



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

Appeal Number: AA/11797/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 August 2015**

**Determination  
Promulgated  
On 4 September 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER**

**Between**

**MM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Iqbal, Counsel, instructed by Wimbledon Solicitors  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. Breach of this order can be punished as a contempt of court. I make the

order because the appellant is a young asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 20 June 2014 refusing her asylum and human rights claims and to remove her to Sri Lanka.

### **Introduction**

3. The appellant is a citizen of Sri Lanka born on 26 October 1989.
4. The appellant claims that she was detained in February 2011 and detained for 8 days. She was interrogated about her relationship with NS (a fellow female student who claimed to be a LTTE member) and subjected to torture including sexual torture). She was released on payment of a bribe and was required to sign something. Her father told her that she had been released subject to conditions that she continued to reside at her aunt's address and made herself available for further enquiries. She arrived in the UK on 10 March 2011 with entry clearance as a student. Since then, she has been told that the authorities went to her parent's house and her aunt's house and asked questions about her.
5. The appellant claimed asylum in July 2013 but her claim was refused on 11 December 2014. The respondent accepted identity and nationality and that the reason for claiming asylum (imputed political opinion) engages the Refugee Convention. However, her account was otherwise rejected.

### **The Appeal**

6. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Taylor House on 8 April 2015. The First-tier judge found that her account was credible but she did not fall into any of the risk categories identified in GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319. She was not at risk of further ill treatment upon return.

### **The Appeal to the Upper Tribunal**

7. The appellant sought permission to appeal on 13 May 2015. The judge erred in law because the reality is that the appellant has been identified as having connections with the LTTE through NS. The perception of the authorities about the appellant is what will cause her problems on return, especially as the very same profile has already caused her to be detained and ill-treated. The judge failed to consider paragraph 339K of the Immigration Rules ("the Rules"). There were no proper findings in relation to the arrest warrant.
8. Permission to appeal was granted by First-tier Tribunal Judge Cox on 10 June 2015 on the basis that it was arguable that the judge failed to adequately address risk on return against the country guidance, the objective evidence and paragraph 339K of the Rules.

9. In a rule 24 response dated 2015, the respondent sought to uphold the judge's decision on the basis that it was open to the judge to find that the appellant was not at risk on return to Sri Lanka.
10. Thus, the appeal came before me.

### **Discussion**

11. Ms Iqbal relied upon the grounds of appeal and submitted that the judge forgot that the purpose of the appellant being targeted by the Sri Lankan authorities was because of NS.
12. Mr Nath conceded that if the appellant was credible then there was scope for difficulty for the respondent. He agreed that there was a material error of law.
13. I find that the judge has largely accepted the appellant's claim at its highest. The judge made the following positive findings of fact (from paragraphs 42, 46, 47, 48, 50 and 55 of the decision) ;
  1. The appellant started studying at Jaffna University in September 2009 when she met NS. They became close friends. In November 2009, NS told the appellant that she was an LTTE member. The appellant started supporting NS financially by, for example, buying her food and letting her use the appellant's telephone. In June 2010, she helped NS find accommodation in Colombo because NS had said that she wished to flee Sri Lanka and needed to go to Colombo to make some arrangements. The appellant last spoke to NS in August 2010.
  2. On 9 February 2011, three people in civil uniform came to the appellant's aunt's house (where the appellant was then staying) and took the appellant away to a place that looked like a police station. She was interrogated about her relationship with NS, and she admitted that NS had told her that she used to be an LTTE member. The appellant was accused of being an LTTE member. She was detained for 8 days and subjected to torture, including of a sexual nature, and beatings. She was released on 17 February 2011 through payment of a bribe and was required to sign two Sinhalese documents without knowing what they said.
  3. The appellant's father told her she was released subject to conditions that she make herself available if they needed to see her (including for future enquiries) and that she continued to reside at her aunt's address. The appellant resided there during the period of less than a month

between her release from detention and leaving for the UK. The authorities did not come looking for her during that period. The appellant has no actual knowledge of an arrest warrant or charge against her.

4. The appellant travelled from Sri Lanka to the UK on 10 March 2011 on her own passport with her UK student visa which was originally valid until September 2013. Her agent had told her which counter to go to at the airport in Sri Lanka and how to exit. She had no difficulty in getting through the airport. That is not probative of a lack of adverse interest in her.
  5. Two people visited the appellant's former university hostel in around February 2011, making enquiries about NS and the appellant. The appellant was told about the visit in June 2011. The authorities visited her parent's house on 16 November 2012 and her aunt's house on 17 November 2012. They asked questions about the appellant and the appellant then faxed information to Sri Lanka to prove that she was abroad. The appellant's father attended the police station the next day and the police shouted at him, telling him that the appellant's release had been subject to her being available to attend further enquiries.
  6. The appellant suffers from depression and chronic PTSD and she would benefit from antidepressant medication and would be helped by psychological treatment such as cognitive behavioural therapy.
  7. The appellant does not claim to be an LTTE member but she has attended the Heroes Day.
14. I have regard to paragraph 339K of the Rules which states that the fact that a person has already been subject to persecution or serious harm, will be regarded as a serious indication of a 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. I accept the submissions made by both sides that there is a material error of law in the decision. The judge has failed to properly assess risk on return in accordance with GJ and paragraph 339K of the Rules.
15. I indicated at the oral hearing that I would consider whether to remake the decision. I have decided to remake the decision because the appellant's case has effectively been accepted at its highest by the judge. I find that the appellant has provided some support to NS who claimed to be a LTTE member. The authorities were sufficiently interested in the appellant to

detain her for 8 days and to torture her. She confessed her activities and was accused of being a LTTE member. She was released on a bribe but it was made clear that she should be available for further enquiries. The appellant made herself unavailable for further enquiries by leaving for the UK. The authorities have asked about the appellant's whereabouts at three different locations. Police shouted at her father and told him that her release was subject to her being available for further enquiries.

16. Taking all of those findings into account, I find that it is reasonably likely that the authorities perceive the appellant to be a threat to the integrity of Sri Lanka because she is perceived to have a significant role in relation to post-conflict Tamil separatism (paragraph 356 of GJ). Her perceived activities are plainly post-conflict. It is reasonably likely that the appellant is on a local watch list. It is reasonably likely that she will be subject to further detention if she is returned to Sri Lanka. Following GJ, detention in Sri Lanka always gives rise to a reasonable degree of likelihood of torture. If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or serious harm requiring international protection. I find that the appellant's appeal against the decision of the respondent must therefore succeed.
17. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand.

### **Decision**

18. Consequently, I set aside the decision of the First-tier Tribunal. I remake the decision as follows,
- (i) I allow the appeal under the Refugee Convention.
  - (ii) I allow the appeal under Articles 2 and 3 of the Human Rights Convention.

Signed



Date 1 September 2015

Judge Archer

Deputy Judge of the Upper Tribunal