



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/02291/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

NY (SRI LANKA)
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Muquit, Counsel instructed by A & P Solicitors

For the Respondent: Ms Holmes, Specialist Appeals Team

DECISION AND REASONS

1. The appellant appeals on error of law grounds to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Goldmeier sitting at Taylor House on 31 July 2015) dismissing his appeal against the decision of the respondent to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection. The First-tier Tribunal made an anonymity direction, and I consider it is appropriate that the appellant continues to be accorded anonymity for these proceedings in the Upper Tribunal.

The Reasons for Granting Permission to Appeal

2. On a renewed application for permission to appeal to the Upper Tribunal, Upper Tribunal Judge Plimmer granted the appellant permission to appeal for, *inter alia*, the following reasons:
 - (1) Although the decision is generally carefully reasoned, it is arguable that First-tier Tribunal Judge Goldmeier has erred in law in concluding that there is “*nothing*” to suggest that the appellant’s name appears on any extant court order or arrest warrant [107] and there is “*nothing*” to suggest an intelligence led enquiry would conclude the appellant is a significant Tamil activist or has an intention to become one on return [123].
 - (2) The judge accepted that the appellant was arrested post-conflict in September 2013 during which time he was photographed, fingerprinted and tortured, and that under torture he signed a document confessing to his involvement in the LTTE. The judge accepted that his release was not officially sanctioned but procured by way of bribery, such that he will be recorded as an escapee. The judge also accepted that the Sri Lankan authorities have visited the appellant’s mother on four occasions asking for his whereabouts and the most recent occasion was in March 2015. Those matters arguably indicate that the appellant may be of continuing adverse interest and there may be an extant court order/arrest warrant for him.

Discussion

3. It is convenient at this stage to refer to the country guidance case of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**. This country guidance replaces all existing country guidance on Sri Lanka, and it includes the following headline guidance:
 - “(2) The focus of the Sri Lankan government’s concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
 - (3) The government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state ... Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
 - (4) If a person is detained by the Sri Lankan Security Services there remains a real risk of ill-treatment or harm requiring international protection.
 - (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.

- (6) There are no detention facilities at the airport. Only those whose names appear on a 'stop' list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.
 - (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
 - (a) Individuals who are, or are perceived 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.
 - (b) Journalists ...
 - (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes ...
 - (d) A person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.
 - (8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government.
 - (9) The authorities maintain a computerised intelligence-led 'watch' list. A person whose name appears on a 'watch' list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual."
4. Tony Melvin of the Specialist Appeals Team settled a detailed Rule 24 response opposing the appeal. But having heard Mr Muquit develop the grounds of appeal, Ms Holmes accepted that the positive credibility findings made by Judge Goldmeier (which are recited above) were highly problematic when set alongside the judge's concomitant finding that the appellant did not have a risk profile which engendered a real risk of persecution on return.

5. I find that an error of law is made out for the reasons given by UTJ Plimmer when granting permission. In short, the judge did not give adequate reasons for finding that the appellant would not be at risk on return given the extent to which he accepted the appellant's account of events in Sri Lanka between September 2013 and March 2015.
6. Mr Muquit's primary case on remaking was that I should proceed to remake the decision in the appellant's favour on the ground that the judge's positive credibility findings lead ineluctably to a finding that he will be at real risk of persecution on return.
7. However, as I explored in oral argument, Judge Goldmeier also made one crucial adverse credibility finding at [108]. He rejected the appellant's evidence that his interrogators were under the mistaken impression that he was of higher rank in the LTTE than was the case. It is arguable that this particular finding is inadequately reasoned. But the same can be said of the judge's positive credibility findings. The essential problem with what is otherwise a carefully reasoned decision is that the judge did not apply the guidance in **GJ and Others** when assessing the credibility of the appellant's account of events in Sri Lanka from September 2013 onwards, and only applied his mind to the guidance after he had decided which aspects of the appellant's account he accepted (most of it) and which aspect he rejected (the authorities' alleged misperception of the appellant's role and status in the LTTE).
8. Although the guidance is primarily directed at risk on return, it is also highly relevant to the assessment of the credibility of a claim by an ex-LTTE cadre of persecution in 2013, more than four years after the end of the civil war. Of particular pertinence is the guidance given in headnote (8) that an individual's past history will only be relevant to the extent that it is perceived by the authorities as indicating a present risk to the unitary state.
9. If the authorities had an accurate perception in September 2013 of the appellant's true role and status in the LTTE (in the past and/or since the end of the civil war), then prima facie the appellant's claimed arrest and detention in September 2013 runs counter to the guidance given in headnote (8) of **GJ and Others**, and it is on that account not credible.
10. The finding at [108] is inconsistent with the finding in [107] that the appellant's release was not officially sanctioned, that he may be recorded as an escapee, and that the authorities have been searching for him since his "escape". For, absent an acceptance that the authorities wrongfully perceived the appellant as having a higher rank in the LTTE than was the case, it is difficult to see why the authorities would have a continuing adverse interest in the appellant.
11. Accordingly, I find that the error of law is such that the decision as a whole is unsafe, and that none of the findings of fact made by the judge can safely or fairly be preserved.

Notice of Decision

12. The decision of the First-tier Tribunal dismissing the appellant’s appeal on asylum grounds is vitiated by a material error of law, and accordingly the decision of the First-tier Tribunal is set aside in its entirety, and this appeal is remitted to the First-tier Tribunal at Taylor House for a complete rehearing on all issues and none of the findings of fact of the previous Tribunal shall be preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed

Date

Deputy Upper Tribunal Judge Monson