



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

Appeal Number: PA/02686/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1<sup>st</sup> September 2017**

**Decision & Reasons  
Promulgated  
On 13th September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**TK  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Jane Heybroek of Counsel instructed by Chelian Law Solicitors

For the Respondent: Mr Tony Melvin, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is the appellant's appeal against the decision of Judge Hamilton made following a hearing at Taylor House on 25<sup>th</sup> August 2016. The decision was not promulgated until 31<sup>st</sup> January 2017.

## **Background**

2. The appellant is a citizen of Sri Lanka born on [ ] 1989. He arrived in the UK on 26<sup>th</sup> January 2006 and claimed asylum. He claimed that he was in danger from the authorities in Sri Lanka and in danger of being forced to join the LTTE. His father had been forced to work for them, suffered mistreatment and was detained for three days in 1989. His brother was also detained by the authorities but escaped and has been granted asylum in the UK. The appellant himself worked for the LTTE while he was at school. The local pro Tamil group in his area knew about his activities as did the army. He was detained in a round up and beaten up but released after a few hours after the intercession of a local official. His father arranged for an agent to take him to the UK.
3. His application was refused in 2007 but, because the appellant was an unaccompanied minor, he was granted a short period of discretionary leave.
4. The appellant claimed that he then made a fresh application but this is denied by the respondent. He is making a complaint against his former solicitors. His new solicitors made further submissions in December 2015 which resulted in the refusal decision before the Immigration Judge.
5. The appellant said that he would be at risk on account of his sur place activities in the UK.
6. He claims to be a member of the Transnational Government of Tamil Eelam (TGTE) but did not have a membership card. He is a member of the British Tamil Forum, but again has no membership card. He attended meetings and regularly attended the Great Heroes Day event which takes place in November in London every year. Photographs of him are on the internet and on the National Liberal Party website.
7. The appellant says that he launched a website called [TM] which promoted Eelam news and Eelam cinema news and had also edited songs relating to the LTTE which had featured in a video released on 27<sup>th</sup> November 2015 on YouTube to mark Heroes Remembrance Day.
8. On 20<sup>th</sup> June 2014 he helped his friends at the Saathanathamizha (an awards ceremony) by acting as cameraman. He also collected an award for best director on behalf of his friend at the ceremony.
9. He did the photography at a function marking the release of Koottaly and after the function was informed that the director of the film had been arrested in India.
10. Finally he had helped to create a music video for the Tamil Eelam Freedom Fighters filmed in Epping Forest on 25<sup>th</sup> November 2014.
11. The judge recorded the respondent's concerns about the application as set out in the Reasons for Refusal Letter, the documentary evidence and oral

evidence which he had considered, the applicable law and, at paragraph 95 of the determination started the consideration of his findings.

12. He concluded that there was not sufficiently clear evidence in order for him to find that further submissions had been made to the respondent after the refusal in 2007 and he did not accept that the appellant had remained in the UK in the mistaken belief that he had an outstanding application.
13. So far as the original claim was concerned, he noted that there were discrepancies between the appellant's oral evidence and the accounts of having been interrogated as set out in his SEF. He properly reminded himself that the appellant was a minor when it was completed but nevertheless recorded that the appellant confirmed that he had gone through the written record of his screening interview and his SEF with his present representatives and they were accurate. The judge set out in some detail the discrepancies in the appellant's account, not only in relation to his own detention but also in relation to his father and concluded that the appellant had left Sri Lanka because his father had a generalised concern about the situation there but not that he had ever suffered persecution in Sri Lanka or that there was a real risk of such treatment being repeated. It may have been that he had been detained and questioned during the course of a routine round up but nothing more.
14. The judge then considered the sur place activities. He did not believe that the appellant had failed to mention them before because he did not think that they were relevant. He noted that he had failed to produce photographs which he claimed were on the NLP website and did believe that the appellant had established, to the lower standard, that he was a member either of the BTF or the TGTE.
15. It was accepted that the appellant was associated with the Thamilithal website but there was no mention of his name on it and acting as an uncredited cameraman on 20<sup>th</sup> June 2014 could not possibly bring him to the attention of the Sri Lankan authorities.
16. So far as the involvement in the pro-LTTE film was concerned, again he was uncredited. He did collect the award on behalf of the director but his appearance was brief and he was referred to by his nickname and not his real name. The judge did not accept that the Sri Lankan government spies would have attended an arts event of this sort.
17. In relation to the YouTube clip, there was a brief shot of the appellant holding a poster for the film but there was no independent evidence that Kootali was in fact a pro-LTTE film. Even if it was, his brief appearance in the video clip would not be sufficient to bring him to the attention of the Sri Lankan authorities.
18. Finally, the judge said that he watched the pro-LTTE music video released on Heroes Day but there was no mention of the appellant on the credits.

He did briefly appear in the film but was completely unrecognisable and his face was obscured for most of the time he was on screen. There was no evidence that his role was as significant as he claimed. His involvement could be consistent with him being politically active but equally consistent with having been taken after taking part as an extra to make up the numbers.

19. The judge concluded

“147. Looking at the evidence as a whole including the background evidence and the photograph the appellant provided, I do not find that he has shown that he has been politically active for the Tamil separatist cause whilst in the UK. I do not find that he has shown he has any commitment to that cause except where it overlaps with his social life and his wish to be involved in artistic media activities. I do not find that there is any risk that he will be considered to be a journalist or that anything he has done in the UK would lead the authorities in Sri Lanka to conclude that he was a threat to the unity of the Sri Lankan state or involved in trying to reignite the civil war.

148. Also for the reasons given above I do not find that the appellant has shown that he or his family would have a profile that would bring the appellant to the adverse attention of the Sri Lankan authorities. Even if, before he left Sri Lanka, he had been mistreated by the Sri Lankan authorities on one or more occasions during routine round ups and questioning I still would not find there was any risk that what had happened to him in past will be repeated. The background evidence and the guidance in GJ show the situation in Sri Lanka has completely changed since the defeat of the LTTE.

149. The appellant would be a young man returning from a country where there is anti-government Tamil diaspora activity. However this does not itself put him at risk. His parents and his sister live safely in Sri Lanka, so he has somewhere to return to.”

20. The judge then considered the appellant’s claim with respect to Article 8 and dismissed the appeal on all grounds.

**The Grounds of Application**

21. The grounds concentrate on the delay between the hearing of the appeal and its promulgation. The judge apologised for the five months’ delay at the outset, because of his ill-health, but credibility was an important issue. The oral evidence was summarised over 47 paragraphs in the determination. No account was taken of the appellant’s demeanour and the judge’s recollection was likely to have been dulled over the many months taken to write the determination which rendered his decision on credibility unsafe.

22. The grounds cite a number of reported decisions dealing with delay, in particular Arusha & Demushi (deprivation of citizenship-delay) Albania [2012] UKUT 80 which held that, to establish that a delay in the promulgation of a decision has led to an error of law, it has to be shown that the decision was not safe and therefore unlawful. There must be a nexus between the delay and the safety of the decision. Excessive delay may require a very careful perusal of the judge's findings of fact and of his reasons for his conclusions in order to ensure that the delay has not caused injustice to the losing party.
23. The grounds also argue that the judge had not applied the correct standard of proof to his findings and had failed to exercise caution in rejecting as incredible an account by an anxious and inexperienced asylum seeker. He had failed to give adequate reasons for finding it not credible that the EDPD and Sri Lankan army knew about the appellant's LTTE activities but nevertheless released him after his alleged detention. He had also failed to reach a clear and unambiguous finding in relation to the historic claim by stating that "it may be" that the appellant was detained and questioned in a routine round up.
24. Equally he had failed to reach clear findings regarding the appellant's political activities in the UK. There was insufficient reference to the background evidence relied on and an inadequate account of the relevant guidance in GJ v SSHD (post civil war: returnees) Sri Lanka CG [2013] UKUT 319.
25. Parts of the appellant's claim, such as his association with the Thamilital website were accepted but there was an inadequate assessment of the risk. The judge had failed to consider whether he would be perceived by the government of Sri Lanka to have commitment to the Tamil separatist cause.
26. Finally the judge had erred in his consideration of Article 8 and the appellant's family life with his brother in the UK. There had been a lengthy delay in failing to remove him since 2007 which had not been properly considered in the assessment of proportionality of removal.
27. Permission to appeal was initially refused but granted on reapplication by Upper Tribunal Judge McWilliam on 10<sup>th</sup> July 2017.

### **Submissions**

28. Ms Heybroek relied on her grounds. The rule of thumb was that a three month delay would render a decision unsafe and in this case the delay was some five months. The judge had dismissed the appeal entirely on the basis of his credibility findings and his memory would have faded. He could not possibly have remembered what the appellant's demeanour was like when he was giving his evidence.

29. The judge had failed to properly exercise caution when rejecting the appellant's evidence as not credible and had not properly anchored his findings to the country guidance case of GJ and the risk posed on return to journalists and those involved in the media. On the accepted facts of this case the appellant had significant involvement in a number of different enterprises.
30. Mr Melvin defended the determination and submitted that there was no evidence at all that the delay had affected it. All relevant matters were properly considered and the judge had reached decisions open to him, namely that the appellant's involvement with the various organisations was peripheral and he would be of no interest to the authorities on return.

### **Findings and Conclusions**

31. The judge appears to have had a period of ill-health following the hearing of the appeal, which resulted in a delay of some five months before it was promulgated.
32. It is quite apparent however that the judge took a very careful note of the proceedings. There is a typed transcript on the file which sets out the questions and answers given and submissions made. Had the judge based his findings on the witness's demeanor, as Ms Heybrook suggested he should, that would have itself rendered the decision vulnerable to appeal. Moreover, the determination itself is a model of clarity and a thorough analysis of all of the relevant issues.
33. First, it was entirely open to the judge to conclude that no representations were made following the initial refusal because the respondent had no record of any such application.
34. Second, the judge was plainly aware of the caution which had to be exercised when dealing with the SEF and the screening interview, because the appellant was a minor at that time, but he properly recorded that the appellant confirmed that the written record of the interview and SEF was accurate with his representatives. He then undertook a detailed analysis of the evidence given at that time and outlined a number of important discrepancies, relating to the detention, and whether, for example, the appellant had been present at the murder of a teacher.
35. The judge was entitled to find the appellant's evidence about the trigger event which caused him to have to leave Sri Lanka confused and contradictory, on the one hand because of fear of the LTTE wanting him to join them and on the other because his family wanted him to complete his O levels. The judge was not bound to make an unambiguous finding in relation to the round ups because whether he was detained in a round up or not is not determinative of whether he would be at real risk on return now.

36. The judge analysed the appellant's sur place activities in the UK in meticulous detail. He did accept that the appellant had some involvement in a number of different projects, and considered each in turn, and whether the level of his involvement would put him at risk. He was entitled to conclude that it would not.
37. The country guidance case of GJ sets out a number of categories of persons at real risk of persecution or serious harm on return to Sri Lanka. They include individuals who were or who were perceived to be a threat to the integrity of Sri Lanka because they were or perceived to be have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
38. The judge referred to the guidance in GJ and it is quite apparent that he had it in mind when considering risk on return. At paragraph 147 he concluded in terms that there would not be any risk that the appellant would be considered to be a journalist or a threat to Sri Lanka, a clear reference to the headnote in paragraph 7 of GJ.
39. No submissions were made in relation to Article 8 and whilst the judge found that the appellant was financially dependent upon his brother that financial dependency would not be disrupted if he was to return to Sri Lanka. There was simply no basis upon which the appellant could properly succeed on Article 8 grounds.
40. Clearly the main criticism of this determination was its delay in promulgation, albeit that it was no fault of the judge. However, by producing such a clear and well reasoned decision the judge has ensured that his conclusions are safe and therefore there is no nexus between the delay and the sustainability of the decision.

### **Notice of Decision**

The Immigration Judge did not err in law. His decision stands. The appellant's appeal is dismissed.

### **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.

Deborah Taylor

Signed  
2017

Date 12 September

Deputy Upper Tribunal Judge Taylor