



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

Appeal Number: AA/00658/2014

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 6 June 2016**

**Decision Promulgated  
On : 7 June 2016**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**P T**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer  
For the Respondent: Mr S Muquit, instructed A P Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State for the Home Department against the decision of the First-tier Tribunal allowing PT's appeal against the respondent's decision to remove him from the United Kingdom following the refusal of his asylum claim.

2. For the purposes of this decision, I shall refer to the Secretary of State as the respondent and PT as the appellant, reflecting their positions as they were in the appeal before the First-tier Tribunal.

3. The appellant is a citizen of Sri Lanka of Tamil ethnicity, born on [ ] 1984. He arrived in the United Kingdom on 27 April 2013 with leave to enter as a Tier 4 student migrant, valid until 9 September 2014. He claimed asylum on 7 May 2013. His claim was refused on 12 November 2013. He appealed against that decision. His appeal was allowed in the First-tier Tribunal on 12 April 2016. The Secretary of State has been granted permission to appeal that decision.

### **The Appellant's Claim**

4. In August 2003 the appellant was arrested together with his friend J, on the basis of suspicion that J had been involved in bomb blasts, and was released from detention in 2004 after being questioned and ill-treated. On 8 June 2008 he was arrested with others in a routine round up and was held overnight and released without charge. From 2008 to 2012 he worked for the United Nations Office for Project Services (UNOPS). As part of his work for UNOPS he had access to Global Positioning Satellite (GPS), which was banned by the government, but from which he was able to find locations of army camps and provide information to the LTTE, which he did from April 2008. On 26 November 2009 he was caught when going home from work and was stopped at a checkpoint and taken for questioning. He was held in an unknown place until 19 January 2010. He was tortured. One day he took some tablets with the intention of committing suicide and lost consciousness. His captors thought he was dead and dumped his body. He was found by people and taken to hospital. He was also of adverse interest to the Sri Lankan army and CID because he had helped a work colleague, JJ, who was wanted by the Sri Lankan authorities. The Sri Lankan authorities came to his home looking for him on 26 November 2012. He was not at home but his brother phoned him to tell him and he fled to Killinochchi and then left the country after obtaining a student visa. Since his arrival in the UK, the Sri Lankan authorities had come to his home looking for him several times. JJ is now in the UK.

5. The respondent, in refusing the appellant's claim, accepted that he had been attached to the Applied Research Unit (ARU) of UNOPS as a researcher from 29 November 2009 to 25 December 2011 but did not accept that he had been involved in updating database and mapping and did not accept that he had assisted the LTTE as claimed. The respondent did not accept that the appellant was arrested and detained in 2003 or in November 2009 and did not accept that he was of continuing interest to the Sri Lankan authorities. It was considered that he would be at no risk on return to Sri Lanka.

6. The appellant's appeal against that decision was initially heard in the First-tier Tribunal on 11 February 2015 and was dismissed in March 2015. However the First-tier Tribunal's decision was subsequently set aside in the Upper Tribunal, on 24 November 2015, and the appellant's case was remitted to the First-tier Tribunal to be heard *de novo*.

7. The appeal came before First-tier Tribunal Judge Griffith on 21 March 2016. Judge Griffith referred to the appellant's claim to have participated in diaspora activities but recorded his representative, Mr Muquit's concession that those activities would not in themselves create a risk to the appellant. The judge heard from the appellant as well as from his colleague JJ, who had also worked for UNOPS and whom he had accommodated in his home after his (JJ's) escape from detention and whom he had assisted in leaving Sri Lanka. JJ had since been recognised as a refugee in the UK. It was clarified on behalf of the appellant that the core of his claim was his relationship with JJ.

8. The judge accepted that the appellant and JJ had met when working for UNOPS. She accepted that the appellant had been able to access GPS during his work for UNOPS and that the Sri Lankan authorities had therefore been interested in him on that basis. She accepted that he had been arrested and detained by the authorities in November 2009, as well as in 2003 and 2008. She accepted that JJ had been hiding in the appellant's home after escaping from detention and she accepted the appellant's account of the Sri Lankan authorities' adverse interest in him after JJ's departure from Sri Lanka. The judge noted the appellant's attendance at certain diaspora events and she considered that those activities could serve to raise his profile above that of a person simply attending rallies and demonstrations. She concluded that the appellant would be at risk on return to Sri Lanka and she accordingly allowed the appeal on asylum and human rights grounds.

9. The respondent sought permission to appeal Judge Griffith's decision on the grounds that she had made a material misdirection in law by failing to adhere to the risk categories in GJ (post-civil war: returnees) Sri Lanka CG (Rev 1) [2013] UKUT 319, as reaffirmed in MP & Anor v Secretary of State for the Home Department [2014] EWCA Civ 829 and by relying on the dissenting view of Lord Justice Underhill in MP.

10. Permission was granted on 4 May 2016.

11. At the hearing before me Mr Tufan submitted that the judge had erred by finding that the appellant's sur place activities, which had been conceded by Mr Muquit in the First-tier Tribunal did not put him at risk, elevated his profile to being at risk when he did not otherwise fall within any of the risk categories in GJ.

12. Mr Muquit submitted that the grounds were wrong in considering Lord Justice Underhill's comments at [50] of MP as a dissenting view and that the judge was entitled to conclude that the appellant fell within the all-encompassing risk factor as being perceived as a risk to the state.

13. I advised the parties that, in my view, there was nothing in the grounds justifying the setting aside of the judge's decision. My reasons for so concluding are as follows.

## Consideration and findings.

14. The grounds challenging the judge's decision and upon which permission was granted assert, in essence, that the judge failed to follow the guidance in GJ, as confirmed in MP, and instead favoured the minority, dissenting, view in MP. However, as Mr Muquit properly pointed out, and as Mr Tufan agreed, Lord Justice Underhill's view was not a dissenting, minority view, but merely clarified the majority view. What he emphasised, at [50] of the judgement in MP, was that paragraph 365(7)(a) of GJ should not be read as prescribing that diaspora activism was the only basis on which a returning Tamil might be regarded as posing a current or future threat. He considered that there may, albeit untypically, be cases where an applicant would be regarded as posing a threat to the integrity of Sri Lanka as a single state even if not involved in diaspora activity.

15. As Mr Muquit submitted, what Judge Griffith was saying, in relying upon Lord Justice Underhill's comment at [50], was that the ultimate question was whether or not an applicant would be perceived by the Sri Lankan authorities as a threat to the integrity of the state, and that that question could be answered by having regard to a range of various risk factors taken together which may not individually fall neatly within the risk categories at paragraph 356(7) of GJ. She found that that was particularly relevant in the circumstances of the appellant's case.

16. The core issue in the appellant's claim was that the Sri Lankan authorities were aware that he had assisted a person of interest to leave the country and, furthermore, that there had been ongoing interest in him since his departure from Sri Lanka, and visits to his home, as a result. The judge had accepted the appellant's account in that, and all other respects, and her positive credibility findings had not been challenged by the respondent. Following Mr Muquit's concession before the First-tier Tribunal that the appellant's diaspora activities, periods of detention and work for UNOPS would not individually amount to risk factors giving rise to a risk on return in line with the country guidance, Judge Griffith had accepted his argument that, those matters when taken together with his known relationship with a person who had been accepted as being of adverse interest to the Sri Lankan authorities, would nevertheless lead the appellant to be perceived by those authorities as a threat. The judge found that that was consistent with Lord Justice Underhill's view and I find nothing inconsistent with the country guidance in either GJ or MP in such a conclusion.

17. Accordingly, it seems to me that the judge was perfectly entitled to conclude that the appellant fell within the all-encompassing risk factor identified in GJ and MP, of being perceived as a current threat to the integrity of Sri Lanka and to conclude that he was therefore at risk on return to that country. I find that the respondent has not made out her grounds of appeal and that the judge did not err in law as the grounds assert.

## DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The Secretary of State's appeal is dismissed and the decision of the First-tier Tribunal to allow the appellant's appeal stands.

### **Anonymity**

The First-tier Tribunal made an order for anonymity. I maintain that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed  
Upper Tribunal Judge Kebede

Date 7 June 2016