of Decision**

23. The appellant's appeal is allowed on asylum grounds.
24. As the appellant qualifies for asylum I make no finding under the Qualification Directive.
25. The appellant's appeal is allowed on human rights grounds, Articles 2 and 3 on the same basis.

### **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

Dated: 28 June 2017

Deputy Upper Tribunal Judge Hutchinson



Appeal Number: PA/11508/2016

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

No fee award was sought or is made.

Signed

Dated: 28 June 2017

Deputy Upper Tribunal Judge Hutchinson