



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA064512016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 5 July 2017

Decision & Reasons Promulgated  
On 14 August 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

L A  
(ANONYMITY DIRECTION MADE)

Appellant

v

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. Lingajorthy, counsel instructed by Linga & Co  
For the Respondent: Mr. P. Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. Following a hearing which took place on 20 April 2017, I found errors of law in the decision of the First tier Tribunal. A copy of the decision is appended. I adjourned the appeal for a resumed hearing, which took place on 5 July 2017.

2. No further evidence was called thus the appeal proceeded on the basis of submissions only.

3. Mr Lingajorthy handed up a skeleton argument along with the judgment in *MP (Sri Lanka)*. He drew my attention to page 30 of the Appellant's Bundle dated 4.11.16 at Q.21 onwards. He submitted that the starting point with regard to *GJ* is who was there at the end of the war to witness: see the skeleton argument at [7](c) and [8]. The Appellant was not released following rehabilitation ie his threat to the State is not neutralized and there would be an ongoing risk to him now. After having come here he continues to take part in diaspora activities. Mr Lingajorthy argued that the Appellant's credibility has not been challenged. He has given a clear and succinct account in light of the background information. He was adversely identified and taken to the Joseph camp and he will still be of ongoing interest.

4. Mr Lingajorthy explained that pages 7-8 attached to the additional witness statement comes from the British Tamils Forum website and in response to the a question from the Upper Tribunal that Dr Shanmugarajah is in the USA. He submitted that simply because a bribe has been obtained does not mean a person is not telling the truth. What is absolutely crucial *cf. MP (Sri Lanka)* iat [35] onwards is the last days of the war. Tamils died in no fly zone and the Appellant was one of the very few people present in an area the size of a football ground watching these events unfold.

5. Mr Lingajorthy drew my attention to Dr Gupta's psychiatric report and Dr Martin's scar report and the fact that First tier Tribunal Judge Andonian had cited large parts of the reports. This shows not only that his evidence is accepted but is corroborated. There is ample evidence that this Appellant would become cannon fodder if he were to go back to Sri Lanka now. There is revived interest in diaspora activities and if someone is involved in the UK there will be a knock at their parents' door. He submitted that *GJ* is engaged and that looking at the context it is clear that he comes with a profile: report from Freedom from Torture at page 63 onwards from May 2009 to August 2015; page 83 at 1.3 and page 74 which refers to torture following return from the UK, which is treated as a hotbed of diaspora activities.

6. In response, Mr Duffy submitted that even if the Appellant's claim is that he was detained at the end of the war, tortured and released on payment of a bribe, it does not necessarily mean he would be at risk on return *cf. GJ*. There were a lot of people like the Appellant who had a minor role in the LTTE and contributed a member of the family. There is nothing in the profile of this Appellant that would put him in the first category of risk factors at [7] *viz* a threat to the unitary state in Sri Lanka. In relation to his activities *cf. MP & NT* someone who might potentially be a witness would be at risk. With regard to page 74 of the bundle most of those tortured on return were in the UK as students and it may just be a means of extorting bribes and not necessarily a

risk. With regard to 1.3 of page 83, all of the Tamil detainees who have been tortured will have an association with the LTTE as they were the government in the area where they lived. With regard to the Freedom from Torture report this is a survey of people who claimed to have been detained are connected with the LTTE. In relation to his connection with Dr Shanmugrarajah and risk on this basis, doctors would be at risk but the Appellant himself was very low level and was just assisting; the combination of the Doctor being there and speaking out puts the Doctor at an elevated risk but this would not necessarily attach to the Appellant and he is outside the *GJ* risk categories.

7. In relation to the point about being released on payment of a bribe if one looks at the level of interest towards the end of the war, the Sri Lankan authorities were rounding up everybody so it was not necessarily indicative of future risk. If Prabakaran himself was arrested, he would not have been able to obtain his release by payment of a bribe. Those who are released on this basis are at a very low level or would not be released. The Appellant is not important enough and his particular profile as asserted is not enough to meet *GJ* categories or disclose any risk outside.

8. In his reply, Mr Lingajorthy submitted that the Home Office were clutching at straws in asserting the Appellant's role as minor. The evidence at [84] clearly states that even a low level member would be of interest to the authorities. *GJ* does not distinguish between high level and low level members but just supporters. Whilst the Appellant entered the UK as a student it does not matter to the Sri Lankan CID whether or not he came as a student but the fact that that he is returning from the UK means he would be seen to destabilize Sri Lankan as a unitary state. It is not a law and order problem but a serious issue: see *GJ* risk factors. The Sri Lankan authorities want to extract information as to progress by the LTTE in re-grouping overseas. The LTTE is an organisation ranked by the FBI and there is no question but that a high ranking member would be arrested and a bribe would not be effective.

9. Mr Lingajorthy submitted that if a doctor is at risk where are the Sri Lankan authorities going to look but for his orderly or assistant in order to discredit him? When the Appellant was in the LTTE he had sufficient profile to be on the side of the wrong hands for them to attack the integrity of the LTTE. He still has a value to the Sri Lankan authorities and that increases his risk. He is one of the very few people to witness the war, which is a war "without witness" yet the Appellant was present in this situation. The Doctor would have been taken much more seriously but the Appellant was his assistant and would be taken seriously, particularly bearing in mind the lower standard or proof. The fact that he was an assistant only does not undermine his fear on return.

10. I reserved my decision, which I now give with my reasons.

## *Findings*

11. The following findings of fact made by the First tier Tribunal Judge were unchallenged by the Respondent and are thus preserved: the Appellant had reporting conditions imposed upon him from 2009 to 2011 and the reasons provided by the Appellant for not claiming asylum earlier are credible.

12. Whilst I did not hear evidence from the Appellant, I have given careful consideration to the refusal decision of 8 June 2016. The Respondent's position at that time was that the Appellant's account of claimed torture including sexual abuse, being blindfolded and beaten continuously and the body map do not show that his injuries are consistent with his account and they could have been established in any number of ways [21]-[22] refer. However, before the Tribunal is a report from his GP dated 21 October 2016, in which he stated "*I believe this man has almost certainly experienced the torture he describes*"; a psychiatric report of Dr Avirup Gupta dated November 2016 and a report regarding the Appellant's scarring by Dr Andrew Izquierdo-Martin, following an examination of the Appellant on 4 November 2016, all of which post date the refusal decision. Dr Martin's report describes as 'typical' the Appellant's scars on his back and upper right limb. Mr Duffy, on behalf of the Respondent, did not seek to go behind or challenge the findings in the medical evidence and I accept that evidence as showing that there is a serious possibility that the Appellant was detained and tortured by the Sri Lankan authorities.

13. The issue is whether the Appellant would be at risk on return now, in light of his accepted history ie. that he was forced to join the LTTE in 2007. In May 2009, he surrendered to the authorities and was taken to an IDP camp where he assisted with manual jobs and later assisted a doctor in treating wounded soldiers. The Appellant was identified by masked men as one of the helpers of Dr Shanmugarajah and he was asked to renounce the statements made by the doctor that the government authorities had bombed the hospital where he was working and helping the doctor. He was detained in June 2009, taken to Joseph camp and was subjected to torture during the first three months of his detention. He was released in November 2009 and payment of a bribe and was placed on reporting conditions but in early 2011 he ceased reporting, moved to Colombo and came to the United Kingdom in January 2011.

14. Mr Duffy's submissions, in essence, were that, even if the Appellant had been detained and ill-treated, he was too low level to now be of interest to the Sri Lankan authorities. Mr Lingajorthy submitted that the key issue is that the Appellant was a witness to the last days of the war and the fact that Tamils were killed by the Sri Lankan authorities rather than taken as prisoners of war and this would put him at risk. This reflects the Appellant's witness statement of 28 June 2017 at [22]-[25]. The document from the British Tamils Forum

appended to the statement dated 23 June 2017 makes express reference to the fact that Dr Shanmugarajah was one of three government appointed medics who worked with the most basic medical facilities to run a makeshift clinic inside the conflict zone and that “*to the fury of the government, the doctors were also one of the few sources of independent information about the civilian casualties of a conflict that was all but hidden from view... In the very final days of the conflict, the three doctors fled the conflict zone and were detained by Sri Lankan troops ... the three men were being held by the criminal investigation department in Colombo.*”

15. The risk category identified by Mr Lingajorthy in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) is at 356(7)(c) which provides:

*(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:...*  
*(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. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.”*

16. However, it is not the Appellant’s case that he has given evidence to the LLRC. This point was one which was taken on appeal to the Court of Appeal in MP & NT [2014] EWCA Civ 829 in respect of which Lord Justice Maurice Kay held as follows at [36]-[38]:

*“36. The complaint in relation to this risk category is that it is too narrow. The ground of appeal is advanced on behalf of the appellants and it is also vigorously supported by submissions made on behalf of the Intervener, Tamils against Genocide (TAG), represented by Ms Shivani Jegarajah and Ms Parosha Chandran. Their submissions essentially seek to extend the need for the protection to (1) individuals who did not give evidence to the LLRC but wish to give evidence to any future inquiry or investigation and (2) individuals who may never give such evidence but who may wish to speak out about egregious conduct witnessed by them – whether for therapeutic, political or other personal reasons. As to this second group, it is submitted that their protection needs are comparable with those of homosexuals who might be returned to Iran (see HJ (Iran) v Secretary of State for the Home Department [2010] UKSC 31) or citizens of Zimbabwe who might feel obliged to simulate support for ZANU/PF on return (RT (Zimbabwe) v Secretary of State for the Home Department [2012] UKSC 38).*

37. *At the moment, the evidence about these circumstances is understandably vague and speculative. It may well be that, if international pressure were to lead to the establishment of a different form of inquiry, the position would call for further consideration in a case in which appellants could give and adduce evidence about specific difficulties. However, we are not in that position (although Ms Jegarajah was able to point to current developments at the United Nations and elsewhere which could give rise to such developments). Nor is the evidence of the second putative group in concrete form. It rests on a passage in the report of Dr Smith which, on analysis, seems to relate to those who have provided evidence of war crimes. At this stage, there is no evidence of an evidence-receiving body beyond the LLRC, in relation to which protection is established. In this respect, the principal witness would appear to be Dr Suthaharan Nadarajah, a London-based expert. However, his evidence was given limited weight on these issues because, "his expertise is terrorism and he has not researched the position of returned asylum seekers". He has not been to Sri Lanka for ten years.*

38. *I tend to the view that counsel for the appellants and for TAG have identified a potential risk category which is not protected by paragraph 356 (7) (c). I reject the submission on behalf of the Secretary of State to the effect that any necessary protection would be provided by paragraph 356 (7) (a) which, in my judgment, does not address these situations. However, I do not think that the UT fell into legal error by not confronting these concerns at this stage. The position is either hypothetical, un-evidenced, or both. It may need to be revisited by the UT in the future."*

17. Whilst this Tribunal is not in a position to make definitive findings in the manner of a country guidance decision as to an extension of this risk category in the manner envisaged and set out at [36] of MP above, I have concluded that, in light of the accepted history of detention and torture of this Appellant due to the fact that he was a witness through his work assisting Dr Shanmugarajah to potential war crimes by the Sri Lankan authorities in the conflict zone in the last days of the war in May 2009, a risk to him on return to Sri Lanka cannot be excluded. I bear in mind in this respect that, following his election in January 2015 and following intense lobbying, President Sirisena indicated that his administration would consult with the UN concerning plans to set up a domestic enquiry into the worst crimes committed during the final stages of the war.

18. If I am wrong about this, I find in the alternative, that the Appellant falls within the guidance set out in GJ at [356](7)(a) viz (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.*" Whilst the Appellant has been involved with some activities in the diaspora his case was not put on the basis that these activities amounted to a "significant role in relation to post-conflict Tamil separatism." However, I find that the fact the

Appellant is a potential witness to war crimes committed by the Sri Lankan authorities and the fact that he was detained and placed on reporting conditions for this reason prior to coming to the United Kingdom, means that there is a serious possibility that he would, on return, be perceived to be a threat to the integrity of Sri Lanka as a single state, as his evidence could lead to a renewal of hostilities within the country or otherwise be perceived as destabilising and at the very least, impugning the integrity of the State authorities.

*Decision*

19. For the reasons set out above, I allow the appeal on protection grounds, on the basis that the Appellant is entitled to recognition as a refugee.

*Rebecca Chapman*

Deputy Upper Tribunal Judge Chapman

13 August 2017

ANNEX



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA064512016

**THE IMMIGRATION ACTS**

Heard at Field House  
On 20 April 2017

Decision & Reasons Promulgated

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Before

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

Between

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

Appellant

v

**L A**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms S. Jegarajah, counsel instructed by Linga & Co  
For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal on behalf of the Secretary of State for the Home Department against a decision of First tier Tribunal Judge Andonian, dated 9 January 2017 in which he allowed the appeal of the then Appellant against a



decision by the Secretary of State dated 8 June 2016 refusing to grant him asylum. I shall refer to Mr LA as the Claimant for the purposes of this appeal.

2. The Claimant is a national of Sri Lanka, of Tamil origin, born in 1990. He arrived in the United Kingdom in January 2011 with a student visa, which was subsequently extended to 15 February 2014 but was then curtailed on 14 May 2013. He made two applications for a residence card on the basis that he was a non-EEA national dependent of an EEA national but both were refused. The Claimant was detained on 13 May 2015 and claimed asylum on 22 May 2015, after removal directions to Sri Lanka were set on 19 May 2015.

3. The basis of his claim is that he had been forced to join the LTTE in 2007, received two weeks of basic military training and afterwards worked in the kitchen and later in the medical unit. He surrendered to the authorities in May 2009 and was taken to an IDP camp, where he assisted with manual jobs and assisted a doctor in treating wounded soldiers. He was identified by masked men as one of the helpers of Dr Shanmugarajah and was asked to renounce the statements made by the doctor that government soldiers had bombed the hospital where he had been working and helping the doctor. He feared that the Sri Lankan authorities would consider that he was someone who could have a part to play in the resurgence of LTTE activities and that he would be on a wanted list. The Secretary of State rejected his claim, essentially on the basis of credibility and inconsistencies in his account.

4. On appeal to the First tier Tribunal, the appeal was allowed, it would appear on the basis that the Judge accepted the credibility of the Claimant's account and the medical evidence submitted in support, particularly the report of Dr Izquierdo-Martin, who concluded that the scars on the Claimant's back abdomen and upper limbs were typical of unwilling and deliberately caused injuries [19].

5. The Secretary of State sought permission to appeal to the Upper Tribunal, in time, on the basis that the Judge had erred materially in law (i) in failing to make findings on disputed facts and failed to give reasons for finding that the Claimant had discharged the burden of proof and (ii) in failing to apply the country guidance decision in *GJ* [2013] UKUT 319 (IAC) in that he failed to make any finding that the Claimant would be at risk of persecution on return and failed to identify the risk category into which the Claimant would fall. No rule 24 response was lodged on behalf of the Claimant.

### *Hearing*

6. At the hearing before me, Ms Jegarajah sought permission to rely on an extract from the COIS on Sri Lanka dated June 2009. Ms Isherwood submitted that this document was not of assistance and ignores the fact that the Respondent did not accept the Claimant's account, in that she does not accept

the detention between 2007 and 2009 and ensuing events. She submitted that the Judge made no reference properly to *GJ* (op cit) and whilst the Judge looks at the medical evidence in some detail, this was based on what the Claimant said. Ms Isherwood submitted that the Judge considered the evidence without taking into account the Secretary of State's position and there is no reference to the refusal letter. The Judge needed to make findings as to whether or not he accepted what the Claimant claims and what he has said happened in Sri Lanka, bearing in mind [13] of the refusal letter where the only matter accepted by the Secretary of State is the nationality and identity of the Claimant. Ms Isherwood further queried how on the Claimant's own facts he would succeed, with reference to *GJ* [2013] UKUT 319 (IAC). She submitted that the decision of the First tier Tribunal Judge contained material errors of law and needed to be re-heard

7. In her submissions, Ms Jegarajah submitted that, contrary to the assertion by the Secretary of State, the Judge has considered the issues between the parties as raised in the refusal letter at [6] and [9] of the decision. The relevance of the extract from the COIS on Sri Lanka dated June 2009 is that it refers directly to Dr V Shanmugarajah who spoke out to foreign observers and this places in context the fact that the Sri Lankan authorities were trying to use the Claimant as a counter witness and this is made clear from the Claimant's asylum interview record where he refers to the doctor and the consequent interest in him by the authorities at Q's 21-42, & Q's 66-67, 90 and 99. She submitted that on this basis it was clear that the Appellant was in a potential risk category *cf. MP* [2014] EWCA Civ 829 at [35] through to [38] regarding witnesses to war crimes.

8. Ms Jegarajah took me through the detail of the Judge's decision and the fact that at [2] he noted that the Claimant did not have a good immigration history; at [3] that he is a Tamil from Sri Lanka and at [4] onwards he sets out the basis of the case, both factually and legally and he refers to *GJ* (op cit) specifically on two occasions, thus Ground 2 is simply wrong. At [6] in respect of the fact that the Secretary of State did not think it was credible that the Claimant would be placed on reporting conditions if his mother would pay a bribe, this was addressed by the Judge and at [8] the Judge addressed the delay in claiming asylum. At [9]-[23] the Judge goes very carefully through the medical evidence and gives extensive reasons for attaching weight to the medical evidence of Dr Martin at pages 31 onwards of the Claimant's bundle. There was also Rule 35 report and photographs of the Appellant's scarring which were before the Respondent at pages 37 and at page 43, which is a body map showing extensive scarring. Having gone into all this evidence at [24] the Judge applied the lower standard of proof and found the Claimant's account to be credible.

9. Ms Jegarajah submitted that the challenge by the Secretary of State is misconceived in that one can see from the contents of the decision of the First

tier Tribunal Judge that he was fully engaged with the contents of the Secretary of State's decision and addressed these in broad terms so that the parties know why they have won or lost. He has read the interview and the refusal letter but took account of the quantity of corroborative evidence in the case and applying lower standard of proof allowed the appeal. She submitted that the *GJ* point is misconceived because this was addressed at [4] of the Judge's decision. Ms Jegarajah submitted that this is a very serious case so far as the Sri Lankan authorities are concerned because of Dr Shanmugarajah and the fact that he was witness to the shelling of the hospital and this been investigated by the United Nations. She acknowledged that the structure of the decision was unorthodox but the content is there and the decision discloses no material error of law.

10. In her reply, Ms Isherwood submitted that it is irrelevant to go through the evidence and it was clear from [15] of the refusal that the Secretary of State did not accept the core of the account. She submitted that nowhere in the decision does the Judge consider the core of the account. At [6] of the decision reference is made to the Claimant's mother paying a bribe but that ignores the challenge at [16] of the refusal letter, which concludes that it was not credible the Claimant would be placed on reporting conditions. The Judge at [2] refers to the Secretary of State's position but does not set out what is accepted or not. It was not enough to say that the Claimant has been detained solely on the basis of the medical evidence and it is not possible to ascertain from the decision how the scars were caused. She submitted that the fact that the UN had investigated in 2016 was irrelevant in terms of the safety of the decision; that the Judge needed to make findings on issues in dispute and failed to give reasons for finding that the Claimant has discharged the burden of proof.

### *Decision*

11. I reserved my decision, which I now give with my reasons. I find that First tier Tribunal Judge Andonian materially erred in law, for the reasons put forward by the Secretary of State in the grounds of appeal. Firstly, it is the submitted by Ms Jegarajah and I accept that the Judge did engage with some aspects of the refusal letter *viz* that the Claimant's mother had paid a bribe, that reporting conditions were imposed upon the Claimant and the reasons for the delay in claiming asylum. However, the Judge failed to address: the point raised at [15] of the refusal decision as to inconsistent statements made by the Claimant regarding the reason for his detention and the fact that the Claimant left Sri Lanka on his own passport, indicating a lack of interest in him by the authorities: [19] of the refusal decision refers. These are material issues and it was incumbent upon the Judge to make findings of fact in respect of them.

12. It is also the case that whilst at [24] the Judge held that the Claimant had discharged the burden of proof that he has a well-founded fear of persecution for a convention reason, he failed to give reasons for that finding, which follows directly after a lengthy summary of the medical evidence from [9]-[22] of his decision. Whilst it may be that the Judge was convinced by the conclusions of the medical experts that the Claimant was a victim of torture, he does not state this in terms nor provide any reasons as to why this evidence, even taken with his other findings of fact, meant that the Claimant had demonstrated to the lower standard of proof that he is a refugee. I further find that the Judge erred materially in law in this respect.

13. The second ground of appeal asserts that the Judge failed to apply the country guidance decision in *GJ* [2013] UKUT 319 (IAC) in that he failed to make any finding that the Claimant would be at risk of persecution on return and failed to identify the risk category into which the Claimant would fall. I find that this ground of appeal is also well-founded in that, whilst at [4] the Judge makes reference to the *GJ* principles, it is clear that this is in the context of the Claimant's claim and what he believed and feared. The Judge makes no finding as to the application of the *GJ* principles to the particular facts of the case and no finding as to which risk category the case falls to be considered.

14. For these reasons, I find that First tier Tribunal Judge Andonian erred materially in law and that the decision needs to be re-made. I adjourn the appeal for a resumed hearing before me on the first available date. Directions are appended to this decision. I maintain the anonymity order imposed by the First tier Tribunal.

*Rebecca Chapman*

Deputy Upper Tribunal Judge Chapman

21 May 2017

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DIRECTIONS

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1. The resumed appeal is to be listed for 2 hours.
2. The following findings of fact are preserved: the Claimant had reporting conditions imposed upon him from 2009 to 2011 and the reasons provided by the Claimant for not claiming asylum earlier are credible.
3. Any further witness statements or evidence upon which the Claimant seeks to rely is subject to application to the Upper Tribunal in accordance with the requirements of paragraph 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008.
4. A Tamil interpreter will be required.

*Rebecca Chapman*

Deputy Upper Tribunal Judge Chapman

21 May 2017