



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

Appeal Number: PA/07904/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre

Decision & Reasons

On 13th October 2017

Promulgated

On 1st November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[T N]

~~(ANONYMITY DIRECTION MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit (Counsel), A & P Solicitors

For the Respondent: Mrs H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Boylan-Kemp MBE, promulgated on 29th March 2017, following a hearing at Birmingham, Sheldon Court on 23rd February 2017. In the determination, the judge refused the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sri Lanka, and was born on [] 1987. He appealed against the decision of the Respondent dated 7th July 2016 refusing his application for asylum and humanitarian leave.

The Appellant's Claim

3. The Appellant expresses a twofold risk. First, that he would be at risk of persecution due to his political and imputed political opinion on account of being a supporter of the LTTE whilst in India. Second, that he has been a supporter of the TGTE in the UK and that his father supported the LTTE.

The Judge's Findings

4. The judge recounted how the main thrust of the Appellant's account was that his activities in supporting the LTTE in India have brought him to the attention of Q-Branch. They would have passed information on to the Sri Lankan authorities. That would have put the Appellant at risk upon return to Sri Lanka. The Appellant gave evidence before the judge that in 2009, approximately some twenty days before his accomplices, Raha and Ramanan, were arrested, the Appellant and his father were invited by Q-Branch for questioning. The judge held that "the Appellant failed to mention this very relevant event in either his asylum interview or witness statement". This, according to the judge, "significantly undermine the credibility of his account" (see paragraph 21). The judge thereafter went on to give more detailed consideration to this aspect of the claim (paragraphs 24 to 26). It was wrongly rejected (paragraph 27).
5. Second, consideration was then given by the judge to the Appellant's diaspora activities in supporting the "Transnational Government of Tamil Elam" (TGTE). The Appellant stated he started helping them in 2013. He claimed to regularly attend TGTE meetings. He had stated he attended various demonstrations. This included a demonstration on 18th May 2016 in Westminster. He provided a letter from the TGTE dated 20th February 2017 (see paragraph 28). However, the Appellant's attendance at these events "occurred after he had received his refusal letter" (paragraph 29), as pointed out by the Home Office Presenting Officer. The Appellant's own representatives explained this on the basis that the Appellant "had not been thinking but documenting his attendance at any TGTE events" prior to receiving the refusal letter (paragraph 30). The judge did not agree. The judge held that "all of the photographs are post the refusal decision and appear to have been taken for the sole purpose of bolstering the Appellant's asylum claim" (paragraph 31).
6. Finally, the judge gave due consideration to the country guidance case of **GJ (Sri Lanka) [2013] UKUT 00319**. In particular, the judge referred to the statement (at paragraph 8) that, "any individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or

the Sri Lankan Government". The Appellant, concluded the judge, did not present a risk to the unitary Sri Lankan state or the Sri Lankan government.

7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge failed to adequately appreciate that membership of the TGTE, which is a prescribed "terrorist" organisation by the Sri Lankan government, was enough in itself to put the Appellant at risk of ill-treatment and persecution. This was the principal activity of note by the Appellant in the UK. Second, that in relation to the risk arising from the Appellant's long residence in India, the judge had failed to give adequate consideration to the fact that some returnees had been tortured and interrogated about their time spent in southern India.
9. On 21st August 2017 permission to appeal was granted. On the second of these grounds, but not on the first.

Submissions

10. At the hearing before me on 13th October 2017, Mr Muquit, appearing on behalf of the Appellant, renewed the first Ground of Appeal as well. He submitted that the normal course by the Tribunal is that if one ground is admitted but the other is rejected, the notification of this is accompanied by a form from the Tribunal service alerting an Appellant to the possibility of making a written application for the rejected ground to be reconsidered again. This did appear to have happened here. I indicated to Mr Muquit that I would give him permission to argue the first ground before me afresh again if this was the case. Accordingly, Mr Muquit argued both grounds.
11. First, he submitted that the Appellant's diaspora activities in the form of his membership of the TGTE placed him at risk of ill-treatment upon return to Sri Lanka. The judge had considered this matter (at paragraphs 33 to 35) but had wrongly rejected it.
12. Second, that the grant of permission, with respect to the second ground, was subject to the caveat that it was not known whether Counsel appearing at the hearing below had actually argued that activities of Sri Lankans in India would place them at risk. Mr Muquit referred to the skeleton argument of Counsel at the time. He states (at paragraph 30) that, "the Appellant is at additional risk as a Tamil returning after several years abroad in the UK following the civil war, and in India during the civil war". In particular, the skeleton argument had drawn attention to the COIS at paragraph 2.3.9. This reads that,

"Furthermore Sri Lankan Tamils who sought refuge in India during the civil war are returning in greater numbers and with confidence about the country situation in Sri Lanka. However, tens of thousands of

refugees remain in India and there is evidence that some returnees were tortured and interrogated about time spent in southern India”.

Mr Muquit submitted that the judge overlooked the fact that there was a risk of torture and interrogation, simply on account of the Appellant having lived in India during the civil war, and this was not least because the Home Office itself had accepted this in the COIS. He submitted that I should make a finding of an error of law and remake the decision on the existing evidence myself at this Tribunal.

13. For her part, Mrs Aboni submitted that permission to appeal should not be granted. First, in relation to Ground 1 there was no material error of law at all in stating that membership of the TGTE did not for this Appellant create a risk. All the Appellant’s activities undertaken, with respect to demonstrations and the like, were post refusal activities. His actions had been self-serving. He had only attended these meetings, as clearly found by the judge, in order to bolster a reclaim. Mrs Aboni also applied the logic in **HJ Iran** to make the argument, that if the Appellant had not sincerely and genuinely attended these meetings and demonstrations, then upon return he would be under no compulsion to admit to having attended them, given that the Sri Lankan authorities did not have knowledge of his attendance. In any event, they would know that many people applying for asylum in the west do so on the basis of surplus activities that have occurred post refusal letter.
14. Second, as far as the second ground was concerned, the judge had rejected the fact that the Appellant’s time spent in India would attract risk of ill-treatment. As the judge had observed, “the main thrust of the Appellant’s account is that his activities in supporting the LTTE in India brought him to the attention of Q-Branch ...” (paragraph 19). Yet this had not been mentioned during the asylum interview, the judge accordingly concluded that “the Appellant failed to mention this very relevant event in either his asylum interview or witness statement” such that it “significantly undermined the credibility of his account” (paragraph 21).
15. In reply, Mr Muquit submitted that the Secretary of State’s own evidence was that if people had spent time in India then it was known that some returnees had been tortured or interrogated upon return to Sri Lanka. Moreover, the recent decision of **UB (Sri Lanka) [2017] EWCA Civ 85** assisted the Appellant because in that case the applicant had been totally discredited, but it was still concluded that he would be at risk upon return to Sri Lanka.

No Error of Law

16. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows. First, and with respect to Ground 1, namely that the Appellant had been involved in sur place activities in the UK, such as his membership of a

TGTE, and his attendance at meetings and demonstrations (see especially paragraph 28), the judge properly concluded that, “it appears that the Appellant does not hold any significant role in the TGTE or in any other post-conflict Tamil separatist organisation; the evidence being that he has attended a few organised events ...” (paragraph 33). On his behalf, it has been submitted that the fact that the Appellant’s personal Facebook account link to the TGTE Facebook page would place him at risk (paragraph 33). The judge rejected this. It was rejected on the basis that the Appellant could not be perceived as a threat to the Sri Lankan authorities or the unitary state of Sri Lanka.

17. Second, insofar as the second ground is concerned, namely, the Appellant’s residence over some years in India, it is true that this was expressly put before the judge (see paragraph 30 of the skeleton argument), and in relation to the COIS at paragraph 2.3.9. However, what the latter states is that, “Sri Lankan Tamils who sought refuge in India during the civil war are returning in greater numbers and with confidence about the country situation in Sri Lanka ...”. Of course it was recognised, that some tens of thousands of refugees still remain in India. It was also recognised that there was evidence that “some returnees were tortured and interrogated about the time spent in southern India” (paragraph 2.3.9). Nevertheless, the judge rejected this on clear grounds.
18. First, that the Appellant had failed to mention that the authorities in India took both him and his father in for questioning when they were approached by Q-Branch, either in his witness statement or during his asylum interview.
19. Second, the judge observed that, “I simply do not find his account of being able to enter and exit the country without difficulty to be plausible when set against his account of being a person of interest to the Indian authorities” (paragraph 24). There may be examples of people who have been tortured upon return from southern India. However, this is not to say that the Appellant will be perceived in the same light, particularly given the way in which the judge has found the facts in relation to his particular case, as I have just outlined.
20. Finally, in either case, and whether one is considering Ground 1 or Ground 2, the judge emphatically concluded (at paragraph 34) that the country guidance case of **GJ (Sri Lanka) [2013] UKUT 00319** was determinative. It established that, “an individual’s past history would be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government.” The judge took into account the two photographs of the Appellant which are allegedly on the TGTE Facebook page.
21. Nevertheless, the judge held that,

“As the Appellant is not a person already known to the Sri Lankan authorities as someone involved in the LTTE, the TGTE or other post-

conflict Tamil separatism activities, and because of his very low-level of involvement of the Appellant in the TGTE, then I find that a small number of photos in which is featured on Facebook would be insufficient to place him at risk as a result” (paragraph 34).

The judge was entitled to come to that conclusion. The reference to the more recent case of **UB (Sri Lanka) [2017] EWCA Civ 85** does not alter the position.

Notice of Decision

22. There is no material error of law in the original judge’s decision. The determination shall stand.
23. An anonymity order is made.

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.

Signed

Date

Deputy Upper Tribunal Judge Juss

31st October 2017