



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

Appeal Number: AA/11435/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 October 2017**

**Determination & Reasons
Promulgated
On 13 November 2017**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

**P K
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, of Counsel, instructed by Duncan Lewis and Co Solicitors

For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Sri Lankan national of Tamil ethnicity born on [] 1986 who claimed asylum on 21 August 2014 having previously been in the UK as a student in 2012-2013. She returned to Sri Lanka in May 2013 to attend her brother's wedding and claimed that she had been stopped at a check point after being recognised by an informant who

knew of her previous work for the LTTE. She was detained, tortured and raped but managed to escape after an agent was bribed. She returned to the UK on 1 June 2013 and made her asylum claim the following year shortly before the expiry of her student leave.

- 2.** On 30 March 2017, First-tier Tribunal Judge Oliver dismissed her appeal against the respondent's refusal of 1 December 2014 to grant her protection in the UK. There had also been an earlier hearing in March 2016 before First-tier Tribunal Judge Robison but her decision was set aside. Following a hearing before me on 24 August 2017, Judge Oliver's decision was also set aside for the reasons set out in my determination promulgated on 25 August 2017. Essentially there were difficulties with his reasoning and failure to properly apply country guidance. Although his findings on the asylum claim were challenged and set aside, those on the appellant's mental health were unchallenged and, therefore, stand. The accepted findings of fact are set out in Ms Jegarajah's skeleton argument and are that:

 - (i) The appellant had been arrested, detained, tortured and raped by the authorities in Sri Lanka;
 - (ii) Detention commenced with her arrest on 25 May 2013 and came to an end with her release through bribery on 29 May 2013;
 - (iii) She had been identified by a former LTTE member who had disclosed her LTTE involvement;
 - (iv) She had smuggled weapons whilst in government controlled territory between 2002 and 2006;
 - (v) During her detention, the appellant had been asked whether she was still helping the LTTE and whether she had attended protest
- 3.** The appellant was not called to give oral evidence at the hearing before me on 30 October 2017 and I proceeded to hear submissions from the parties. Ms Jegarajah confirmed that she would not be pursuing an article 3 mental health claim nor was she pursuing an asylum claim based on the appellant being a female head of a household. She clarified that she would, however, be relying on the medical evidence on the appellant's mental health in so far as it impacted upon how the appellant would respond to questioning by the authorities on return.
- 4.** Ms Jegarajah relied on the draft Counter Terrorism Act and submitted that although it was not yet in force, it was recognised by the international community and the UNHCR as a document which set out the government's view. It demonstrated that the government's interest in diaspora activities was greater than the significant profile category envisaged in GJ (post civil war returnees) Sri Lanka CG [2013] UKUT 00319. Ms Jegarajah also submitted that according to

the respondent's own evidence on Sri Lanka, returnees would be questioned about historic detention, LTTE activities and attendance at commemorative events such as Heroes Day. She submitted that the GJ categories had widened in the context of the new proposed act which targeted past activity.

5. Ms Jegarajah relied on a redacted decision from the respondent as evidence that there had been a departure from GJ in that case and that the respondent had issued guidance to her case workers that in certain circumstances such a departure was appropriate.
6. Ms Jegarajah relied on the appellant's three witness statements. Although one was missing from the bundle, she undertook to forward it to the Tribunal. It was subsequently received. She pointed out that the contents were, however, summarized in Judge Oliver's determination. She referred me to the screening interview where the appellant had said that:
 - (i) she had used a false identity to travel to the airport;
 - (ii) that her ID card had been retained by the Sri Lankan authorities;
 - (iii) that she had been arrested on 25 May 2013 following her identification by a former LTTE informant;
 - (iv) that she had been tortured.

I was also referred to the substantive interview where the appellant stated that:

- (i) she had willingly supported the LTTE;
 - (ii) she had suffered torture and gender related persecution;
 - (iii) her involvement with the LTTE had been disclosed to the authorities by an informer who had identified her by name;
 - (iv) she had been arrested because of the information provided by the informer;
 - (v) her diaspora activities were not her first involvement with the LTTE;
 - (vi) she had been involved in Tamil separatist activities at the time of the cease fire;
 - (vii) she had been transporting weapons;
 - (viii) the LTTE had been stock piling weapons during peace time;
 - (ix) she mentioned her informant's name;
 - (x) she had been handcuffed and taken to the military camp.
7. Ms Jegarajah submitted that whilst the First-tier Tribunal had found that the appellant's activities were not significant, in accordance with the guidance in GJ, what had happened to her in detention and the type of questions she had been asked were consistent with the government's objectives as apparent from the proposed legislation. Reliance was placed on the extracts of the COI report cited in the

skeleton argument. It was submitted that the respondent considered former leaders and those who provided weapons to the LTTE to have a significant profile; the appellant fell into the second category. Furthermore, the appellant had attended commemorative events every year since 2012. She had also attended a protest in March 2014 against the visit to the UK by the Sri Lankan president. Her friend's witness statement explained why she had gone to the protest despite being unwell. There were photographs showing her holding banners.

8. In response, Mr Tarlow relied on the decision letter and on GJ. He submitted that the government used sophisticated intelligence to identify those trying to destabilise the unity of the country. If the appellant had mental health issues then she was not a threat. Her involvement at the demonstration was at a low level. She could return to Sri Lanka and live anywhere. The new laws had not yet been enacted.
9. Ms Jegarajah briefly replied. She submitted that the Human Rights Watch report confirmed that there had been little progress. The position had evolved since GJ. Returnees were being questioned on return according to the COI report. The proposed Counter Terrorism Act was deeply problematic as it was prepared despite UN Resolutions and the country evidence demonstrated there were serious concerns over its application. The appellant's activities would not be seen as minor by the government. Her mental health had to be factored into the assessment of how she would react to questioning.
10. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give.

11. Conclusions

12. I have assessed all the evidence before me with care. I bear in mind that the appellant has to make out her case to the lower standard. I have taken full account of the submissions that have been made.
13. There is a wealth of recent country material including two reports from the respondent. The relevant passages are cited in the appellant's schedule to the bundle prepared for the hearing on 24 August 2017. From the Home Office Fact Finding Mission report of July 2016, I note that former LTTE cadres are still followed and monitored, that those of interest are abducted without a paper trail rather than arrested, that those who are taken away rarely return, that the authorities are anxious to stop any pro-LTTE activities outside Sri Lanka, that torture continues to be carried out by the armed forces, that people returning to Sri Lanka from the UK with a previous LTTE connection would be subjected to torture and harassment, that those who return may be arrested and that people are investigated even if their involvement/offence took place decades ago.

- 14.** The Home Office Country Policy and Information Note on Sri Lanka of July 2017 reports that there is no sufficiency of protection or internal flight option for those who fear the authorities, that in addition to the GJ categories, a grant of asylum may also be appropriate in other cases, that the government has continued to arrest returnees and detain them despite criticism from the international community, that there is no effective legal system to assist victims and that those who are suspected of links to the LTTE continue to be detained.
- 15.** The UNHCR report of July 2017 states that any person suspected of LTTE involvement, however indirect, remains at risk of detention and torture. The 2016/2017 Amnesty International report confirms the same, noting that the government pledge in 2015 to repeal the Prevention of Terrorism Act had still not been implemented. Other reports by organisations such as Human Rights Council and the US State Department also report that torture remains a serious concern, that it is routinely used by the police and security officials, that procedures regarding the legality of detention are not followed, that abductions continue, that those with a real or perceived association with the LTTE at any level and whether current or historic are at particular ongoing risk, that the authorities take a strong interest in the activities of Tamil diaspora in the UK, that hundreds of former LTTE cadres have been coerced into becoming informers and that there are detailed records held of every detention which are not deleted upon release either by bribery or otherwise.
- 16.** I have also had regard to GJ. Although it was decided in 2013, it remains country guidance. It confirms that the government's objective is to identify Tamil activists in the diaspora with London as a particular hot spot and that disappearances are increasing rather decreasing as are the size and budget of the armed forces. I also have regard to the four categories of persons at real risk of persecution or serious harm on return.
- 17.** I have had regard to the various medical reports, the appellant's witness statements, interview records and the supporting statement from the appellant's friend.
- 18.** My conclusions are reached after full consideration of all the evidence as a whole.
- 19.** Much of the appellant's account was accepted by the First-tier Tribunal Judge and the findings of fact (as set out at paragraph 2 above) stand. Notwithstanding Mr Tarlow's reliance on the decision letter, which questioned the credibility of the claim, it is no longer in dispute that the appellant was willingly involved with the LTTE, that she smuggled weapons for them, was identified by an informer, detained and tortured until her release on payment of a bribe and

that her scarring was not self-inflicted or inflicted by proxy. The only claimed fact on which there was no finding was whether the authorities had been to the family home looking for her. The appellant did not give oral evidence before me but I have three witness statements from her, a screening interview and substantive interview. Given that her account has been accepted in all other respects and in the absence of any challenge by the respondent to this part of the claim, I have no reason to disbelieve it. It is certainly in keeping with the country material which confirms that the authorities keep suspects and their families under surveillance and have an ongoing interest in all those who have had LTTE connections, no matter how historic. Moreover, given her escape from detention, it is unsurprising that checks would be made for her at her home.

- 20.** The appellant claimed to have left Sri Lanka using her own passport. Although the First-tier Tribunal found that this was indicative of a lack of interest in her, it is plain that such a finding is contrary to country guidance. The Upper Tribunal accepted in GJ that *“it is possible to leave through the airport even when a person is being actively sought”*. I, therefore, find that her ability to leave Sri Lanka in this way has no bearing on the interest of the authorities in her or on the risk of serious harm on return.
- 21.** The respondent’s case essentially appears to be that the appellant’s activities were of low level and that there would therefore be no interest in her on return. This stance does not, however, engage with the accepted facts of her previous detention and severe ill treatment for the same activities. I do not understand why, if the authorities were so interested in those activities in 2013 that they detained and tortured her, they would suddenly have no interest in her at all. It seems to me, having had regard to the recent country material, that the authorities have an ongoing interest in those who have or have had any kind of LTTE involvement, even if it is perceived, and given that records are kept of all detentions it would be a simple task to discover that the appellant was a person whom they had previously detained, who had been identified by an informer as smuggling weapons for the LTTE through army checkpoints and who, therefore, would still be of interest. It is very likely in my view that she would be seen to be someone who constituted a threat to the unity and stability of the Sri Lankan state. I do not see that her mental health would have any bearing on the approach taken by the authorities. I refer also to the respondent’s March 2017 report which indicated that those who provided weapons to the LTTE were perceived to have had a significant role. I do not find there is much of a difference between smuggling weapons through a check point and in providing weapons. Either way the guns were destined for the LTTE.
- 22.** I accept that the appellant has been attending LTTE events in the UK. She has been consistent in this claim and I have seen the supporting

statement from her friend, which was unchallenged, and the photographs of the appellant holding banners. On return, she would certainly be questioned about her sur place activities and, as she cannot be expected to lie she, would have to disclose her activities. The evidence shows that the Sri Lankan government continue to question persons about attending Heroes Day and similar commemorative events.

- 23.** Ms Jegarajah relied heavily on the Counter Terrorism Act drafted by the Sri Lankan government. This has not yet been implemented but I accept that its contents demonstrate the ongoing objectives of the government and make it plain that their interest in former LTTE activists and supporters is far from over.
- 24.** In conclusion, then, the appellant's claim is credible in all respects. I find that her activities cannot be described as low level or insignificant given that they involved smuggling weapons through security check points and given that they attracted such brutal treatment in the past. I find that there is no reason why that interest would have dissipated now and, indeed, it is possible that it would be even greater given her assisted escape. The absence of evidence of an arrest warrant does not diminish that risk nor does the lack of charges brought against her in a country where legal procedures and niceties appear not to be followed. I find that the visits of the authorities to her home further demonstrate an ongoing interest. I find that the appellant's ability to travel on her own passport to the UK does not indicate a lack of interest in her. I find that the three medical reports all confirm that the appellant is a vulnerable woman and further support her claim of ill treatment.
- 25.** For these reasons, I conclude that the appellant has made out her case to the lower standard.

26. Decision

27. The appeal is allowed on asylum and article 3 grounds.

28. Anonymity

29. I continue the anonymity order made by the First-tier Tribunal.

Signed



Upper Tribunal Judge

Date: 10 November 2017