



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/03697/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> January 2016**

**Decision & Reasons  
Promulgated  
On 22<sup>nd</sup> February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**Y N**

(ANONYMITY DIRECTION MADE)

Respondent

**Representation:**

For the Appellant: Mr Avery, Home Office Presenting Officer

For the Respondent: Mr Coleman, Counsel for S Satha & Co, Solicitors, London

**DECISION AND REASONS**

1. The Appellant in these proceedings is the Secretary of State, however for convenience I shall now refer to the parties as they were before the First-tier Tribunal.
2. The Appellant is a citizen of Sri Lanka born on 18<sup>th</sup> May 1985. He appealed against the Respondent's decision of 20<sup>th</sup> May 2014 refusing to grant him asylum in the United Kingdom. His appeal was heard by Judge of the First-

tier Tribunal Andonian on 16<sup>th</sup> October 2015. He allowed the appeal in a decision promulgated on 27<sup>th</sup> October 2015.

3. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Heynes on 12<sup>th</sup> November 2015. The permission refers to the Grounds of application which state that the judge failed to give adequate reasons for finding the Appellant credible and did not follow the relevant country guidance. The permission states that whilst the judge is not required in his decision to deal with every point raised, the refusal letter sets out a number of significant credibility issues which have not been addressed beyond dismissing them en bloc as being of little substance. The permission states that the decision does not address the risk factors identified in the country guidance and that these are arguable errors of law.
4. There is no Rule 24 response.
5. The Presenting Officer submitted that the credibility issues in this claim were not properly dealt with at paragraphs 3 to 5 of the First-tier Judge's decision. He submitted that the judge failed to follow the country guidance case of **GJ and Others Sri Lanka CG [2013] UKUT 00319 (IAC)**.
6. The Presenting Officer referred me to paragraph 9 of the decision which states "I find the Respondent's challenges to the credibility of the Appellant's evidence to be of little substance". He submitted that the refusal letter in this case was extremely detailed relating to credibility and the inconsistencies in key parts of the Appellant's evidence. At paragraph 25 of the refusal letter reference is made to the Appellant's arrest in 2005 and the inconsistencies in his evidence about this. Paragraph 26 of the refusal letter refers to his release after that arrest. He was arrested without charge and with no reporting conditions. The Respondent considered this alongside the background information about those arrested for suspected connection to the LTTE and makes mention of the Appellant's lack of information about his release, which led to the Respondent coming to the conclusion that this did not happen.
7. I was referred to paragraph 32 of the refusal letter about the Appellant's detention in 2013 in Colombo after being rounded up and the Appellant's explanation of why he was detained. This paragraph states that his explanation does not correspond to the exit procedures at Sri Lankan airports, when his visit to Thailand in 2010, and his return to Colombo on his own passport is taken into account. At paragraph 34 the refusal letter states that the fact that he was able to leave Sri Lanka in 2010 on his own passport is inconsistent with his claim that he was arrested because of his previous activities and that he is a person of interest to the Sri Lankan authorities.
8. At paragraph 35 of the refusal letter reference is made to the Appellant stating that his name was given to the authorities by people who were caught trying to leave for India in 2011. When he was asked why the Sri

Lankan authorities waited until 2013 to arrest him he said that his previous evidence was wrong, it was not 2011.

9. The Presenting Officer submitted that these are not trivial issues and the judge did not deal with them adequately when considering the Appellant's credibility.
10. The Presenting Officer went on to deal with the case of **GJ and Others** submitting that the Sri Lankan authorities are only interested in people who are carrying out activities related to Tamil separatism and who are trying to destabilise the unitary Sri Lankan State. The Presenting Officer submitted that there is no evidence that this Appellant was involved in any such activities and even if he is found to be credible, this would not lead to the conclusion that he might be on a "stop" list at the airport. He submitted that this was only an assertion by the Appellant.
11. I was referred to paragraph 6 of the decision which makes mention of a "stop" list and the categories of people who are at real risk of persecution or serious harm on return to Sri Lanka. The judge states in this paragraph that only individuals who are perceived to be a threat to the integrity of Sri Lanka as a single state are at risk and then states "The Appellant before me is such an individual". The Presenting Officer submitted that there is no reasoning by the judge as to how he came to this conclusion and there was no evidence before the judge to suggest that the Appellant is such an individual. He submitted that the reasoning in the decision is inadequate and the decision is therefore unsustainable.
12. Counsel made his submissions on behalf of the Appellant, submitting that the only fair criticism of this decision is that it is very short, but he submitted it is not unsafe or unsound and there is no material error of law therein.
13. He submitted that this Appellant is extremely vulnerable and the judge accepted this and dealt with it. I was referred to paragraph 1 of the decision which refers to the Appellant being dazed and he submitted that the judge took into account the Appellant's mental state when considering his risk on return. He submitted that at paragraph 2 of the decision the judge states that the Appellant's profile goes to the core of the claim. He refers to the extensive medical evidence and the two expert reports, being a psychiatric report by Dr Dhumad and the report on his physical condition and his scars by Professor Lingam. I was referred to paragraph 14 of the decision which refers to Dr Dhumad's report and to the appellant having depressive episodes with psychotic symptoms and experiencing PTSD. The report states that in the context of deportation, because of the appellant's PTSD, the risk of suicide is increased. Dr Dhumad states that the impact of a return to Sri Lanka will affect the appellant's mental health badly. He states that the Appellant is mentally unstable and Counsel submitted that the appellant was unable to give evidence at the First-tier hearing because of this.

14. I was then referred to the report by Professor Lingam which states that the Appellant was incapable of giving a consistent account and was unable to recollect dates and events. Counsel submitted that the First-tier Judge took all of this into account and also took into account the scars on the Appellant's body, which the report states are consistent with trauma and torture. The judge also referred to the NHS letters on file.
15. Counsel submitted that the refusal is based on inconsistencies and poor recollection at his interview. Because of these his evidence was found to lack credibility, but Counsel submitted that the judge considered this in the light of the medical evidence and found that the credibility findings of the Respondent were of little substance because of his health issues.
16. Counsel then referred to the evidence from the Appellant's cousin at the First-tier hearing. He submitted that the judge was entitled to take this into account and reference is made in the decision at paragraph 11 to the report of the doctor from Harley Street which states that the Appellant is socially isolated and is suffering from clinical depression.
17. He submitted that the judge properly assessed the Appellant and found him, because of these medical issues, to be at risk on return to Sri Lanka, particularly if he is interrogated at the airport.
18. With regard to the said case of **GJ and Others** Counsel submitted that the judge refers to this case at paragraph 3 of the decision. He submitted that this is an Appellant who was arrested post-conflict in 2013, which was after the said case of **GJ and Others** was heard. The judge found that because of the Appellant's most recent arrest in 2013 he will be at risk on return and he submitted that based on the evidence, including the objective evidence, before the judge, he was entitled to make this finding.
19. I was referred to paragraph 4 of the decision in which the judge refers to a "stop" list. I was asked to find that the judge was correct when he stated that because of the Appellant's adverse profile he will be arrested and detained on his return to Sri Lanka and will be on a "stop" list. He found this to be foreseeable and found that the authorities will do a background check on the Appellant on return and he will have to give details of his address in Sri Lanka when he arrives at the airport. Counsel submitted that at paragraph 5 of the decision the judge clearly understands who is at risk on return to Sri Lanka and has considered all the evidence before him.
20. At paragraph 6 the judge goes through the terms of the said case of **GJ and Others**. He refers to returnees being stopped at the airport and finds that the Appellant will be perceived to be a threat on return because he assisted in an escape and because of this the Appellant will be perceived to be a Tamil activist in the diaspora. The judge finds that this Appellant will be 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. He submitted that there is no error in paragraph 6 of the decision. The Appellant has been arrested three times and the judge has clearly considered the Appellant's situation against the background material. He

submitted that the judge has made clear reference to the country guidance case law and has also made findings on the Appellant's mental health and vulnerability. He submitted that there is no material error of law in the First-tier Judge's decision. He was entitled to make the findings he did.

21. I put to Counsel that in 2013 the Appellant was merely arrested in a round-up and he was later released on reporting conditions. Counsel submitted that the judge was aware of this, but believed that this arrest in 2013 was due to the fact that he had been arrested in the past and had travelled to an LTTE area. He submitted that the judge finds the Appellant to be credible. I was referred to paragraph 12 of the decision and Counsel submitted that the judge has used the low standard of proof correctly and finds that the Appellant has discharged the burden of proof. Counsel submitted that at paragraph 6 the judge states that persons whose names appear 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, are also at risk. He finds this applies to this Appellant. He submitted that the judge believes that this Appellant will be seen to be a threat to the State and will be stopped at the airport and is likely to be ill-treated. Counsel submitted that this Appellant may not be a threat to the single state, but the judge finds that on return he will be perceived to be a threat to the single state. The judge has explained why he finds this and the grounds are merely a disagreement with the judge's decision.
22. The Presenting Officer again referred me to paragraph 6 of the decision and the general statement about the said case of **GJ and Others**. He again submitted that there is no reasoning of the judge's finding that the Appellant will be perceived to be a threat to the integrity of Sri Lanka as a single state. I was referred to paragraph 8 of the decision in which the judge gives weight to the evidence of Professor Gunaratna. He submitted that the judge has found the appellant to be credible, but he has ignored the interview and the credibility issues. He submitted that the whole decision is inadequate and the judge has failed to apply this Appellant's case to the country guidance case of **GJ and Others**.

### **Decision and Reasons**

23. I have to decide if there is an error of law in the First-tier Judge's decision. At the First-tier hearing the Appellant was found to be unable to give evidence because of his poor mental health. I have considered his statement of evidence, his screening interview and his substantive interview. These took place in April 2014. The First-tier hearing took place on 16<sup>th</sup> October 2015. In April 2014 the Appellant was able to be interviewed. He answered all the questions he was asked. There were 263 questions and he told the interviewer that he had never been a member of any pro-Tamil group in Sri Lanka at that interview. The refusal letter dated 20 May 2014 was based on that interview. The inconsistencies by the Appellant were made at that interview and there is nothing on file to indicate that the appellant had problems answering the questions he was asked or that he had mental health issues at that time.

24. After the refusal letter was issued Professor Lingam made out a report dated 15 October 2014 referring to the appellant's scarring and Dr Dhumad prepared a psychiatric report dated 25 March 2015. The First-tier hearing took place on 16 October 2015. The appellant's health clearly deteriorated after his interview as it was found he was unable to give evidence at the hearing.
25. The judge found that the Appellant would be at risk on return and I am told by Counsel that this finding is based partly on the Appellant's present mental health. I accept that he is a vulnerable adult and that he has mental health issues, but the judge has not given weight to the inconsistencies in the appellant's evidence when he was interviewed when he was mentally able to attend and answer questions.
26. The judge goes through the Appellant's profile at paragraph 2 of the decision. The Appellant's final arrest was in 2013, after the war had ended and during a round-up. The appellant stated that he was arrested because associates of his had been caught trying to leave Sri Lanka in 2011 and they had given the appellant's name to the authorities. When the appellant was asked about the 2 year gap before he was arrested, he said the date he gave of 2011 was wrong. This goes to his credibility but the judge has accepted this without question. He gave no reasons for accepting that the Appellant was arrested during a round-up due to the fact that he had been arrested in the past and due to his having travelled to an LTTE area. Round-ups in Sri Lanka at that time were common (COI report). People with little or no political background were often part of round-ups. This does not mean that they were considered to be Tamil activists working for Tamil separatism. Based on the background evidence this Appellant was probably arrested in 2013 because he was in the wrong place at the wrong time. If indeed this happened, he was later released.
27. At paragraph 6 of the decision the judge states that people whose names appear on a "stop" list will be detained from the airport. There is no evidence that this Appellant is likely to be on a "stop" list. The judge states that the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka are individuals who are or are perceived to be a threat to the integrity of Sri Lanka as a single state. The judge has stated that the Appellant is such an individual, but he has given no explanation for this finding. Based on what was before him he was not entitled to reach this conclusion. There is nothing to indicate that the appellant might have an arrest warrant against him. People at risk in Sri Lanka are Tamil activists in the diaspora who, while working for Tamil separatism, aim to destabilise the unitary Sri Lankan state. There is nothing in the evidence to suggest that this Appellant is one of these people. The judge has not explained why he finds the Appellant falls into this category. He does not seem to have given proper weight to the appellant's trip to Thailand in 2010 on his own passport.
28. The judge refers to the country guidance case of **GJ and Others**. The case states that the focus of the Sri Lankan Government's concern has changed since the civil war ended in May 2009 and that the LTTE in Sri

Lanka is a spent force. All the appellant's activities were before the war ended. With regard to his scars it has been accepted that the Appellant's account up until the war ended is likely to be true, but the judge has not explained why he would be of any interest to the authorities on return now. The judge has not given proper weight to the country guidance case of **GJ and Others**.

29. The judge has given considerable weight to the medical evidence produced, as he should have but he has given inadequate reasons for finding he would be in a risk category on return and he has not dealt satisfactorily with the country guidance case of **G J and Others**.

### **Decision**

30. I find that there are material errors of law in the judge's decision allowing the Appellant's appeal, which decision was promulgated on 27<sup>th</sup> October 2015.
31. The First-tier Judge's decision must be set aside.
32. No findings of the First-tier Tribunal can stand. Under s.12 (2) (b) (i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. The member(s) of the First-tier Tribunal to reconsider the case are not to include Judge Andonian.
33. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray