

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



Appeal Number:

AA/04305/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 16 June 2015**

**Determination**

**Promulgated**

**On 7 July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE**

**Between**

**K T**

(ANONYMITY DIRECTION MADE)\_

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation:**

For the Appellant: Mr S Muquit of Counsel instructed by Kanaga Solicitors.

For the Respondent: Mr David Clark, Senior Presenting Officer.

1. This appeal was last heard on 24 October 2014 when I, for reasons given in my determination set aside the decision of Judge Conrath, First Tier Tribunal Judge dismissing the appeal of the appellant, a national of Sri Lanka. In my decision I preserved the findings made by Judge Conrath about the appellant having been detained and tortured when she had gone back to Sri Lanka in February 2013 as the authorities wanted information about the activities of her husband who it is accepted had been involved with the LTTE. At the hearing on 24 October 2014 I had directed that the appeal be listed before me for a fresh hearing on 30 January 2015. The appeal had to be adjourned on that date.

2. At the hearing before me the appellant was present and gave oral evidence through a Tamil speaking court interpreter. She adopted her written witness statement, verifying the contents thereof to be true, as her evidence-in-chief to support her appeal. She also relied on all the previously submitted documents in the course of the appeal including medical report etc.
3. In cross examination the appellant insisted that her statements given in the course of her claim for asylum were true and that the authorities had suspected her also to have been involved with the LTTE due to her husband's LTTE profile. She was asked why she had not informed the respondent of the breakdown of her marriage, she said that she had not realised that she had to. She had re-entered the UK, as her visa had not expired.
4. She said that she had been detained and tortured in Sri Lanka because of her husband who they knew was from the LTTE. She said that as she was being tortured she was not able to understand what she was being asked. She had left her ten-month old baby in the United Kingdom in order to find the whereabouts of her husband and she had at that time been in no state of mind to give any answers to the questions she was asked.
5. She said that when she had married she did not know that her husband was involved with LTTE activities. When she and her husband lived together in London, she also went to various demonstrations organised by the LTTE sometimes with her husband and sometimes on her own. Her husband used to take photos and videos of the demonstrations and used to get many telephone calls. She said that although their marriage had ended by the time she learnt that he had been arrested in Sri Lanka, she could not bear it and rushed to Sri Lanka to find what had been done to him. She had left her baby, which she had borne from her relationship with another man following the break up of her marriage and had planned to return in five days to resume caring for him.
6. She explained why she had gone to Vavuniya to see her mother although she had thought that her husband was being detained in Colombo. She had been given the information about her husband's detention by K, a friend of her husband who was at the time living in Sri Lanka and perhaps did not know that her marriage to his friend had broken down. She was shown a document produced titled "The Gazette of the Democratic Socialist Republic of Sri Lanka" and was asked why her name or that of her husband did not appear in the document which Mr Clark said gave names of all persons and organisations which the Government of Sri Lanka considered to have involvement in 'Terrorist' activities. The appellant was not able to answer the question and looked somewhat bemused.
7. She said that as far as she knew ports had been put on notice about her but she said, "bribes work". The appellant said that the agent that her mother had arranged for her was with her when she went to

the airport. He had travelled with her to Oman and had taken care of the exit arrangements for me from Colombo. The appellant said that her mother was still being asked for her whereabouts and she writes and calls her. She said that besides the letter that is in her appeal bundle she has other letters too but they are at "home". These also say that the authorities are still looking for her. When asked if there was a warrant of arrest against her in Sri Lanka, the appellant said she does not know. At this stage the appellant was very distraught and I adjourned the hearing for ten minutes.

8. Upon resumption, Mr Clark said that he had no more questions to ask of the appellant. In re-examination the appellant said that her husband had been working for "media" but she does not know if he was working for some one or he was freelance. He had his own cameras and he had also been given cameras but she did not know who had given him the cameras. She said that while she was being tortured her torturers said they knew that she and her husband had been involved in LTTE activities. They did not believe her when she told them that she knew nothing about her husband's activities. She drew attention to her mother's statement, which is in her bundle of documents. That concluded the evidence of the appellant and I invited the representatives to make submissions.
9. Mr Clark said he relied on the reasons set out in the refusal letter to support the decision to refuse her claim. He accepted that a Judge's findings on her claimed detention and ill treatment when she last went to Sri Lanka are not in dispute. Mr Clark said if I was satisfied on the evidence presented that the appellant's release had indeed been procured by the giving of bribes, he would be in difficulty to defend the respondent's decision to refuse the appellant's claim. However Mr Clark asked me to consider the immigration history of the appellant. She had failed to inform the respondent about her change of circumstances in her marriage. This was particularly important as her visa was as her husband's dependant. Moreover the appellant had failed to apply for asylum upon her return. Mr Clark argued that these actions undermined her credibility. The appellant's profile as an LTTE "activist" was very low. Her claim to have attended many demonstrations is not supported by anyone or any organisation. He asked me to bear in mind the contents of paragraph 3.3.1 (a) of the decision in **GJ**. Mr Clark asked me to find that she was released because she was of no interest. He asked that I so find also because she is not on the list given with the Sri Lankan Gazette. Mr Clark argued that I should pay particular attention to the contents of paragraphs 336 and 331 of the **GJ** decision and of paragraph 309 too. He asked that the appeal be dismissed.
10. In reply Mr Muquit relied on his written skeleton argument. He argued that the appellant had given her evidence in an honest and truthful manner and had made no effort to embellish her claim. Mr Muquit argued that the appellant had benefitted from a corrupt system to escape further difficulties and had managed to escape from Sri Lanka as a result of bribes. He said that the husband's

profile as LTTE activist of high profile had been accepted by as can be seen from Paragraphs 39 and 40 of the previous determination. He asked me to give due weight to the letter from mother as it establishes that the appellant is still being sought in Sri Lanka. He asked that the appeal be allowed. I reserved my decision which I now give with the following reasons:

11. In applying the principle that the appellant carries the burden of proof and is required to discharge it on the standard of reasonable likelihood and not on a balance of probabilities, I have appraised all the evidence with care and anxious scrutiny. I have also taken full and proper account of the evidence that made the First Tier Judge Conrath to accept that when the appellant went to Sri Lanka in 2013, she was detained and ill treated by authorities on suspicion of familial and/or personal involvement with the LTTE. It was a finding based on medical evidence and well reasoned which led me to retain that finding having found the determination of Judge Conrath in material errors of law for reasons given in my decision promulgated on 4 November 2014. That is the starting point in my consideration of the appeal.
12. The appellant's claim is that she will face persecution if she is returned to Sri Lanka and she states that this will happen as she is suspected or perceived to be a supporter of the LTTE. In determining this appeal I have taken full account of the fact that the authorities in Sri Lanka have inflicted defeat on the LTTE and in so doing they face allegations of most grave and serious abuses of human rights. It is borne out by reports from international human rights reports that the authorities remain very vigilant of resurgence of the separatist movement. In my judgement therefore it would be fool hardy to think that the defeat of the LTTE has made the life and limb of LTTE persons or those perceived to have been with the LTTE, safe now.
13. The matter of risk to Tamils in Sri Lanka with LTTE involvement and such returnees was comprehensively reviewed by the Upper Tribunal in GJ and I respectfully follow the guidance given in that judgment.
14. As I said earlier, my starting point in this appeal is that this appellant has suffered detention and ill treatment at the hands of the authorities when she was last in Sri Lanka. This was caused as the authorities thought that she had a political opinion that was adverse to theirs. Or so they perceived. Hence she was without a doubt detained and ill-treated for a Convention reason.
15. She has said that she or her mother acting in her interests secured her release by payment of bribe. Judge Conrath did not accept that and took the view that she was released because she was of no further interests to the authorities. In so doing the Judge reviewed her past immigration history as well as the fact that she had

returned to the UK on her own Sri Lankan passport and hence could not have been at any further risk. I take a different view. I accept the evidence of the appellant which has been consistent and plausible throughout that her release was secured by her mother by payment of bribes and that her safe departure too was ensured by engagement of an agent who travelled with the appellant part of the way to London. Having heard and seen the appellant assert these facts before me, I believed the truth of this assertion.

16. I have taken account of all the submissions made by Mr Clark that appear to show the appellant to be a person whose credibility is not good. However, the appellant has explained most of the points of "poor credibility", and others, in my view, are not of much significance to the core of the claim. In relation to not informing the Home Office that her marriage had broken down, I understand and accept the explanation given by the appellant and the same I do about her re-entry. The appellant came across to me as a simple woman, who I could not find capable of understanding much of what went around her. I believe that she was unaware of her husband's LTTE activities until very late in the day. Her responses to questions about her husband's activities/employment etc. in the UK demonstrated to me her level of intellect as well as the strength of their relationship. I also find it most likely that when she was in detention, the detention was put on record. While in detention, she was fingerprinted and made to sign a paper. I also give due and proper weight to the letter from the appellant's mother according to which the authorities are looking for her. I accept her evidence that she has more of such letters at home.
17. I have of course taken account of the documents presented by Mr Clark claiming to give names and other particulars of all those (real or artificial) persons who the govt. of Sri Lanka have designated as having been or being involved in terrorist activities. I do not give it much weight, as I was not able to get a full explanation from Mr Clark about the use and purpose of this document. I note that the name of the appellant is not in these documents. On the other hand I note that the appellant's husband's involvement with the LTTE has been accepted for the purposes of this appeal.
13. In the light of my findings of facts, I conclude that the appellant is a refugee under the Convention on Refugees and that I therefore allow her appeal to remain in the UK as a Refugee.

K Drabu CBE  
Date: 5 July 2015  
Deputy Judge of the Upper Tribunal

