



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/11629/2016**

**Appeal Number:**

**Extempore judgement**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 22 May 2017**

**Promulgated**

**On 25 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**

**Between**

**DM**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms P Yong, Counsel instructed by Wimbledon Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. DM is a citizen of Sri Lanka and his date of birth is 12 December 2003. He was aged 13 at the hearing before the First-tier Tribunal. He made application for asylum and this was refused by the Secretary of State in a decision of 7 October 2016. He appealed against that decision and his appeal was dismissed by Judge of the First-tier Tribunal Malcolm, in a decision dated 6 March 2017, following a hearing at Hatton Cross on 7

February 2017. Permission was granted to the Appellant by Designated Judge of the First-tier Tribunal Macdonald on 3 April 2017. Thus the matter came before me.

2. DM's evidence in a nutshell is that on 15 January 2016 his father was arrested and detained by the authorities as a result of his LTTE (historic) involvement. Following this, approximately two weeks later, the Appellant's mother was informed by neighbours that men had come looking for the family. She was scared and believes that the authorities want to now take her eldest son, DM. Arrangements were made for him to leave Sri Lanka. The Appellant gave evidence at the hearing and relied on the witness statement of his mother. The judge made a number of findings. For the purposes of this decision the salient findings are those at paragraphs 90, 94 -111 which reads as follows:-

"90. The evidence in this case is in fairly short compass. The relevant evidence is that the Appellant lived in family with his parents and three younger siblings until the arrest of his father in January 2016. Since then his father has not returned home, it is his mother's belief that he has been killed.

...

94. The appellant is very young and I accepted that he had no further information which he was able to add about his father's involvement with the LTTE other than what he had been told by his mother. The evidence of this was again relatively brief, the evidence being that his father and mother married in 2001, his father had been involved with the LTTE between 1995 and 2000 but there was no detail available as to the level of his involvement.

95. The respondent has not accepted the evidence of the arrest and detention of the appellant's father. The only evidence of this is the information provided by the appellant (being a reporting of the information of facts giving (sic) to him by his mother) as now supplemented by the witness statement provided by the appellant's mother.

96. I have taken into account the age of the appellant when assessing his evidence. I accept the appellant's evidence as being entirely consistent. The evidence which is relevant to his asylum claim (his father's involvement with the LTTE) is based on information provided to him by his mother.

97. The evidence which the appellant is able to give direct evidence about is of his contact with his mother. In his statement it is stated that he speaks to his mother once a week however at the tribunal it was his evidence that he spoke to her perhaps once a month or every two months. It may be that there was a time when the appellant was speaking to his mother on a weekly basis

but it is now less frequent. The appellant was also consistent that he did not have a contact number for his mother and that his mother telephoned his cousin's house, this was also corroborated by the evidence of his cousin.

98. I accepted from the evidence that the appellant does have contact with his mother when she contacts his cousin's house.
99. I considered it was also relevant however that the appellant's cousin was able to make contact with the appellant's mother by contacting the appellant's grandmother. I accordingly considered it reasonable to assess that the applicant would be able to make contact with his mother.
100. The appellant has however given evidence that he has had no contact with his father since the arrest in 2016 and viewing the evidence overall I accept that the appellant's father did disappear in January 2016.
101. I considered that it was highly relevant to establish whether there was any ongoing interest. In the appellant's mother's statement she has stated that some two weeks after her husband was arrested she was told by a neighbour that the authorities had come to her house. This was the only evidence of any further visits with no information being given as to the reasons for these visits however as a result of this the appellant's mother has taken to moving to various relative's homes. In addition various family members they also at other occasions returned to their own home. I considered that if the appellant's mother was as fearful as claimed by her that she would not under any circumstances have had the family return to the family home.
102. I accept that the appellant's mother and grandfather made arrangements for the appellant to leave Sri Lanka, the issue is whether the appellant is at risk.
103. I have given consideration to the country guidance case of **GJ** which sets out in paragraph 356(7) the risk categories.
104. It is accepted that the appellant has never had any LTTE involvement.
105. The basis of the claim is that he is at risk due to his father's involvement.
106. Arrangements were made for the appellant to leave Sri Lanka with the assistance of an agent. It was submitted by Ms Yong that the very fact of the appellant returning to Sri Lanka as a

failed asylum seeker and as a minor would of itself trigger adverse interest in him.

107. Submissions were made on the human rights position in Sri Lanka and the treatment of children however I was not persuaded that I could ignore the country guidance case and do not find that the appellant falls within any of the risk categories in **GJ**.

108. If the evidence is accepted at its highest the appellant's father was a member of the LTTE, he was arrested in January 2016 due to LTTE involvement and has not been seen since. Thereafter authorities attended at the family home and since then the appellant's mother has moved from place to place to avoid contact with the authorities.

109. The appellant's mother took the step of having the appellant removed from Sri Lanka as she perceived that he was in danger.

110. I consider that the fear expressed by the appellant's mother is as suggested by Mr Olaobaju, speculative and having fully considered the case of **GJ** and the other background information provided by the appellant's representatives I simply do not consider that the country guidance case of **GJ** can be overridden and accordingly do not find that the appellant falls within any of the risk categories.

111. For these reasons I consider the appellant's asylum claim cannot succeed."

3. The grounds (particularly ground 1) are unnecessarily protracted. I intend to start with ground 2 which argues that the judge failed to make findings of fact pertinent to the Appellant's claim. I conclude that the judge made an error of law because there is no clear unequivocal finding in relation to the core of the Appellant's account which is that his father was a member of the LTTE and that this led to his arrest in January 2016. Although the judge accepts that his father disappeared, he does not make a proper finding about the cause of this. This is material to a finding in respect of interest by the authorities in the Appellant. Whilst, I do not accept that a finding was not made in respect of interest in the Appellant (it can be reasonably inferred from paragraph 101 that the judge did not accept this), the problem with the judge's finding (at paragraph 101) is that it is not clear whether or not the judge considered ongoing interest in the context of the Appellant's father having been arrested as an LTTE member or not because there is no clear finding about this. The judge has not made sufficient findings of fact on material matters.
4. I have taken into account the findings at paragraph 108 where the judge sets out the Appellant's claim "at its highest", but in my view this does not rectify the problem because the assessment of risk on return conducted

by the judge (which simply amounts to the judge concluding that the Appellant does not fall within a risk category identified by the Upper Tribunal in GJ), does not engage with perception of the Appellant by the authorities, if indeed his father has been detained by the authorities as a result of involvement with LTTE activities. To this extent, there is merit in ground 1.

### **Notice of Decision**

5. The errors are material. I set aside the decision of the First-tier Tribunal to dismiss the appeal. The matter needs to be heard afresh and in my view the First-tier Tribunal is the appropriate venue because there needs to be an extensive fact-finding assessment. I gave an extempore judgement and Mr Whitwell indicated his agreement with me in respect of venue. Ms Yong and the Appellant had decided not to remain in court.
6. I remit the matter to the First-tier Tribunal for the appeal to be reheard *de novo*.

### **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

Joanna McWilliam

Date 23 May 2017

Upper Tribunal Judge McWilliam