



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

Appeal Number: AA/09815/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 14 November 2014**

**Promulgated:
On 17 November 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER

Between

MR SAYADEEPAN SACHCHITHANANTHAM

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muqit, Counsel instructed by Kanaga Solicitors

For the Respondent: Ms Sreeraman, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka whose date of birth is recorded as 29 March 1976. On 11 September 2012 he arrived in the United Kingdom and immediately thereafter contacted the Asylum Screening Unit in order to make application for international protection as a refugee. On 11 October 2013 a decision was made to refuse the application and to remove him to Sri Lanka. He appealed. His appeal was heard on 27 November 2013 by Judge of the First-tier Tribunal Youngerwood sitting at Taylor House. Judge Youngerwood found the Appellant in every material particular to be credible in his account of what happened to him but

nevertheless found that the authorities would not now have an interest in him were he to be returned and therefore dismissed the appeal.

2. Not content with that determination, by Notice lodged with the First-tier Tribunal on 30 December 2013, the Appellant made application for permission to appeal. That application was refused in the First-tier Tribunal but a renewed application made to the Upper Tribunal led to a grant of permission by Upper Tribunal Judge McGeachy on 12 February 2014.
3. In granting permission Judge McGeachy stated:-
 - 1) The grounds of appeal refer to the fact that the Judge of the First-tier Tribunal accepted that the Appellant, having been a long time voluntary member of the LTTE had been tortured and detained.
 - 2) They refer to the grant of permission granted to the Court of Appeal in ***MP and NT (C5/2013/2603)*** and state that the Judge of the First Tier Tribunal was wrong to conclude that the Appellant would not be at risk.
 - 3) Given the decision in ***MP and NT (C5/2013/2603)*** I consider that the grounds of appeal are arguable.
4. The matter came before Deputy Upper Tribunal Judge Wilson, in the Upper Tribunal on 8 May 2014. He found having regard to the guidance in the case of ***GJ and Others (Post Civil War - Returnees) Sri Lanka CG [2013] UK UT00319*** that there had been a material error of law. Judge Wilson said as follows:

*“6 The judge clearly was aware of the sur place activities and records the Respondent’s assertion that he was not on a watch list, he was not a Tamil activist working to destabilise the unitary Sri Lankan state, those matters being fairly set out in consideration in both the refusal letter and in sub-paragraph 9 of the summary of the Appellant’s witness statement. The risk assessments however within ***GJ and Others*** clearly include in paragraph 8 the observation that the Sri Lankan authority’s approach is based on sophisticated intelligence.*

7 In a post conflict Sri Lanka an individuals past history would be relevant only to the extent that it is perceived as indicating a present risk to the unitary state. Within that context the argument given his past historical involvement in the LTTE and an argued current sur place activities would be sufficient to place him at a significant risk of questioning after passing through the airport. This would of course have to be heightened in its scrutiny by reason of the past historical abuse the Appellant suffered.

- 8 *Overall despite the caretaking in the First-tier Tribunal I am satisfied that this aspect of the Appellant's case has not been adequately considered. This is a material error of law.*
 - 9 *Given the clear comprehensive findings in the Appellant's favour at the First-tier Tribunal which were challenged by the Respondent, I am satisfied this should continue by way of further hearing in the Upper Tribunal with such short appropriate oral evidence from the Appellant and submissions on risk on return.*
 - 10 *Given the nature of the asserted risk I therefore make an interim anonymity order in relation to the Appellant. This matter will of course require further consideration at the conclusion of the appeal."*
5. The findings which were not in dispute made by Judge Youngerwood at the initial hearing were to the effect that in May 1997, the Appellant had joined the LTTE voluntarily. He underwent some basic training. About two months after beginning his work he was injured in an attack and sustained injuries to his head and stomach. He spent ten months in an LTTE hospital in recovery. Thereafter the Appellant worked in the administrative section of the medical wing. The Appellant remained with the LTTE from 1997 until 19 April 2002. In 2008 he was invited to rejoin, which he did, working administratively in the medical department. On 17 May 2009 the Appellant in common with others was rounded up and remained in detention for just short of two years. He was not released until 23 April 2011. On his release it was a condition that he should attend a military controlled area and was required to report every two weeks. Despite reporting, on 29 June 2011 he was taken to a room where he was beaten up and then detained for eleven months during which time he sustained severe ill treatment, including beatings with sticks, and burns with iron rods. The Appellant was located by a cousin and upon the payment of a bribe the Appellant was released but told to leave the country within six days. He left Sri Lanka on a false passport.
 6. The Appellant's account was supported by photographs and medical evidence. The second period of detention was brought about because the Appellant, it was said, had not disclosed the extent of his own activities and those of his wife who was also involved with the LTTE.
 7. At paragraph 29 of the determination Judge Youngerwood said:-

"Having considered all the above evidence, I conclude that the Appellant has established the likelihood that his core account is truthful and accurate, and I proceed, therefore, to consider current risk on that basis."
 8. One other material part of the evidence was that the Appellant had been told by members of his family that the authorities were regularly looking for him, though it would seem to ensure, on Judge Youngerwood's findings,

that the Appellant had in fact left the country (I refer to paragraph 38 of the determination).

9. The Appellant gave evidence before me. He adopted his witness statement of 14 October 2014 and exhibited a number of photographs showing his presence at demonstrations in May and July 2014. The photographs appear on internet websites including Ethiri.com; TamilWin web news; and Mullivaikkaal web news.
10. The Appellant told me that the first demonstration he attended was May 2013, consistent with what he had said in the First-tier Tribunal. In the witness statement reference was made to having attended a rally in November 2013. The Appellant told me that he had attended demonstrations which had been organised by the British Tamil Forum, though he was not a member of it and indeed was not a member of any Tamil based group in the United Kingdom but rather simply attended the events. In all he has attended six demonstrations and he would learn of them from friends. His primary motivation in attending the demonstrations is in order to inform the wider British public of the events happening in his country, namely abductions, torture and disappearances. The Appellant said that wants to be able to live in Sri Lanka in a state of freedom. He has never spoken at any of the rallies but has shouted out slogans and would explain to people what the demonstrations were about were he approached.
11. It was put to the Appellant in cross-examination that there was no reference in any of his previous statements to him having friends in the British Tamil Forum. The Appellant however was insistent that he was invited to demonstrations by telephone and he not understand what reference he might make in his witness statement. He said that the usual number of people attending a demonstration was about 400-500 although at one there were about 1,000 participants.
12. The Appellant went on to tell me that he became aware of the photographs on the internet websites from watching Tamil News. He did not know how long the photographs would be retained on the website but he said that he found them about two days after the various events. He had not returned to the websites more recently. The Appellant said that he is not involved in funding raising activities and when asked if he advocated a separate Tamil state he said that all he wanted was freedom just like the people in the United Kingdom. He said he did not mind whether that was to be enjoyed insider or outside a separate Tamil state.
13. The Appellant produced a letter from the International Centre for Prevention and Prosecution of Genocide dated 4 October 2014, to which no exception was taken, describing the Appellant as having been actively participating in human rights issues and at genocide meetings/events exposing the government of Sri Lanka. The Appellant was said to be part of the volunteer team actively promoting the importance of submitting evidence to the UNHCR. Additionally it was said that the Appellant had

provided written evidence under oath. Asked about that letter, the Appellant said that he had been invited to make a statement which he had done though he did not attend any meetings. As to being a member of the volunteer team, he said that he did that through friends and insofar as the letter referred to active participation, he said that he did whatever was asked of him. He had attended two meetings but never as a member though he had given evidence. He said that he had given evidence in writing and that he expected to be called again by the organisation.

14. The Appellant was asked whether to his knowledge there had been an arrest warrant issued against him since he left Sri Lanka and he said yes. He said that he learned that from his cousin's sister when he was phoned in October. He explained that although when giving evidence before the First-tier Tribunal his evidence had been that there had been no contact until three months after his arrival and that the family had expressed a desire to make no further contact, it was his evidence now that she was scared at that time but what she had done was to go to another house and make contact from there. He said that he did not speak to family directly but through fiends.
15. There was no re-examination.
16. Ms Sreeraman accepted that the Appellant had been told that he should not return. Her focus was on the guidance in the case of **GJ**.
17. Before dealing however with the submissions that were made, I should, to the lower standard make findings. The Appellant has already been found to be a truthful witness. There was in fact no material challenge to the Appellant's evidence concerning his attendance at the various demonstrations merely an exploration on behalf of the Respondent to ascertain the extent of his involvement. The Appellant's evidence was given before me in a measured way and I found without any attempt to exaggerate or embellish his account. I therefore accept to the lower standard and find as a fact that the Appellant did attend each of the demonstrations which he said. I accept that he was prominent in holding a placard at the demonstrations which appear in the Appellant's bundle and I accept and find as a fact that those photographs appeared on the internet for at least two days. I accept and find as a fact that the Appellant has co-operated with the International Centre for Prevention and Prosecution of Genocide and I accept and find as a fact that members of the British Tamil Forum have made contact with the Appellant to inform him of demonstrations. It follows that the Appellant has friends in the British Tamil Forum and by implication could, if asked, at least give some information which might assist others in identifying them.
18. Returning to the submissions made on behalf of the Respondent, Ms Sreeraman pointed to the country guidance but invited me to find that the activities in London were not such that the Appellant would come to the attention of the authorities and in any event there was no sufficient basis,

given to his level of involvement, for saying that the authorities would be at all interested in him.

19. The relevant aspects of the country guidance in **CG** are set out at paragraph 34 of the determination of Judge Youngerwood. I observe that the Court of Appeal had the opportunity to consider the country guidance in **MP and NT v Secretary of State for the Home Department [2014] EWCA Civ 829**. The Court of Appeal did not find any error of law in the country guidance or in the approach taken to its preparation but Lord Justice Underhill made what I consider to be a material observation:

*“I would, however, like to emphasise one point. The clear message of the Upper Tribunal’s guidance is that a record of past LTTE activism does not as such constitute a risk factor for Tamils returning to Sri Lanka, because the government’s concern is now only with current or future threats to the integrity of Sri Lanka as a unitary state; and that is so even if the returnees past links with the LTTE were of the kind characterised by UNHCR as “more elaborate.” I respectfully agree with the Vice President that that is a conclusion which it was entitled to reach. It is also clear that the Tribunal believed that “diaspora activism,” actual or perceived is the principal basis on which the government of Sri Lanka is likely to treat returning Tamils as posing a current or future threat; and I agree that that too was a conclusion which it was entitled to reach. But I do not read para 356(7)(a) of its determination as prescribing that diaspora activism is the only basis on which a returning Tamil might be regarded as posing such a threat and thus of being at risk on return. Even apart from cases falling under heads “(b)-(d) in para. 356(7) there may, though untypically, be other cases (of which **NT** may be an example) where the evidence shows particular grounds for concluding that the government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he or she has been involved in diaspora activism.”*

20. The submissions made on behalf of the Appellant highlight certain aspects of the country guidance.

“The government’s present objective is to identify Tamil activists in the diaspora while 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 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...*

7(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...*

8. *The Sri Lankan's 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 he is perceived by the Sri Lankan authorities as indicating a present risk to the Unitary Sri Lankan state or the Sri Lankan government."*

21. It seems to me that the history of the Appellant, he having been detained on two occasions and tortured, taken together with the continuing interest by the authorities in knowing that he is no longer in the country, which I accept is the current position in relation to the Appellant in Sri Lanka, taken together with his sur place activities would at the very least lead to him being questioned (which itself places the Appellant at risk). It seems to me against the background information and the sophisticated intelligence that the authorities would be aware of the Appellant's attendance at demonstrations and given his past would be interested to know the extent to which he has been involved and indeed the extent to which he might be able to provide them with information leading to others looking to separatism.
22. To be fair to Ms Sreeraman she did say at the outset that her position, "*on instructions*" was to maintain the Respondent's position but it was clear to me that she understood the difficulty of the Respondent's position and she quite properly did not overlabour those points favourable to the Respondent; there were very few.
23. I was not invited to maintain the anonymity order and as the appeal has been allowed, I see no basis for its continuation.

Notice of Decision

The determination of the First-tier Tribunal is set aside and is remade. The appeal in the First-tier Tribunal is allowed both on asylum and human rights grounds.

Signed

Date

Judge Zucker
Deputy Judge of the Upper Tribunal

