



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number:

AA/01427/2015

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons

Promulgated

On 7th March 2016

On 5th April 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

MRS GJ

(Anonymity Direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Jegarajah (Counsel) instructed by A.P Solicitors

For the Respondent: Miss Brocklesby-Weller (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge Rose dated the 31st March 2015, in which he

dismissed the Appellant's appeal on his asylum, humanitarian protection and human rights grounds.

2. Within the Grounds of Appeal it is argued, *inter alia*, by the Appellant that the First-tier Tribunal Judge erred in law in failing to allow the appeal, given that he had accepted:

- (i) that the Appellant's husband had spied for the LTTE, telecast their videos, transported fuel [for] the LTTE, arranged transportation and accommodation for LTTE members;
- (ii) in January 2009 the Appellant's husband had been abducted by pro-government paramilitaries and beaten and later released;
- (iii) the family relocated following the abduction, but despite that the Appellant's husband was sought by the Karuna group and that in September 2009 he went into hiding;
- (iv) the Karuna group and the Army visited the family home looking for the Appellant's husband frequently;
- (v) that on the 7th May 2010 the Appellant was attacked violently by the Karuna group and suffered a miscarriage as a result;
- (vi) again in July 2010 she was beaten severely for not disclosing her husband's whereabouts;
- (vii) on the 4th March 2012 the Appellant was arrested and taken to an Army camp. She was questioned about her husband's whereabouts and other prominent LTTE members;
- (viii) on the 5th March 2012 she was released through bribery and reporting conditions were imposed.

3. It is contended that the Appellant's husband is still in hiding and that all of the arrests in this case post-dated 2009 and that the Upper Tribunal in the case of GJ had stated that "the GOSL no longer relies principally on checkpoints and searches; its approach is

intelligence led and it has sophisticated, extensive intelligence as to those who are seeking to destabilise the unitary state, within the Diaspora and in Sri Lanka itself". It is argued that nothing has changed since the Appellant's arrests and torture and that the Appellant has left the country in breach of reporting conditions and that therefore this is a case which should have been allowed.

4. Although permission to appeal was initially refused by First-tier Tribunal Judge White on the 5th May 2015, permission to appeal was then subsequently granted by Deputy Upper Tribunal Judge Kamara on the 10th July 2015 when he found that "In view of the many positive credibility findings made by the FTTJ, which include an acceptance of the activities of the appellant's husband on behalf of the LTTE, as well as her own detention and ill-treatment, it is arguable that the Judge erred in finding that she was not at risk of persecution in Sri Lanka".
5. Within the Respondent's Rule 24 reply dated the 17th August 2015, it is argued that the First-tier Tribunal Judge directed himself appropriately and that in the Country Guidance case of GJ and Others, the Tribunal had identified the category of persons who would be at risk of ill-treatment upon return and that guidance was subsequently endorsed by the Court of Appeal in the case of MP. It is argued that Judge Rose properly had regard to those cases and applied the guidance to the present case and that the finding that the Appellant did not engage any of the categories identified in GJ was a finding that was open to him on the evidence and that he was entitled thereby to dismiss the appeal against refusal to grant asylum status. It is argued that the Judge directed himself appropriately.
6. In her oral submissions before the Upper Tribunal, Ms Jegarajah first asked for the anonymity direction to be maintained. This was not

objected to by Miss Brocklesby-Weller, and in the circumstances, I therefore do maintain the original anonymity order made by the First-tier Tribunal, given the nature of the risk said to be faced by the Appellant from the Sri Lankan authorities.

7. Ms Jegarajah sought to argue that the finding that the First-tier Tribunal Judge were irrational in refusing the appeal and that inadequate reasons had been given for the refusal. She sought to rely upon paragraph 306 of the decision of the Upper Tribunal in the Country Guidance case of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) in which it was stated that "President Rajapaksa has repeatedly stated that the GOSL's approach to security is now intelligence-led. The security service debriefed thousands of Tamils at the end of the civil war and the GOSL has available to it sophisticated, high-quality intelligence, enabling it to evaluate and assess the risk posed by particular individuals both within and without Sri Lanka" and the further finding at paragraph 310 that "there is no evidence that strip searches occur at the airport; the GOSL's approach is intelligence led rather than being driven by roundups and checkpoints as it was during the civil war".

8. She referred me to the body map of the scarring suffered by the Appellant at page 20 of the bundle, and as to the answers given by the Appellant in interview. She asked me to bear in mind that the conflict in Sri Lanka ended in on the 18th May 2009 and that in respect of the answers given by the Appellant in interview, the Appellant stated at page H9 of the Respondent's bundle at question 18 that "in 2009 a man came to my house to kill my husband. My husband escaped. My son and I remained in the house. They came several times looking for me and harassed me. I told them I did not know where he was. I had nobody to help me. My husband used to come once a month or two to help me, which I did not tell them. I

was pregnant, on my way back from the clinic Karuna's men saw me and got suspicious about how I could get pregnant without my husband. They came to my house and beat me up on May 7th, I think, 2010". She referred me to paragraph 25 of the interview where the Appellant stated in answer to the question as to when she last spoke to her husband on the phone "May 2010 after they came to the house and beat me up, when I lost the baby".

9. Ms Jegarajah said that the Appellant's evidence regarding the help her husband had given to the LTTE was set out in answer to paragraph 30 of the interview in which the Appellant had said that "I don't know what he did, he said he had distributed propaganda leaflets. We lived in an Army controlled area, so the LTTE asked him to raise awareness and collect money for them. He also showed videos about the LTTE and the Tamil plight in Sri Lanka. He also gathered information about the Army and STF officers". She told me that in interview at question 31 the Appellant had also stated how her husband was a driver and that he carried parcels to LTTE areas for them and that at question 34 the Appellant had said that her husband had her told that he found accommodation for LTTE members who came to the area and that at question 38 the Appellant had said that her husband was an LTTE spy.

10. Ms Jegarajah next referred me to question 53 in respect of the problems that the Appellant said she had started having in May 2010 and that the Appellant had said that she was pregnant and had gone to a clinic and that the authorities had gone to check about her visit and they had got it confirmed that she was pregnant but that "the same night they came to the house at night. I was feeding my son. Two men came and went rampaging in the house. They asked where my husband was, I said I did not know. One of them kicked me and asked how I got pregnant. I fell against the wall and fell unconscious. My son started screaming and fell on top of

me. They did not even care, they kicked me and pulled my screaming son away. They pulled my nightie. People in the neighbourhood heard my screams and came outside my house and witnessed what was happening. They kept repeating and asking me to show where my husband was. They said I knew where he was and kept hitting over and over again and threatened to harm me and my son. I pleaded and asked to be left alone and told them I would take my husband to them when he contacts me”.

11. Ms Jegarajah next referred to question 77 in the interview where the Appellant detailed what had happened to her in July 2010 and, in reply to a question as to what had happened in July 2010 the Appellant had stated in interview "they came, hit me, asked where my husband was and how many times he had been. I strongly believed that they had been informed. I was kicked with heavy boots and hit on my right wrist with a baton. One stamped on my back with a boot. I screamed and my son woke. They kept hitting me over and over. They searched the house and left saying I had to produce my husband in a week or my son and I would be shot at”.

12. Counsel next took me to question 96 of the interview where the Appellant stated that she been taken to an Army base with her son in 2012 and that in talking about that detention, the Appellant had stated how she had been taken to a room, her hands had been tied and she had been sat on a chair when a man had hit her from the front and that she had been hit with hard cardboard and that they had pushed dirty socks into her mouth and then slapped her then she was hit with cardboard on her thighs and talked about how she had been sexually assaulted and touched inappropriately.

13. The Appellant then gave evidence in that interview how a gun had been pointed at her head and how she had been threatened with being shot and that they had threatened also to shoot her son.

The Appellant detailed these answers between questions 92 and question 122 of the interview. She also detailed within those answers how they would bring her son into the room and threaten to shoot him if she did not tell them where her husband was. It was stated that it was the Appellant's case that she had been arrested on the 4th March 2012 and released on the 5th March 2012.

14. Ms Jegarajah on behalf of the Appellant then took me to the relevant paragraphs of the decision of First-tier Tribunal Judge Rose. She first highlighted how within the Judge's finding starting at [27] of the decision made he had taken account of the matters raised in the asylum decision, but had noted that the medical report provided for the appeal was dated the 26th March 2015 and was therefore not available as at the date of the decision.

15. At [28] the Judge had noted that the medical expert had considerable experience in provision of medical reports on victims of torture and that the Judge had noted how the expert, Mr Izquierdo-Martin, had concluded that the scars on the Appellant's upper limb were typical of injuries intentionally caused by sharp implements and was highly consistent with the mechanism of injury described by the Appellant, namely being scratched by the fingernails during her detention and that the scars on her lower limbs were said to be typical of injuries caused by being intentionally beaten with a long narrow blunt implement as described by the Appellant at [29]. At [30] the Judge had found that "Overall, Mr Izquierdo-Martin's opinion is that most of the scars are typical of intentionally caused injuries and are likely to be caused by a third-party as described by the Appellant". He also considered that it was extremely unlikely that the injuries to the lower limbs were self-inflicted.

16. Ms Jegarajah then referred me to [31] where the Judge found that he had no reason to find that the probable cause of the injuries

were self-inflicted by proxy and that the Judge had thereby ruled out self-infliction by proxy and that the Judge stated that the Appellant had not exaggerated her injuries. She noted that the Judge had also found that although the Appellant was able to leave Sri Lanka in 2012 using a passport in her own name, by her own account she had not been stopped at the airport as a result of arrangements having been made by the agent who assisted her and that in the Judge's finding at [39] "it is plausible that the Appellant was able, through an agent, to procure safe passage through the airport".

17. At [41] the Judge had found specifically that "having considered the evidence in the round, my findings are as follows. I am prepared to attach some weight to the Appellants account as to the events which led to her leaving Sri Lanka. However, I attach little weight to her account of her involvement in demonstrations in the UK".

18. Ms Jegarajah therefore argued that although the Judge has discounted the sur place argument, he had accepted the Appellant's account of what happened to her in Sri Lanka. However, she went on to argue that the Judge's findings in light of these positive credibility findings as to the Appellant's account in Sri Lanka were irrational, and had not properly been explained, such as to be inadequately reasoned. She argued that although the Judge had correctly identified the risk categories set out within the case of GJ (Sri Lanka) between [45] and [48] and the Judge had considered the Appellant's evidence as to her husband's activities in support of the LTTE at [49] such as he found that "none of these activities indicated that the Appellant's husband was himself a high level member of the LTTE or that he is now someone who is likely to be perceived as a threat to the integrity of Sri Lanka as a single state" and he found that there is no evidence that the Appellant's name was on a stop list.

19. Ms Jegarajah argued that given conflict had ended on the 18th May 2009, and yet on the account accepted by the First-tier Tribunal Judge the authorities were interested in the Appellant's husband not only in 2009, but also in 2010 and 2012 to the extent that she was tortured and threatened that both herself and her son would be shot if her husband was not produced, the Judge's findings that she would not be at risk upon return were irrational and had not been properly explained, given that all of the arrests and treatment which the Judge accepted post-dated the end of the conflict in 2009 and that what had to be considered was not simply the activities of the Appellant's husband, but the view of the Sri Lankan authorities as to the activities of the Appellant's husband and the risk that he posed to the integrity to Sri Lanka as a single state.

20. She argued that if the Appellant's husband was still wanted by the authorities to that degree up to 2012, why he would no longer be of interest to the authorities, and in such circumstances his wife would be at risk upon return, given that she was a lever used to try to get to the Appellant's husband. She asked me to find that there were material errors of law and to remake the decision allowing the appeal.

21. In her submissions on behalf of the Respondent Miss Brocklesby-Weller relied upon the Respondent's Rule 24 response. She argued the Judge had properly considered the cases of GJ and MP and that the categories set out therein were exhaustive and that the Judge had correctly set out the husband's activities and found that he was not a high level member of the LTTE or someone who was likely to be perceived as affecting the integrity of Sri Lanka as a single state and the Judge at [50] had found that "even if, as the Appellant maintained, her husband has remained in hiding, it does not follow that in fact he is still of interest to the authorities or to the

Army in Sri Lanka, so that the Appellant would be at risk because she would be perceived as someone who could provide information as to his whereabouts". Miss Brocklesby-Weller agreed that the Upper Tribunal in the case of GJ, was considering the categories of people who would be at risk upon return to Sri Lanka following the end of the civil war.

22. I reserved my decision on error of law and materiality.

My Findings on Error of Law and Materiality

23. The summary of First-tier Tribunal Judge Rose as to what the Appellant's case was is set out at [6] to [8] of the decision. Within these paragraphs, First-tier Tribunal Judge Rose found that:

"6. The Appellant maintained that her husband had supported the LTTE. He was seized by the Karuna group in 2009 and severely beaten. The family moved, but the Appellant was threatened and as a consequence her husband left home and started living in hiding, coming home once or twice a month. In May 2010, the Appellant was seen by a member of the Karuna group, as she returned from the clinic, whilst she was pregnant. She was attacked at night and asked of her husband's whereabouts. Members of the Karuna group came again in July 2010 looking for her husband and she was severely beaten for not disclosing details of his whereabouts. She sustained injuries for which she was treated by an Ayurveda doctor. Her attempt to go to the UK failed.

7. In March 2012 she was arrested by the Army and the Karuna group, fingerprinted and photographed. She was questioned about

her husband and where he was hiding, and was ill-treated and beaten. Under duress, she signed a book. She was then released from detention through the payment of a bribe, arranged by her mother-in-law. She went to Colombo, and in May 2012, she left Sri Lanka and went to Malaysia. She stayed there for two months and then travelled to the UK with her son, arriving on the 25th July. While in the UK, she had been involved in Tamil Diaspora activities.

8. At the Appellant's asylum interview (AIR 152) she was asked who she feared in Sri Lanka, and she referred to the 'Karuna group and Army '."

24. I do accept First-tier Tribunal Judge Rose between [28 and 31] that the Judge properly considered the evidence regarding the scarring and the report of Mr Izquierdo-Martin, and that the Judge had noted how the scars to the Appellant's upper limbs were typical of injuries caused by sharpened implements and were highly consistent with the mechanism of injury described by the Appellant, namely being scratched by the attackers fingernails during her detention and how the scars on her lower limbs were said to have been typical of injuries caused by being intentionally beaten with a long narrow blunt instrument, as described by the Appellant. He also noted that Mr Izquierdo-Martin had considered that the scars were extremely unlikely to have been self-inflicted at [29 and 30] of the decision. It is also clear that Judge Rose discounted the possibility of self-infliction by proxy at [31] he also found that the Appellant had not exaggerated her injuries within that paragraph. At [32] the First-tier Tribunal Judge further found that although the Appellant's application had been made using a false name, which he found may indicate that she was prepared to use deceit in order to come to the UK, it was consistent with the Appellant and her husband seeking to flee from Sri Lanka. First-tier Tribunal Judge Rose then between [33 and 37] gave clear and adequate reasons as to why the Appellant's

sur place activities were rejected.

25. However, the Judge went on at [41] to say that he was prepared to attach some weight to the Appellant's account of the events which led to her leaving Sri Lanka, but was attaching little weight to her account of involvement in demonstration in the UK.
26. Although First-tier Tribunal Judge Rose therefore gave clear and adequate reasons discounting the Appellant's sur place activities, there were no parts of the Appellant's account of what had happened to her in Sri Lanka, which he regarded as being false or implausible. The Judge appears to accept the entirety of the Appellant's account as to what happened to her in Sri Lanka, including the beating of her husband in 2009, and her own beating in 2010 whilst pregnant, and her arrest, detention and torture in March 2012. None of these aspects of the Appellant's case were rejected by the First-tier Tribunal Judge.
27. It is apparent from this that the Judge having accepted these core parts of the Appellant's account, he must also have accepted that the Appellant's husband was still of sufficient interest to the Sri Lankan authorities in 2009, 2010, and 2012, such as to lead to her husband being beaten, the threats made to the family in 2009, and the Appellant being beaten in May 2010, July 2010 and March 2012. All of these arrests post-dated the end of the civil war on the 18th May 2009. It is clear from the First-tier Tribunal Judge's findings that the Sri Lankan authorities must have still been interested in the Appellant's husband in 2010 and 2012, even though this was at a time when as was set out within the Country Guidance case of GJ, the focus of the Sri Lankan government's concerns had changed since the end of the civil war in May 2009 and the LTTE in Sri Lanka itself was a spent force with no terrorist incidents since the end of the civil war and that the categories of persons at a real risk of

persecution or serious harm on return Sri Lanka, whether in detection or otherwise, were after the civil war and still are, as set out within GJ. These included "individuals who are, or perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or perceived to have a significant role in relation to post conflict Tamil separatism within the diaspora and/or renewal of hostilities within Sri Lanka".

28. Therefore, although First-tier Tribunal Judge Rose has at [49] set out his reasons for finding that the Appellant's husband was not a high level member of the LTTE, in terms of the Appellant's evidence in interview that her husband had simply distributed propaganda leaflets, collected money for the LTTE, showed videos about the LTTE and the Tamil plight in Sri Lanka, and had gathered information about the Army and about a special Army force the STP, had been a driving for the LTTE and had found accommodation for LTTE members who came to the area and was a LTTE spy rather than a member and had provided financial assistance for LTTE members.

29. However, First-tier Tribunal Judge Rose has failed to explain the apparent inconsistency between his findings regarding the low-level activities undertaken by the Appellant's husband, and his acceptance regarding the treatment suffered by her husband and by herself and other threats made to her and her son, not only in 2009, but also in 2010 and 2012. The First-tier Tribunal Judge has failed to adequately explain, giving his findings that the Appellant's husband was of sufficient interest to the authorities not only in 2009, but also in 2010 and 2012 such as to lead to the Appellant being beaten, even when pregnant, and having been tortured to the extent of leaving scarring set out within the medical report in 2012 by the authorities to find out her husband's whereabouts, why this would mean that the Appellant would not still be at risk from the Sri

Lankan authorities if she were to be returned, in order to place pressure upon her to reveal the location and whereabouts of her husband.

30. The Tribunal has to consider not only the actual activities undertaken by the Appellant's husband, but also the perception of the Sri Lankan authorities as to his activities and the threat that he posed to the integrity of Sri Lanka as a single state. The First-tier Tribunal Judge has failed to consider this and has failed to properly explain the inconsistencies in respect of the treatment of suffered by the Appellant and her husband and the threats made, and his findings as to the low-level activities carried out by the Appellant's husband. Although clearly in this regard the focus of the Sri Lankan authorities has changed since the end of the civil war, as set out within the Country Guidance of GJ, it is significant in this regard that all of the arrests and treatment found by the First-tier Tribunal Judge post-dated the end of the civil war. The Judge has failed to explain in such circumstances why the Appellant's husband was not perceived by the Sri Lankan authorities as being a threat to the unity of a single state in Sri Lanka, otherwise to fall within the risk categories of GJ, even if the activities were in fact limited.

31. The inconsistent findings and failure to properly explain such inconsistency does amount to a material error of law, such that the decision of First-tier Tribunal Judge Rose is set aside, and the matter is remitted back to the First-tier tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge Rose.

Notice of Decision

The decision of First-tier Tribunal Judge Rose contains a material error of law, such that the decision of First-Tier Tribunal Judge Rose is set aside;

The case is remitted back to the First-Tier Tribunal for rehearing *de novo*, before any First-tier Tribunal Judge other than First-tier Tribunal Judge Rose.

Signed

Dated 7th March 2016

R McGinty

Deputy Judge of the Upper Tribunal McGinty