



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

Appeal Number: AA/08771/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15<sup>th</sup> May 2014  
Extempore judgement delivered  
On 15<sup>th</sup> May 2014**

**Determination Sent:**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE**

**Between**

**PS  
(ANONYMITY ORDER MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah of Counsel instructed by Greater London Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant appeals a decision of the First-tier Tribunal promulgated on 17<sup>th</sup> October 2013, the date of which it was heard, in which Judge Taylor dismissed his appeal against a refusal of asylum dated 2<sup>nd</sup> September

2013. The Appellant applied for permission to appeal that decision to the First-tier Tribunal and on refusal renewed the application in the Upper Tier.

2. Upper Tribunal Judge McGeachy granted permission on 10<sup>th</sup> January 2014 in the following terms:

“Taking into account the various positive findings of the Judge of the First-tier Tribunal together with the grant of permission given by the Court of Appeal in **MP** and **NT (Sri Lanka)** in appeal number AA/02916/2009 I consider that the grounds of appeal are arguable.”

3. Before me Ms Jegarajah relied on the grounds of the application for permission as they were drawn before the First-tier Tribunal and as renewed in the Upper Tier. Ground 1 of those applications asserts that the First-tier Tribunal Judge erred in law because the appeal on the basis of the facts found ought to have been allowed. I am satisfied that there is merit in the grounds to the point that this appeal should have been allowed in the context of the guidance set out in the case of **GJ & Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319**. The judge has set out the Appellant’s account at paragraphs 9 and 10 of his determination and also reminded himself of the detail of the reasons for refusal at paragraph 7 of the determination. The Respondent, the judge noted, had rejected the credibility of the Appellant’s account and the judge identified as the main reason for that rejection an issue about the Appellant’s passport used to travel to the United Kingdom. After detailed consideration the judge has accepted the Appellant’s account in respect of that issue.
4. The other significant adverse factor the judge found was the Appellant’s immigration history which has been set out at paragraph 1 of the decision and which the judge visits in some detail at paragraph 20 of the determination in the context of Section 8 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The judge finds that when weighed against the positive evidence in the Appellant’s case that despite the adverse immigration history the Appellant is nonetheless credible and he accepts the Appellant’s account. That it is clear from the reasons is the account that the judge has set out previously in the determination.
5. Mr Walker has accepted before me that the Appellant has provided evidence to the judge about his claim that the authorities in Sri Lanka have exhibited an ongoing interest in him post his release from detention and post his arrival in the United Kingdom. That evidence was not subjected to any cross-examination before the judge and in light of the credibility findings it is evidence that the judge has accepted as being part of the Appellant’s account. The evidence is that the authorities remained interested in the Appellant prior to his coming to the United Kingdom, post-flight in April 2011 and subsequently in 2013, and that this took the form of the authorities making enquiries of the Appellant’s mother about his whereabouts and expressing an interest in wanting to locate him and speak to him. In that context I find that that is evidence that the authorities remain interested in this Appellant.

6. It follows that although on the findings or the account of the Appellant's own activities in Sri Lanka it is not immediately discernible as to why the authorities should have such an interest. The evidence establishes that they do and of course their perception of what he may know or what his affiliations now might be are not matters which are able to be determined.
7. Having accepted the Appellant's account the judge then considered the categories at risk as set out in the country guidance case in **GJ** and it is apparent that in doing so he has failed to take into account the evidence of the authorities' ongoing interest in the Appellant and for that reason I am satisfied that his assessment of risk is materially flawed. The evidence is that absent any reason other than pro-Tamil separatism for the authorities' interest in the Appellant the evidence shows that this Appellant comes within the risk category set out at **GJ**, in particular at 356(7(a)). The standard is of course the low standard of real risk and to that end the evidence of continuing interest is deficient to meet it. In those circumstances I find that the First-tier Tribunal Judge's decision is vitiated by error so that I set it aside and re-make the decision allowing the appeal on asylum and Article 3 grounds.
8. There is no challenge to the issues of the dismissal of the appeal in respect of Article 8 and that decision remains.

Signed

E Davidge

Date 23 May 2014

Deputy Upper Tribunal Judge Davidge