



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06246/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 4 March 2019

Decision & Reasons Promulgated  
On 26 March 2019

Before

**DR H H STOREY**  
**JUDGE OF THE UPPER TRIBUNAL**

Between

**MR P S**  
**(ANONYMITY DIRECTION MADE)**

Appellant

and

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

Respondent

**Representation:**

For the Appellant: Ms A Patyna of Counsel, instructed by Gurney Harden Solicitors  
For the Respondent: Mr E Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Sri Lanka. In a decision sent on 22 November 2018 Judge Devittie of the First-tier Tribunal dismissed his appeal against a decision made by the respondent on 23 April 2018. The appellant first claimed asylum in October 2010. His application was refused in November 2010. His appeal was dismissed by the Tribunal on 21 March 2011 and by June 2011 he had become appeal rights exhausted. On 28 April 2014 he made further representations and, following a judicial review, these were treated as a fresh claim. On 23 April 2018 the respondent

made a decision refusing to grant him asylum and leave to remain in the United Kingdom.

2. The appellant's first ground contends that the judge erred in law in treatment of the appellant's sur place activities in the United Kingdom. It is salient to set out the judge's considerations of these activities in paragraphs 13 and 14:

"13. The appellant stated that his sur plus activities in the UK would place him at risk of persecution upon his return.

- (1) He said that since his release from detention he has begun actively engaging in Tamil activities and LTTE associated organisations in the United Kingdom. He attended a Diaspora Remembrance Day on 18 May 2014 at Trafalgar Square to commemorate those who died in the war. He is a human rights activist. He is a member of the Tamil Solidarity Organisation. This organisation brings all people in the diaspora community together who are Tamils. He is also a member of the Voice of Freedom, which is a group initiated by Tamil youths in London. He plays a musical instrument used in times long gone to make announcements about the fight of the Tamil people. They also have a Facebook page and YouTube channel to promote the vision of this group. He has now dedicated his life to justice for the Tamil people. In 2018 he attended a mass rally organised by all Tamil organisations in the UK. He took the lead in chanting anti Sri Lankan government slogans. At both of these protests the Sri Lankan government officials took photographs of them. His parents attended the events and were threatened by the authorities. As a result his parents have had to move out of their home. He first became involved in UK political activity in May 2014. At one of their demonstrations outside the Sri Lankan embassy in the UK, an embassy official was heard to say:

*"We will cut their throats" "our photos published in the media and the South India Tamil Channel".*

- (2) The appellant called a witness to give evidence on his sur plus activities. He said that he was a Tamil Solidarity activist. He saw officers take photos and utter threats at an event he attended with the appellant and others. He recruited the appellant to the Tamil Solidarity Movement.

14. In relation to the appellant's sur plus activities I have accepted his account of the extent of his involvement. However, given the fact that the appellant's profile and history of past detentions does not place him into the category of someone whom the authorities would perceive as a threat to the unitary state of Sri Lanka, I find that his sur plus activities, standing alone, would not cause the authorities to perceive him as posing a threat to Sri Lanka's unitary state."

3. It is contended that in this treatment of the appellant's sur place claim the judge erred in treating as fatal to that claim that his profile and history of past detentions did not place him in the category of someone who the Sri Lankan authorities would perceive as a threat to the unitary state of Sri Lanka. It was said that thereby the

judge wrongly made the risk arising out of the appellant's diaspora activism conditional upon the appellant's earlier history in Sri Lanka. In that way it was said he conflated both aspects of the appellant's claim in circumstances where each on its own could give rise to a risk on return.

4. I am persuaded that this ground is made out and Mr Tufan did not seek to challenge it with any vigour. It was plainly an error on the part of the judge to consider that sur place activities could not on their own place the appellant in a risk category. The guidance given by the Tribunal in GJ [2013] UKUT 00319 (IAC) very clearly sets out that one of the distinct risk categories concerns those identified at paragraph 7 of the headnote in the following terms:

- “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 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.”

This risk category is stated in general terms that do not exclude sur place claims. Such error on the part of the judge was plainly material since the appellant's own account of the extent of his involvement clearly evidenced a significant role within diaspora activities. In light of the above, I find that the judge materially erred in law and that the judge's decision must be set aside.

5. I discussed with the parties what I should do by way of disposal of this appeal if I decided (as I have) to set aside the decision. Both were in agreement that it would be open to me to dispose of it on the basis of the evidence that is now before me. An alternative would be to consider the matter for potential country guidance treatment in particular in relation to whether or not diaspora involvement in the TGTN suffices to place a person within the GJ risk categories.
6. Having considered the matter I am satisfied that I am in a position to remake the decision in this appeal without further ado. On the basis of the judge's findings on the appellant's sur place activities, I conclude that the appeal should be allowed. There are several reasons for my conclusion.
7. First, one relevant consideration when assessing the sur place activities of an applicant concerns whether or not such activities are a continuation of activities that took place in the country of origin: see Article 5 of the Qualification Directive. That is important in this case because it was accepted by the judge that he had been detained in 2006. Indeed this was something accepted by the respondent in the refusal letter in respect of the original asylum claim. Judge Dawson at paragraph 5 of the decision in March 2011 noted that the appellant had been afforded the benefit of the doubt in respect of the incident of detention which occurred in June 2006. As recorded in paragraph 2 of the same decision the appellant had been arrested by the Sri Lankan authorities in connection with a bombing in close proximity to where he lived. He claimed that he was arrested as he was suspected of being an LTTE member. It had

also been accepted by Judge Dawson that in this detention the appellant had suffered ill-treatment. That meant that it was necessary for there to be good reasons why it should be considered that there would not be a repetition of such ill-treatment.

8. Secondly there were several strands to the appellant's sur place activities. He had been involved in a group called PARAI Voice of Freedom, a group of Tamil youths who provide musical accompaniment for diaspora events. His involvement in diaspora events had been confirmed by a letter from T U Senan, international coordinator of Tamil solidarity which described his commitment as a political activist with both Tamil solidarity and the TGTE. His account was also supported by a statement of Mr Pushparagavan, a human rights activist with refugee status in the United Kingdom who recruited the appellant into Tamil solidarity. He confirmed that the appellant's role in the organisation extended beyond attendance at demonstrations and included a project seeking for disclosure of all detention camps and secret torture prison in Sri Lanka, as well as seeking for the release of all political prisoners. There were also photographs, including of the appellant having appeared in the media. He had been interviewed by ETHIR media, an online based political forum. There was a video of him expressing his views which appeared on YouTube. The video of the appellant playing his instrument during a widely reported protest in February 2018 appeared in online media. He was also part of the organising team of the Martyrs' Day celebration in 2017. The statement from Mr Pushparagavan also confirmed that the Sri Lankan authorities had attended and photographed protests in which the appellant had been involved. Before proceeding further, I note that the TGTE continues to be a proscribed organisation in Sri Lanka, as recognised by the respondent in the CPIN at 6.3 and that this is clearly a relevant matter to the assessment of risk of questioning and detention: see **UB (Sri Lanka)** [2017] EWCA Civ 85.
9. Mr Tufan has sought to rely on the fact that the CPIN at paragraph 3.1.4 states that "participating in diaspora activity such as attending demonstrations is not in itself evidence that a person will attract adverse attention on return to Sri Lanka. Each case should be considered on its own facts". However, that is followed by a further paragraph stating at 3.15:

"A person perceived to be a threat to the state through having or being perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or renewal of activities within Sri Lanka as held by the Upper Tribunal in **GJ and Others** are likely to be at risk of persecution on the basis of political opinion and a grant of asylum may be appropriate".

Whilst further the final sentence of this paragraph states that each case must be considered on its own facts, I am satisfied that the facts accepted by the judge in this case were weighty. The evidence showing that the appellant has a significant profile is considerable. As noted earlier, it is not disputed by the respondent that the judge accepted the appellant's account of his sur place activities in full. In light of that acceptance I consider that the appellant has established to the lower standard of proof that he falls within the risk categories outlined in **JG** at 7(a). This not being a

case which turns solely on the issue of his involvement in a proscribed organisation (TGTN); therefore, I do not consider that there is any need to adjourn for further guidance that may be given in the future by the Tribunal in relation to such category of person. As emphasised earlier, the sur place activities of the appellant were multifaceted and fall within the scope of existing country guidance.

10. Mr Tufan has submitted that the appellant would not be at risk because it has not been suggested that he is on a watch or stop list. However, I note that that is a separate category of risk as set out by the Tribunal in GJ and the appellant falls within 7(a) of that country guidance, (accepted at 3.15 of the CIPIN as applying to diaspora activities) irrespective of whether or not he is a person on a watch or stop list.
11. For the above reasons I conclude:

The decision of the judge is set out for material error of law;

The decision I remake is to allow the appeal of the appellant on asylum grounds.

**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 their 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: 20 March 2019



Dr H H Storey  
Judge of the Upper Tribunal