



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

Appeal Number: PA/12521/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 June 2017**

**Decision & Reasons Promulgated  
On 3 July 2017**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR K K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Butterworth, Counsel instructed by Jein Solicitors  
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

- 1.** This is an application for permission to appeal against the determination of First-tier Tribunal Judge Anstis who on 22 December 2016 dismissed the applicant's appeal against the Secretary of State's refusal of his protection and human rights claims. The matter was heard on 14 December 2016.
- 2.** There are various grounds in the written amorphous application which Mr Butterworth attempted to set out clearly. The grounds to the Upper Tribunal did not appear to rely on the grounds to the First-tier Tribunal.

3. In ground (i) was asserted that there was inadequate reasoning; the judge failed to take into account the applicant's claim that he was arrested having been identified by an LTTE member whom he had accommodated. This claim was consistent and not inconsistent with **GJ and Others [2013] UKUT 00319** which noted the use of former LTTE members as informants. The judge should have focussed on the perception the authorities would have of the appellant. His scars were consistent with his claim and his family had links with the LTTE.
4. In response to ground (i) the judge at paragraph 45 found that the appellant was someone who offered *low-level* assistance in Sri Lanka apparently reporting what he observed while travelling to and from work. I do not find the judge's findings were at odds with **GJ** or disclose an error of law on this ground alone. The head note of **GJ** at (8) notes that:

*"Everyone on the northern province had some level of involvement with the LTTE during the civil war. In post conflict Sri Lanka an 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."*
5. In relation to ground (ii) as set out by Mr Butterworth it was submitted that paragraph 47 was highly relevant in relation to the death of the aunt and her death certificate showed that she died of gunshot. Although the appellant stated that this related to the LTTE and contended that there was no finding by the judge, I am not persuaded on this point alone that the judge erred in law. There was no indication on the death certificate which specifically linked the mother to the LTTE or that the incident was other than random in the event of the conflict.
6. Nor do I consider that the judge's finding at [47] in relation to the letter from the mother, referring to the work of the appellant as a teacher, could be construed as connoting a new job, such that it could be argued the judge misconstrued it. There was ambiguity in the letter and it was open to the judge to find that it did not add significantly to the appellant's account, which the judge had clearly been taken into account.
7. Overall, as Mr Tufan pointed out, the appellant's claim was significantly undermined by the failure of the appellant to claim asylum during his lengthy residence in the United Kingdom. As the judge pointed out at paragraph 41 the appellant claims to have been in danger from the Sri Lankan authorities from the date of his arrival in the United Kingdom on 17 October 2010 and yet only claimed asylum in 2016. In the meantime he made a successful application to remain in the UK as a Tier 1 (Post Study) Worker and then an unsuccessful application as a Tier 1 (Entrepreneur) without mentioning anything of the risk he faced in Sri Lanka. As the judge noted there was no suggestion from him as to how the improvement might have transpired. Those findings by the judge fundamentally undermined the appellant's credibility.

8. In relation to the appellant's past activities Mr Butterworth was keen to emphasise that the appellant was not a member of the LTTE.
9. I note that the judge also referred at paragraph 51 to the report of Professor Lingam identifying that his scars "could be from any accident or injury" and that "these wounds are still oozing". Bearing in mind the appellant had been in the United Kingdom since 2010 this is surprising. Nonetheless, on findings open to him, the judge clearly found at [51] that the medical report did not assist the appellant and I find no error in the reasoning on the evidence as it was presented.
10. The judge also noted at paragraph 54 that it was striking that the first time the appellant sought medical treatment was in 2016 and spent five years in the UK whilst studying and working without any form of medical attention or treatment for his depression. Those findings were also open to the judge and further undermined the appellant's credibility.
11. More problematical is the tension between paragraphs 56 and 65 where the judge states:

*"56. The Appellant has given an account of activities sur place which are said to place him at risk on return to Sri Lanka. In his asylum interview he talks of having attended 6-7 Tamil demonstrations in his time in the United Kingdom. In October 2016 there is a letter from the TGTE describing the Appellant as having been a volunteer and office assistance with the TGTE for the previous ten months, so since approximately the start of 2016. In the most recent letter of December 2016 he is described as taking an 'active role in organising events and public demonstrations'. Whatever view one takes of that, it is apparent that on the Appellant's own evidence his involvement with Tamil organisations in the United Kingdom has increased over time, from attending what must have been about one event a year, through to 'organising events and public demonstrations'.*

...

*65. Bearing in mind GL, I do not consider that the Appellant's activities in the United Kingdom would be considered by the Sri Lankan authorities as a threat, or to bring adverse attention to him. I do not accept his evidence that the authorities came looking for him after last weekend's demonstration. These demonstrations are plainly attended by many people, and there is nothing evident from the photographs and other materials I have seen that would suggest to an observer that the Appellant was a prime mover or particularly influential in those demonstrations."*
12. It is either the fact that the judge has not made clear findings as to the extent of the appellant's activities in the United Kingdom, which is what the judge needs to do before applying **GJ**, or alternatively the judge is accepting that the appellant has been a volunteer and offered assistance with the TGTE, a proscribed organisation for the previous ten months at the start of 2016 and that he is now taking a "active role in organising events and public demonstrations".

- 13. GJ** does not require that the applicant be designated as a “prime mover” or particularly influential in those demonstrations. It is how the appellant will be perceived on return. As the head note indicates the categories of persons at real risk of persecution or serious harm include:

*“7(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.”*

- 14.** As Mr Butterworth pointed out the TGTE is in part dedicated to the creation of a Tamil separatist state. The key issue in this matter is how the appellant will be viewed on return in relation to his sur place activities.
- 15.** In the overall context of the evidence which is clearly how the judge addressed the letters from the mother and the attorney, it was open to the judge to find that the letters from the attorney were undermined. The judge addressed these issues at [59] of the decision. The judge criticised the letters from the MP, the attorney and the mother on the basis that they all relate to 2016. However, although it was open to the judge on the basis of **Tanveer Ahmed (Documents unreliable and forged)/Pakistan [2002] UKIAT 00439** to find that the letters carried no weight, in view of my findings above in relation to sur place activities, **I will set aside all findings from paragraph [56] onwards.**
- 16.** In my view there was an adequacy of findings in relation to the appellant’s activities in Sri Lanka and paragraphs [41] to [55] are preserved. However, there are no clear findings as to the appellant’s role with the TGTE and that is what needs to be undertaken in the First-tier Tribunal. I therefore conclude that there is an error of law in relation to the appellant’s *sur place* activities only.
- 17.** For that reason and for that reason alone I return the matter to the First-tier Tribunal for such findings, deliberations and assessment.
- 18.** The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made, and as indicated, the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

**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.

Appeal Number: PA125212016

Signed Helen Rimington

Signed 30<sup>th</sup> June 2017

Upper Tribunal Judge Rimington