



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/02682/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 10th March 2016

**Decision & Reasons
Promulgated
On 6th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MANDALIA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

AK

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms. I Broklesby-Weller, Home Office Presenting Officer
For the Respondent: Mr D Coleman, instructed by S Satha & Co

DECISION AND REASONS

1. The First-tier Tribunal has made an anonymity order and for the avoidance of any doubt, that order continues. AK is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

2. This is an appeal against a decision by First-tier Tribunal Judge levins promulgated on 5th January 2016 in which he allowed the appeal of AK against the decision of the Secretary of State for the Home Department made on 29th January 2015 to refuse to grant the appellant asylum.
3. The appellant before me, is the Secretary of State for the Home Department. However for ease of reference, in the course of this decision I shall adopt the parties' status as it was before the First-tier Tribunal. I shall in this decision, refer to AK as the appellant, and the Secretary of State as the respondent.
4. The appellant is a Sri Lankan national. He is a Tamil by way of ethnicity, and of the Roman Catholic faith. A useful summary of his immigration history is to be found at paragraph [5] of the decision of the First-tier Tribunal and I will borrow from that summary:

"The appellant had lived in Qatar from 2005 to 2010. He left Sri Lanka on 20 September 2011 and came to the United Kingdom on a Tier 4 Student visa and entered on the following day. The appellant returned to Sri Lanka on 31 August 2013 but returned to this country some three weeks later on 19 September 2013, he having been granted a further Tier 4 visa from 23 March 2013 to 25 November 2014. However on 24 October 2013, thus about a month after his return to the United Kingdom, the appellant claimed asylum for fear that he would face mistreatment if returned to Sri Lanka because he claims to have been a member of the LTTE.

5. A summary of the events that lead to the claim for asylum as set out in the respondent's decision to refuse the claim for asylum, is to be found at paragraph [6] of the decision of the First-tier Tribunal Judge. I do not repeat that summary in this decision. At paragraphs [8] to [18] of the decision, the Judge summarised the respondent's reasons for refusing the claim and at paragraphs [21] to [24], the Judge records the submissions made on behalf of the parties. At paragraphs [18] and [19] of the decision, the Judge sets out the medical evidence before him in the form of a report from Professor Lingam and a report from Dr

Persaud. At paragraph [20] of the decision the Judge refers to some original photographs of scarring. He states:

“20.I saw some original photographs of scarring, which did not help, and photographs of the appellant at a demonstration. Because of the way the photographs were lit I conclude that they could very well be of the appellant but I was not sure that they were of him. I will note the appropriate standard of proof below.”

6. The material findings of the Judge are to be found at paragraphs [26] to [30] of the decision. At paragraph [26] the Judge states that he draws no conclusions adverse to the appellant from the month or so delay in his claiming asylum after his arrival.
7. At paragraph [27] of the decision the First-tier Tribunal Judge comes to the conclusion that he did not consider that the appellant's account of his three and a half months with the LTTE in 2001, as being vague. The Judge found the appellant's account of his experiences as he came and went to and from Sri Lanka, to be entirely plausible. The Judge considered it plausible that the appellant was simply not kept on, but released by the LTTE on the basis that he could be called back if wanted later, which is what he had said happened. The Judge did not consider it implausible that the appellant was released after the Sri Lankan Navy found him, on payment by a Catholic Father from his school and that the appellant was released with a warning but without a reporting requirement. The Judge noted that it appears to be the events that happened in 2013, that really give rise to the appellant's claim for asylum. To that end, having had regard to the evidence before him, the Judge states at paragraph [28]:

“28.I consider that there is a serious possibility, reasonable likelihood and real risk that when he returned in 2013 the Sri Lankan authorities visited him at home, detained him and beat him in the way that he described. He was detained for a bit more than a week and released on payment of a bribe.....The authorities were aware of the

appellant's name, they arrested him, beat him, did not consider him of significant interest, so released him. The payment of money helped them to do so. I am satisfied that the appellant was involved with the LTTE but at a low level more than a decade ago. The authorities let him go and he was able to leave Sri Lanka on his own passport. He had an extant visa. I do not consider that the fact that the appellant left Sri Lanka in 2013 to be a factor that indicates that what happened when he was detained did not happen."

8. At paragraph [29] of the decision, the Judge reminds himself of the need to assess the risk that the appellant would face on return in light of the country guidance set out in **GJ and Others**. At paragraph [30] the Judge notes:

"30. The risk factors are set out in paragraph 7 of the headnote. This individual was a low-level LITE supporter who received basic training with them back in 2001 to 2 and he worked for them briefly at their request in 2004. He would not now be perceived to be a threat to the integrity of Sri Lanka as a single state. He is not a journalist. He is not someone who has given evidence to the Lessons Learned and Reconciliation Commission. He is not someone whose name appears on a computerised stop list accessible at the airport. He has passed through the airport without difficulty. It follows that there is not an extant court order or arrest warrant."

9. I pause there to note that those findings are particularly important because it is plain that the Judge is engaging with the risk categories that are identified in the headnote to the country guidance decision in **GJ and Others**. The Judge goes on in that paragraph to state:

"...What happened in 2013 was that the appellant was detained, for whatever reason, beaten and tortured, but then released. I accept that the Sri Lankan authority's approach is based on sophisticated intelligence. He is not on the stop list but subparagraph 9 of the headnote applies. He is someone who was monitored by the security services after his return. They came to see him, detained him and beat him and released him. The headnote explains that if 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 would be a question of fact in each case, dependent on any diaspora activities carried out by such an individual". The key phrase in sub-paragraph (9) is "in general". Each individual's case is different. From the reasons given above I am satisfied that this appellant was detained and beaten and tortured..... It happened once; I can see no good reason why it could not happen again. Accordingly I am satisfied that there is a serious possibility, reasonable likelihood and real risk that if this appellant was returned to Sri Lanka he would be subject to persecution on account of his actual or imputed political opinion...."

10. The respondent appeals on the ground that the Judge erred in allowing the appellant's appeal. She claims that the Judge failed to consider the evidence holistically and that it was incumbent upon the Judge to consider whether the appellant's account in fact fits the category of person that is the current focus of the Sri Lankan governments concern, as identified at [2] and [3] of the headnote to the decision in **GJ and others**. The respondent submits that having concluded quite categorically that the appellant did not fit the profile of someone at risk as presented in **GJ and others** the account that he had been detained and tortured in 2013 as a result of his previous involvement with the LTTE should fall away.
11. Permission to appeal was granted by First-tier Tribunal Judge Page on 22nd January 2016. The matter comes before me to consider whether or not the decision of First-tier Tribunal Judge levins involved the making of a material error of law, and if the decision is set aside, to re-make the decision.
12. At the hearing before me, Ms Brocklesby-Weller adopted the respondent's grounds of appeal and she draws my attention in particular to what is said at paragraph [28] of the Judge's decision. She

submits that the appellant's account of events, and the Judge's consideration of that account, is inconsistent with the Upper Tribunal's decision in **GJ and others**. She submits that the Judge erred in assessing the credibility of that account by relying upon the medical evidence that was before him. She submits that the Judge should have had the objective evidence in mind when making his assessment of the credibility of the account of events in 2013 because the appellant's subjective account of events is not consistent with what is set out in the objective evidence. In any event, she submits that the fact that the Judge accepted the account of events in 2013 is not to say that the appellant remains at risk upon return now.

13. On behalf of the appellant, Mr Coleman submits that the Judge came to findings that were properly upon to him on the evidence at paragraphs [26] to [30] of his decision. The Judge was entitled to believe the appellant's account of events for the reasons that are set out in the decision. He submits that the Judge carefully assessed the risk upon return by reference to the country guidance case and having found that the appellant had been detained in 2013 as he had claimed, it was open to the Judge to allow the appeal for the reasons given.
14. The issue for me to decide is whether or not the Judge was entitled to conclude that the appellant was detained in 2013 and in light of the findings made by the Judge, whether the appellant falls with the category of a person who may be at risk as set out at subparagraph 9 of the headnote in **GJ and others**.
15. In that respect I follow the guidance of the Court of Appeal in **R & ors (Iran) v SSHD [2005] EWCA Civ 982**. The Court of Appeal held that a finding might only be set aside for error of law on the grounds of perversity if it was irrational or unreasonable in the *Wednesbury* sense, or one that was wholly unsupported by the evidence. A finding that is "perverse" embraces findings that are irrational or unreasonable in the *Wednesbury* sense, and findings of fact that are wholly unsupported by

the evidence. On appeal, the Upper Tribunal should not overturn a judgment at first instance, unless it really could not understand the original judge's thought process when he was making material findings. I apply that guidance to my consideration of the decision in this appeal.

16. Having carefully read the decision of the First-tier Tribunal Judge and his reasons, I reject the submission that the decision discloses a material error of law as claimed by the respondent. The decision of the First-tier Tribunal Judge spans over some eleven pages, and 32 paragraphs. It is clear that the Judge very carefully considered the evidence before him as to all of the events that were described by the appellant, and came to findings that were properly open to the Judge on the evidence.
17. In my judgement the findings made by the Judge between paragraphs [26] and [30] in particular, were findings that were properly open to the Judge on the evidence before the Tribunal. They cannot be said to be perverse, irrational or findings that were not supported by the evidence. This is an appeal which in my judgement was allowed after the Judge had carefully considered the particular facts and circumstances of the claim. In my judgement, the Judge allowed the appeal having had very careful regard to the country guidance decision in **GJ and Others** and in particular, subparagraph (9) of the headnote thereto.
18. The country guidance in **GJ and others** is clear that if a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection. Subparagraph (9) notes that 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. The Judge noted at paragraph [30] of his decision that the key phrase in sub-paragraph (9) is "in general". In my

judgement, the Judge was right to stress that each individual's case is different. In this appeal the Judge found that this appellant was detained, beaten and tortured in 2013. As I have said, that was a finding that was open to the Judge on the evidence. It was against that backdrop that the Judge allowed the appeal and in my judgement it was open to him to do so.

19. In my judgement the respondent is unable to establish that there was a material error of law in the decision of the First-tier Tribunal and it follows that the appeal is dismissed.

Notice of Decision

20. The appeal is dismissed.

21. An anonymity direction was made by the First-tier Tribunal and is continued.

Signed

Date: 6th July 2016

Deputy Upper Tribunal Judge Mandalia

FEE AWARD

The First-tier Tribunal Judge made a full fee award of any fee which has been paid or may be payable. I have dismissed the appeal before me and the fee award stands.

Signed

Date: 6th July 2016

Deputy Upper Tribunal Judge Mandalia