Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: DA/01837/2013
DA/01796/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 24 September 2015	**On 4 November 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

GJ (1)
GJ (2)
(anonymity direction made in each case)

Respondents

Representation:

For the Appellant:	Miss A Holmes, Senior Home Office Presenting Officer	
For the Respondents:	DA 01837 2013 GJ(1)	Mr P Haywood, Counsel, instructed by Jein Solicitors
	DA 01796 2013 GJ(2)	Mr A Mackenzie, Counsel, instructed by Jein Solicitors

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall

directly or indirectly identify the respondents. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. It is particularly important in this case that anonymity is respected. The respondents' claim to need international protection could be considerably and unjustly enhanced by their identities being known to the authorities because of publicity in breach of this order.

2. The respondent in DA/01837/2013 is identified here as GJ(1) and the respondent in DA/01796/2013 is identified as GJ(2). Ordinarily I would have given the number (1) to the lower appeal number but the Secretary of State has identified the respondent in DA/01796/2013 as A2 and the respondent in DA/01837/2013 as A1, and the respondents agreed between themselves that Mr Haywood should address me first. It follows therefore that I have identified them accordingly. In this decision I refer to them as "claimants" or as GJ(1) or GJ(2) depending on context.

3. I am grateful to each of the representatives for their assistance in unravelling these cases.

4. The respondents to this appeal are brothers. They are citizens of Sri Lanka. They have each behaved discreditably and were each subject to deportation orders made as a consequence of their criminal behaviour. The events leading to the orders being made were not joint enterprises, at least not with each other, but their cases were, appropriately, heard together because their claims to risk persecution or similar serious ill-treatment in the event of their return to Sri Lanka depended on similar evidence. Although the First-tier Tribunal (First-tier Tribunal Judges Kamara and Traynor) heard the appeals together, the Tribunal promulgated entirely separate Decisions. Normally that is an undesirable practice but here I accept that the risk of muddling the cases was particularly acute and I understand that the First-tier Tribunal wanted to write its Decision in a way that showed beyond doubt that each case had been considered separately. Nevertheless I have prepared one Decision dealing with each of the appeals that were heard in a joint hearing before me.

5. The claimants each appealed a decision of the appellant, hereinafter "the Secretary of State" on 23 August 2013 to refuse to revoke a deportation order made under Section 5(2) of the Immigration Act 1971.

6. In the case of GJ(1) the appeal was allowed on asylum grounds, under the 1950 Convention, and under the Immigration Rules. In the case of GJ(2) the appeal was allowed on asylum grounds, on human rights grounds, and "the appeal against the decision to refuse to revoke the deportation order of 12 October 2010 is allowed".

7. Nothing turns on this slightly different way of expressing the outcome of the appeals decision.

8. I find it most helpful to begin by considering the challenge to the findings that each of the claimants is a refugee.

9. It is an ironic feature of this case that GJ(1) maintains that he was not interested in Tamil politics until he was sent to prison in the United Kingdom and his contact with ethnic Tamils there caused him to think for the first time about the place of Tamils in Sri Lankan society. Consequently he became an active member of various Tamil groups in the United Kingdom. He has played a prominent role in stewarding demonstrations and has established a reputation in the Tamil diaspora as someone who assists people with asylum claims and who advises those who claim to have suffered human rights abuses about where they can get professional advice. He has also played a particular role in organising and distributing a disturbing video clip of a well-known Tamil journalist, one Isaipiriya, in which the journalist was seen to be alive and then later dead in the custody of the Sri Lankan authorities.

10. Without diminishing the relevance of other examples of his support this act was seen as a particularly significant incident because its release came at a time when the Sri Lankan authorities were concerned about their image because they were hosting the Commonwealth Heads of Government Conference in Colombo.

11. Having accepted this evidence the conclusion, at paragraph 159, that the claimant "will almost certainly be perceived by the Sri Lankan authorities as promoting Tamil separatism and, therefore, would be considered by them as amounting to a threat to the stability of the unitary Sri Lankan state" followed by a finding that he would "therefore" face a real risk of persecution might be thought to be unremarkable.

12. However, this has been challenged by the Secretary of State.

13. Indeed, at point 11, the grounds complain that the Tribunal was wrong to describe the witnesses that gave evidence about the politically embarrassing and harrowing video clip as "independent sources". Mr Haywood is not an aggressive advocate and in his grounds he contented himself with describing this criticism as "unworthy". I consider that an eloquent understatement. One of the witnesses is a former BBC correspondent in Sri Lanka and the other is identified as an official with a human rights organisation. Neither was cross-examined on the basis that they were untruthful witnesses. If it was the Secretary of State's case that they were acting unprofessionally or worse, then the allegation should have been put to the witnesses when the chance arose. The Tribunal is not to be criticised for failing to give a detailed explanation for accepting unchallenged evidence. I agree with Mr Haywood and the submission at paragraph 12 of his Rule 24 Reply that the claimant's conduct was clearly within the categories of risk recognised in the country guidance case of **GJ and Others (Post-civil war; returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. The plain fact is that the claimant is a well-known activist in pro-Tamil causes and he may very well be associated with publications critical of the Sri Lankan government because of his role in publicising the damaging video clip.

14. Miss Holmes took a realistic view and did not expand on the grounds which she did not draft.

15. It follows that I find no merit whatsoever in the criticism of the finding that the GJ(1) needs international protection.

16. I now consider the finding that the other claimant, GJ(2), needs international protection. His case for being recognised as a refugee is weaker than that of his brother, GJ(1). Nevertheless, it is his case that he has attended pro-Tamil demonstrations with his family in the United Kingdom and that his father was involved with Tamil separatist politics when he was in Sri Lanka. His main expressed concern was that the authorities would identify him as being the brother of the other claimant who, in his view, was particularly at risk.

17. At paragraph 100 of its decision the Tribunal found that the GJ(2) would be at risk even if he were deported on his own because he would be identified by the authorities as the brother of a known activist. He could not be expected to separate himself from his brother. His own political leanings were in the same direction at his brothers even though they were not pursued with anything like the same degree of enthusiasm. He had done enough to make it reasonably likely that the authorities would know him for his own activities. However there is in his case the added complication of his being mentally ill and all these things together led the Tribunal to conclude that he would be at risk.

18. According to the grounds the finding that the claimant "would not be distinguished from" his brother is a misdirection and it is said to be a misdirection because, unlike the guidance given in the Country Guidance case **GJ**, it fails to distinguish between people on a "stop list" and people on a "watch list". Mr Mackenzie's Rule 24 notice explains his answer to these grounds. I set it out below and respectfully adopt it:

> "The SSHD's challenge to the panel's findings on risk of persecution is incoherent. The basis on which the panel found the respondent to be at risk was that his brother had been extensively involved in *sur place* political activities in the UK and would be known to the Sri Lankan security forces. It found that the respondent would be associated with his brother in the minds of the Sri Lankan authorities, would be questioned about his brother if returned, would be known to have been involved in demonstrations in the UK, and would, because of his mental health conditions, be particularly vulnerable under interrogation: see §100. Hence it took the view that he was at risk of persecution."

19. The grounds go on to assert that these were conclusions that the panel was entitled to reach. I agree.

20. There is an added dimension in the case GJ(2). The Tribunal found that in the event of his return he would be additionally at risk because of the likelihood of his committing suicide. That finding was based largely on the report of an appropriately qualified psychiatrist that was supported by extraneous evidence including the GJ(2)'s own presentation and the fact that he had previously attempted to take his own life. The Tribunal said at paragraph 105:

> "We find that without support he will not be able to self-care or feed himself and that, without any family support or home to live in, his circumstances will swiftly deteriorate."

21. The grounds challenge this on the basis that "the weight of evidence discloses a clear likelihood that members of the appellant's family will in fact accompany him on return". This is an interesting proposition that seems wholly unsupported by the evidence which was that his family members would *not* accompany him on return.

22. In the circumstances the finding that the GJ(2) would be forced to live in circumstances which are inhuman and degrading was clearly open to the Tribunal. The suggestion that the only known relative in Sri Lanka who has not seen him since he was aged 6 and is preoccupied with her own problems concerning a land claim against the government would be in the least bit inclined or able to provide assistance to a person she does not know but whose presence might be a source of vexation to the government is based on nothing other than the fact it is convenient for the Secretary of State's case to assume that it is true.

23. It follows therefore that I am not persuaded that there is any material error in the conclusion of the First-tier Tribunal that each claimant is entitled to international protection and, subject to what is said about disqualification below, each is entitled to be recognised as a refugee.

24. A person who would be otherwise recognised as a refugee is not entitled to refugee status if he has been convicted of a particularly serious crime *and* he is a danger to the community in the United Kingdom. Section 72 of the Nationality, Immigration and Asylum Act 2002 identifies circumstances where these things must be presumed unless the contrary is shown.

25. In the case of GJ(1) at paragraph 145 of the Decision the Tribunal finds in terms that the appellant has rebutted the presumption that he would be a danger to the community. This finding is based on up-to-date evidence about his propensity to reoffend supported by the absence of any further offences since his last conviction.

26. On the face of it this is an entirely rational decision.

27. I was reminded in submissions that the use of the word "danger" is not surplusage but makes the point that the Refugee Convention does not permit a person to be deprived of refugee status just because he commits a criminal offence or just because he may commit another criminal offence. For my part I find it difficult to see how the Tribunal could have avoided finding that GJ(1) was no longer a danger to the community given the evidence about his present attitude and the absence of further convictions.

28. At paragraph 145 the Tribunal says:

> "In assessing the facts of this case on an entirely subjective basis, and in accordance with the information which is available to us in 2014, we find that [GJ(1)] has shown

that his continued presence in the United Kingdom would not constitute a danger to the community."

29. This is described in the grounds as "opaque". It is not opaque. It is perfectly clear to any fair minded reader that the Tribunal has looked at the GJ(1)'s personal circumstances (hence the use of the word "subjective") and has concluded that he does not constitute a danger to the community. The finding is further explained. The Tribunal refers to his GJ(1) addressing his alcohol and drug abuse in addition to the factors already indicated above. Mr Haywood, in his Rule 24 notice, drew attention to the fact that the attitude of the probation service has changed and that GJ(1) respondent is now seen as presenting a "low" risk.

30. In the case of GJ(2), the Tribunal deal with the point at paragraph 101 of its decision. It notes that GJ(2) has not reoffended, that the probation officer assesses him at a "very low risk of reoffending" and that his mental illness makes him vulnerable in a way that he is "incapable of posing a danger to the community".

31. According to the Secretary of State's grounds, at paragraph 25, there is an "unresolved conflict" in the evidence and that this "prevents the parties from understanding the basis on which the panel's conclusions on the Section 72 issue had been reached."

32. I will restrain myself from responding provocatively to this submission. It is surprising that the Secretary of State made it. At paragraph 11 the Tribunal explained how it had outlined at the end of the hearing that it would allow the appeal and gave its reasons. The summary reasons included that GJ(2) had been "assessed as representing a low risk of reoffending". In the Decision written reasons are given at paragraph 101. The Tribunal said that the claimant's risk or reoffending is assessed by the probation officer is "very low". The use of the words "low" and then "very low" does not represent an unresolved conflict. Rather it is a case of a considered written explanation following an extempore summary outline. In any event, it makes no difference. Either finding is wholly consistent with the conclusion that the claimant is no longer at risk.

33. Mr Mackenzie's skeleton argument points out that there was evidence that GJ(2) had given up drinking alcohol. It was found in the report of the forensic psychologist and from his partner.

34. It follows that in both cases the Tribunal has given sound reasons for finding that respective claimant faces a real risk of persecution or other serious ill-treatment in the event of return and in both cases has given proper reasons for its conclusion that the particular claimant does not represent a danger to the community.

35. It follows therefore that the Tribunal was entitled to find as it did that each claimant is a refugee. Refugees cannot be deported and there is probably no need to say any more. If there are any errors identified in the further grounds they cannot be material.

36. Nevertheless I have decided to consider the points made, such as they are.

37. In the case of the GJ(1), the first point of substance taken is that the Tribunal did not have a proper understanding of the nature of the public interest that had to be protected by deportation. Given that the Tribunal found that the claimants are refugee, it is not clear to me that this point is capable of undermining the Tribunal's decision. If the Secretary of State is suggesting that the Tribunal was irresponsible or unaware of the public interest in deportation then I profoundly disagree. In particular the Tribunal had regard to Sections 117B and 117C of the Nationality, Immigration and Asylum Act 2002. It is now trite law to say that the Rules and statute provided a compete code and, that being so, any perceived need to spell out each and every factor of relevance is diminished to the point of being extinguished provided that the reasons for reaching the decision are clear. The Tribunal has clearly has given reasons for finding it would be unduly harsh to expect the GJ(1)'s partner to remove with him. They are not overwhelming reasons in the sense that it may have been that a differently constituted Tribunal would have taken a different view but there is nothing perverse or unintelligible about the decision.

38. As indicated above, I agree with Mr Haywood that it is just wrong to suggest that there were strong indications that the family would return. The claimant's father could not return with him because he would not feel safe.

39. I do not see any point in rebutting each point taken in the grounds. The alleged unresolved issues are just challenges to the finding of fact that the respondent will not get into further trouble.

40. It is, I think necessary and it is certainly desirable, to say that the suggestion that GJ(1) had been recalled to prison is slightly misleading. He had to go to prison because he had breached the terms of the suspended prison sentence. That was to his discredit but it was not a return to the ways that had got him into the really serious offences that risked his status as a refugee. All the adverse inferences to be properly drawn from his having got into further trouble were considered by the Tribunal and a rational conclusion reached.

41. As far as the GJ(1) is concerned, the grounds do not make out the case when considered carefully.

42. In the case of the GJ(2) the high-water mark of the Secretary of State's case concerns an apparent misdirection in paragraph 11 where the Tribunal appears to muddle itself when considering if there are compelling circumstances that justify the appeal being allowed. If the only directions on Section 117C were at paragraph 11 the Decision would be concerning. However, the apparent fault here is remedied at paragraphs 117 and 118 where a correct test was applied. The "over and above" requirements are clearly met.

43. In any event, they have been met by the reason of the respondent being a refugee. Indeed, being a refugee might be the paradigm example of an "over and above" reason.

44. I make the same point made in the case of the other claimant that the code is applied and the code is complete so there is no need to spell out endlessly how horrible the offences were. It is impossible to read the Decisions without an appreciation of the seriousness of the crimes for which the claimants were each convicted.

45. I have modelled my decision very closely on the Secretary of State's grounds because Miss Holmes relied largely on the grounds before me although she did make apt supplementary submissions where she thought that helpful. Miss Holmes indicated at the beginning of the appeal that she anticipated difficulties and this shows that she had a greater understanding of the Decisions that were being criticised than did the person who settled the grounds.

46. For all the reasons given above I am quite satisfied that the Secretary of State's appeal against the First-tier Tribunal's Decisions should be dismissed.

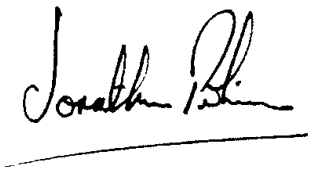
47. This is a very unusual pair of cases. The primary contention that the GJ(1) is entitled to refugee status because his attitude to Tamil separatist matters were awakened or enlivened by his period in prison and he has since then become active in the Tamil community could almost have been calculated to infuriate. However, as it was required to do, the First-tier Tribunal considered it soberly and seriously and subsequently found it to be true. Entirely sensible reasons have been given for that conclusion. With it the findings that both claimants are refugees are entirely sustainable and are certainly not undermined by the grounds raised by the Secretary of State.

48. It follows therefore that this is an appeal that must be and is dismissed in the case of each claimant. It follows that the decisions of the First-tier Tribunal in each case shall stand.

Notice of Decision

49. In each case the Secretary of State's appeal is dismissed and decision of the First-tier Tribunal shall stand.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 28 October 2015