



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00566/2015**

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke
On 26 August 2015**

**Decision & Reasons Promulgated
On 28 August 2015**

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

LP

ANONYMITY DIRECTION MADE

Respondent

Representation:

For the Appellant: Mr McVeety (Senior Home Office Presenting Officer)

For the Respondent: Mr Lingajothy

DECISION AND DIRECTIONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity order. Unless the Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

1. The respondent is a citizen of Sri Lanka. I have anonymised this decision because it refers to his claim for asylum.

Procedural history

2. In a decision dated 16 June 2015 First-tier Tribunal Judge Lagunju allowed the respondent's appeal on asylum grounds. The SSHD appealed against this decision, and in a decision dated 3 July 2015 Judge Reeds granted permission to appeal on the basis that the Judge's conclusions "*regarding risk on return are perverse and lacking in reasoning*".
3. The matter now comes before me to decide whether the decision contains an error of law.

Hearing

4. Mr McVeety accepted that the grounds of appeal drafted on behalf of the SSHD are difficult to follow and seek to disagree with the Judge's positive findings of fact. In these circumstances Mr McVeety sought permission to amend the grounds in order to argue that the decision is inconsistent with **GJ and others (post-civil war: returnees) Sri Lanka CG** [2013] UKUT 00319. After hearing from Mr Lingajothy I gave permission for the grounds to be amended on the basis that they are straightforward, readily apparent from the decision and arguable. I offered Mr Lingajothy the opportunity to adjourn the hearing in order to prepare in light of the amended grounds but he indicated that he was content to go ahead that day. I stood the matter down for Mr Lingajothy to revisit **GJ** and **MP (Sri Lanka) v SSHD** [2014] EWCA Civ 829.
5. When the matter resumed I heard submissions from both Mr McVeety and Mr Lingajothy before reserving my decision, which I now provide with reasons.

Error of law discussion

6. Mr McVeety submitted that the Judge was wrong to find that the decision to allow the appeal was "*in line*" with **GJ** and **MP**. He argued that the Judge's positive and negative findings of fact are such that the respondent did not come within any risk category identified in **GJ**.
7. I accept that the Judge has provided succinct reasons for allowing the appeal but I am satisfied that they are adequate and consistent with **GJ** and **MP**.
8. Although the Judge rejected significant aspects of the respondent's claim [17-24] she accepted his evidence regarding: (1) his family's known involvement and activities on behalf of the LTTE [13], which she described as "*deep and entrenched*" [26]; (2) these led to the respondent living in India as a refugee although he returned to Sri Lanka to help with LTTE activities [14]; (3) the respondent attended a protest outside the embassy [16]. These findings of fact were entirely open to the Judge and to the extent that these are challenged by the SSHD I find that they do not involve any error of law.

9. Having made those findings the Judge explicitly considered **GJ** and **MP** and concluded as follows:

“I find that in line with **MP**, that the [respondent’s] attendance at the protest in the UK coupled with what [is] known about his family would amount to ‘diaspora activism’ which may be viewed as a current and on-going risk/threat to the Sri Lankan authorities. On this basis I find that there is a real risk of ill-treatment to the [respondent] on return.”

10. I accept that the Judge has perhaps inelegantly expressed this. When the decision is read as a whole the Judge has clearly followed **GJ** and **MP** regarding the wider approach to the issue of ‘diaspora activism’. **MP** makes it clear that a person may be perceived to be a threat to the integrity of Sri Lanka as a single state as a result of diaspora activism together with ‘more elaborate links’ – see [12, 16 and 50]. I accept that in **GJ** the Tribunal made it clear that attendance at one or even several demonstrations in the diaspora is not of itself evidence that a person is committed to promoting Tamil separatism [351]. However the Judge in this case found that the combination of the matters she accepted (which included diaspora activities and importantly deep and entrenched family links to the LTTE) were sufficient to render this respondent at real risk in line with **MP** (which accepted there might be untypical cases and NT may be an example of this). The Judge heard evidence from the respondent and accepted significant parts of that evidence. The Judge clearly considered the **GJ** risk factors and was entitled to conclude that this was an untypical case in line with **MP**. As accepted in **GJ** “*the extent to which past links predict future adverse interest will always be fact specific*” [325].
11. Indeed, the SSHD’s original grounds of appeal appear to accept that the Judge’s findings were not inconsistent with **GJ** but criticised the Judge for being “*selective in [her] acceptance of the evidence in order to bring the [respondent] under the umbrella of the risk categories in **GJ***”. I have already indicated above that the Judge was entitled to accept the evidence that she did for the reasons provided. I also accept that the Judge has provided enough reasoning to indicate why she considered the respondent to be at real risk i.e. he came under the wide ‘umbrella’ of risk categories in **GJ** as clarified in **MP**.

Decision

12. The decision of the First-tier Tribunal does not contain an error of law and is not set aside.

Signed:

Ms M. Plimmer
Judge of the Upper Tribunal

Date: 27 August 2015