Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06780/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 27 October 2015	**On 9 December 2015**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

SR
(ANONYMITY DIRECTION MADE)

Respondent

Representation:
For the Appellant: Mr S. Kandola, Home Office Presenting Officer
For the Respondent: Mr A. Bandegani, Counsel instructed by Lambeth Law Centre

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
Anonymity was granted at an earlier stage of the proceedings because the case involves protection issues. I find that it is appropriate to continue the order. Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her 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.

DECISION AND REASONS

1. For the sake of continuity I will refer to the parties as they were before the First-tier Tribunal although technically the Secretary of State is the appellant in the appeal before the Upper Tribunal.

2. The appellant entered the UK on 09 September 2009 with entry clearance as a Tier 4 (General) Student that was valid until 31 December 2011. She overstayed the visa. She later claimed asylum and an initial screening interview was carried out on 23 February 2012. She was interviewed in detail about her reasons for claiming asylum on 08 November 2012. The respondent refused the application in a decision dated 07 August 2014.

3. The appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Hanbury dismissed the appeal in a decision promulgated on 14 January 2015. A panel of the Upper Tribunal set aside the decision on 14 May 2015 and remitted the case to the First-tier Tribunal for a fresh hearing. First-tier Tribunal Judge Cockrill ("the judge") went on to allow the appeal in a decision promulgated on 19 August 2015.

4. The respondent was granted permission to appeal to the Upper Tribunal. No challenge is made to the judge's positive credibility findings. The respondent argues that the First-tier Tribunal Judge's findings relating to risk on return are flawed because he failed to take into account the relevant country guidance case of *GJ & Others (post-civil war: returnees) Sri Lanka* CG [2013] UKUT 00319. The respondent argues that the appellant's history is unlikely to give rise to a real risk of serious harm if returned to Sri Lanka in the absence of significant activities in the Sri Lankan diaspora in the UK. The respondent argues that the judge gave inadequate reasons for concluding that the appellant would be at risk of persecution notwithstanding the fact that he accepted that she had suffered past persecution.

5. The appellant argues that it was open to the First-tier Tribunal Judge to conclude that she was at risk on return on the particular facts of this case. The judge referred to *GJ & Others* and outlined the submissions made by the respondent in his decision. The country guidance case was heard in early 2013 and it was open to the judge to consider up to date evidence that was submitted in support of the appeal.

Decision and reasons

6. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision did not involve the making of an error on a point of law.

7. The judge set out the details of the appellant's claim for asylum in his decision [3-12]. He went on to outline the respondent's reasons for refusal

in considerable detail [13-22]. In considering future risk he noted the respondent's reference to the country guidance decision in *GJ & Others* and her assertion that the appellant would not be at risk on return because of her low level of involvement in the LTTE. In the same paragraph the judge observed that, at that stage, the appellant had not indicated that she was "a Tamil activist in the Diaspora working for Tamil separatism or trying to destabilise the Unitary Sri Lankan State." [19].

8. The judge went on to set out the evidence and the submissions made at the hearing [23-37]. He summarised the contents of the documentary evidence before the Tribunal, which included a large bundle containing medical evidence as well as up to date background evidence "from such organisations as Freedom from Torture, The Guardian, the Home Office, tamil.net, BBC News, and UNHCR, by way of example" [23]. He also noted that the bundle contained copies of various relevant cases and made specific reference to the case of *GJ & Others*. The judge referred to the submissions made by the respondent's representative in relation to *GJ & Others* [33]. The judge also summarised the submissions made by the appellant's representative in the following terms [35]:

> "Mr Bandegani emphasized that even in **GJ** it was accepted that people could get out of Sri Lanka and so there was support there for the Appellant's account as to how she had left her home country. As regards her "sur place" activities, there were photographs of her attending demonstrations and there was an official letter regarding her involvement with a particular Tamil organisation in this country. The TGTE with which she was associated was a proscribed organisation; this was precisely the type of organisation that was identified in **GJ**. The government of Sri Lanka would be very concerned indeed about separatist movements demonstrating a challenge to the Sri Lankan State and efforts being made to resurrect the LTTE. The Appellant, of course, would be returning from London which was seen as a Diaspora hot spot, according to the Sri Lankan government."

9. Having set out the background, evidence and submissions the judge went on to make his findings of fact. He found that there was "very clear and powerful supporting" evidence in the form of the medical reports prepared in support of her case [45]. He accepted on the low standard of proof that it was plausible that she could have secured her release from detention on payment of a bribe and noted that this was consistent with what was said in *GJ & Others* [46]. After having considered all the evidence in the round he concluded that the appellant had given a truthful account of what happened to her in Sri Lanka. He accepted that "she was seen, rightly or wrongly, as being associated with the intelligence unit of the LTTE." and had been the victim of treatment amounting to persecution in the past for reasons of actual or perceived political opinion [49]. The judge's findings relating to risk on return were set out in paragraph 50 of his decision:

> "The question now remains as to what level of risk there is for the Appellant in the future. Although at the time of the Refusal Letter the Appellant had not become particularly involved in "sur place" activities, the fact of the matter is that she has now demonstrably been involved in such anti-Sri Lankan government activity in the United Kingdom. She has associated

> herself with one of the organisations that is proscribed and that has been, again, perfectly well documented in this case, it is the TGTE. It seems to me that there has been more than one event that the Appellant has attended and the level of risk, therefore, for the Appellant has increased accordingly. Although there is no direct evidence on the point it seems to me a perfectly reasonable inference to draw that there is a reasonable degree of likelihood that Sri Lankan authorities will be monitoring, and monitoring closely, what is happening in the Diaspora, particularly where it involved someone such as this Appellant associating themselves with such a proscribed organisation. What is unquestionably the case is that if the Appellant is returned now, and if she is then detained by the authorities, she would be at real risk of persecutory treatment. The way in which the authorities treat those whom they perceive of as representing some threat to the State is very well documented. They have, in the past, been engaged in torture and there seems no reason to consider that matters have in any way improved. There is, as the respondent has rightly acknowledged, a perfectly sophisticated intelligence system in force and someone such as this Appellant, who comes from Point Pedro in Jaffna, and who has had associations with the LTTE in the past and has continued what the authorities in Sri Lanka would see as anti-government activity in this country, would place herself very much at risk of persecutory treatment should she be returned."

10. The respondent does not dispute the First-tier Tribunal's factual findings relating to the credibility of the appellant's account. She focuses her challenge on whether, on those facts, the judge was right to conclude that the appellant would continue to be at risk on return to Sri Lanka. The grounds argue that it was not open to the judge to conclude that the appellant's low level of involvement in demonstrations in the UK was sufficient to place her at risk in light of the Tribunal's conclusion in *GJ & Others* at paragraph 336:

> "We do not consider that attendance at demonstrations in the Diaspora alone is sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka."

11. The respondent argues that even if the facts were taken at their highest the judge failed to explain adequately why the Sri Lankan authorities would perceive the appellant "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" (paragraph 356(7)(a) of *GJ & Others*).

12. The respondent's challenge amounts to no more than a disagreement with the First-tier Tribunal Judge's assessment of the evidence. It is quite clear from my summary of the decision as set out above that the judge had in mind the risk categories outlined in *GJ & Others* throughout his assessment of the case. He referred to it in several places in his decision. The judge dealt with the relevant issues relating to UK diaspora activities and whether the appellant would be perceived, rightly or wrongly, as someone who had been involved in anti-government activity and was

associated with a proscribed organisation. In substance, the judge addressed in the relevant factors that were identified in *GJ & Others* as likely to give rise to a risk on return.

13. In *NM & Others (Lone women – Ashraf) Somalia* CG [2005] UKAIT 00076 the Tribunal made clear that, while country guidance decisions should be followed where relevant, they are not of the same character as legally binding precedent.

> "140. These decisions are now denoted as "CG". They are not starred decisions. Those latter are decisions which are binding on points of law. The requirement to apply CG cases is rather different: they should be applied except where they do not apply to the particular facts which an Adjudicator or the Tribunal faces and can properly be held inapplicable for legally adequate reasons; there may be evidence that circumstances have changed in a material way which requires a different decision, again on the basis that proper reasons for that view are given; there may be significant new evidence which shows that the views originally expressed require consideration for revision or refinement, even without any material change in circumstances. It may be that the passage of time itself or substantial new evidence itself warrants a re-examination of the position, even though the outcome may be unchanged. It is a misunderstanding of their nature, therefore, to see these cases as equivalent to starred cases. The system does not have the rigidity of the legally binding precedent but has instead the flexibility to accommodate individual cases, changes, fresh evidence and the other circumstances which we have set out."

14. In this case the judge did not seek to depart from the risk factors identified in the country guidance decision but conducted a holistic assessment of the case before concluding that there was at least a reasonable degree of likelihood that the appellant would continue to be at risk on return. It is not arguable that the judge erred on the facts and evidence in this particular case.

15. The judge accepted that the appellant suffered past persecution. Paragraph 339K of the immigration rules makes clear that the fact that a person has already been subject to persecution or serious harm will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

16. The conclusions of the Tribunal in *GJ & Others* referred to by the respondent related to general attendance at public demonstrations in the UK and did not consider the specific issue raised in this case, which was the appellant's additional association with the Transitional Government of Tamil Eelam (TGTE). In paragraph 50 of his decision the judge made reference to the fact that the appellant's association with a proscribed organisation was "well documented". Although he didn't refer to a specific document at that stage he had summarised what evidence was before him

earlier in the decision, which included evidence from "the Home Office" [23].

17. The appellant's bundle contained a letter from the TGTE dated 23 September 2014 outlining the appellant's activities with the organisation. Mr Bandegani explained that the First-tier Tribunal Judge was specifically referred to up to date evidence contained in the respondent's own background report (Country Information and Guidance – Sri Lanka: Tamil Separatism dated 28 August 2014). Paragraph 2.2.32 of the report confirmed that the Sri Lankan government proscribed at least 16 Tamil diaspora organisations including the TGTE. Paragraph 2.2.33 referred to a Human Rights Watch report dated April 2014, which stated the following:

> "2.2.33 Human Rights Watch reported in April 2014 that, 'The Sri Lankan government's decision to label 16 overseas Tamil organizations as financers of terrorism is so broad that it appears aimed at restricting peaceful activism by the country's Tamil minority'. Chief Military spokesman Brig. Ruwan Wanigasuriya was reported to have stated that under the order, legal action would be taken against anyone having links with listed groups. This would place local activists and alleged group members visiting the country at risk of being detained and held without charge under Sri Lanka's Prevention of Terrorism Act. "The Sri Lankan government is using vague counterterrorism regulations to tie the major diaspora Tamil groups to the ruthless but defunct LTTE," said Brad Adam, Asia director. "This broad-brush sanction could then be used to punish local Tamil activists and politicians with international ties".

18. Similar evidence was outlined in a letter from the British High Commission in Colombo dated 16 April 2014, which was quoted at paragraph 2.3.6 of the same report:

> " 'On 1 April 2014, the government of Sri Lanka announced the designation of 16 Tamil Diaspora organisations and 424 individuals under the UN Security Council resolution 1373 on counter-terrorism. The order was issued by the Secretary of Defence. The government asserts that this action has been taken to stop attempts to revive the LTTE. The BHC has asked the government of Sri Lanka to provide evidence to support this decision. '
>
> 'Among the organisations proscribed are the Transnational Government of Tamil Eelam (TGTE) and the UK-based Global Tamil Forum (GTF) and British Tamil Forum (BTF). When making the announcement on 1 April, Brigadier Ruwan Wanigasooriya said that individuals belonging to these organisations would face arrest under anti-terrorism laws when travelling to Sri Lanka. This has not yet been tested in practice; to date, there have been no known arrests based on membership of one of the newly proscribed groups' "

19. When the judge's conclusions relating to risk on return are considered in light of the background and other evidence before him it becomes clear

that his findings were made in the context of the general risk factors outlined in *GJ & Others* and the up to date evidence. Given the anxious scrutiny required in protection cases it was incumbent on the judge to assess risk on return in light of the developments disclosed by the background evidence that post-dated *GJ & Others*. This was entirely the correct approach.

20. For the reasons given above I conclude that, in essence, the challenge to the First-tier Tribunal decision amounts to no more than a disagreement with the outcome. The judge's findings were fully reasoned and took into account the particular facts of the case, the relevant country guidance and up to date evidence. His findings were open to him on the evidence and do not disclose any material errors on a point of law.

DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed  Date 01 December 2015
Upper Tribunal Judge Canavan