



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

Appeal Number: RP/00151/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 18th September 2017**

**Decision & Reasons Promulgated
On 10th October 2017**

Before

UPPER TRIBUNAL JUDGE FRANCES

Between

**BABYRAJ MOHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal, instructed by Polpitiya & Co Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 13th April 1987. He appeals against the decision of First-tier Tribunal Judge Kaler dismissing his appeal, against the refusal of his protection claim and the decision to make a deportation order and cease refugee status, on 23rd June 2017.
2. Permission to appeal was sought on the grounds that the judge erred in law in finding that there had been a fundamental, stable and durable change in Sri Lanka, such that it was safe for this Appellant to return there. The judge failed to deal with the background evidence relied on and attached to the Appellant's skeleton argument and to properly assess the

effect of the Appellant's criminal conviction in the UK on his perceived connection to the LTTE and the risk on return. There was also a challenge to the judge's findings in relation to the significance of the visits of the Appellant's family to Sri Lanka subsequent to their grant of refugee status.

3. Permission was granted by First-tier Tribunal Judge Saffer on the grounds that it was arguable that the judge may have given inadequate attention to the evidence of continuing problems in Sri Lanka as summarised in counsel's skeleton argument and that this evidence may indicate an ongoing risk to the Appellant.
4. In the Rule 24 response, the Respondent opposed the Appellant's appeal and submitted that the judge directed himself appropriately. There was nothing in the grounds to show that there were any family links to the LTTE or that the Appellant was actively seeking to destabilise the integrity of the single state of Sri Lanka. There was nothing in GJ (Sri Lanka) CG [2013] UKUT 319 to suggest that the focus in risk groups is limited solely to Tamil men. Furthermore, GJ clearly identified that being asked questions at the airport did not amount to a risk on return.

The Appellant's Immigration History

5. The Appellant entered the UK with his parents and other family members in 2000 when he was 13 years old. His father was recognised as a refugee on 10th October 2001 and the whole family were granted indefinite leave to remain. All other members of the family were subsequently naturalised as British citizens. The Appellant applied for naturalisation on 10th October 2005 and was refused on grounds of poor character.
6. The Appellant was convicted of kidnapping, wounding with intent to do grievous bodily harm and violent disorder at Isleworth Crown Court on 2nd October 2006. The date of the offence was 7th August 2005. He was sentenced to an indeterminate prison sentence with a minimum tariff of four years. He has been on licence since 10th December 2013 and was released from immigration detention shortly thereafter. He has been living with his parents since then. He is a single man with no dependants and works as a customer assistant at Boots Chemist.
7. The Respondent has issued previous notices informing the Appellant of his liability to deportation on 23rd October 2008 and 14th July 2009. A deportation order made in October 2009 was invalidated on 23rd April 2013. The Appellant was informed, in June 2013, that consideration was being given to ceasing his refugee status. The UNHCR had been informed and their response was issued on 22nd July 2013.
8. The Appellant's father was granted refugee status on the basis that his brother had joined the LTTE in 1987. The Appellant's father was a businessman selling vegetables and groceries in Vanni. The LTTE detained the Appellant's father in a camp for ten days and he was released after

paying a ransom. The Appellant's father moved to Vavuniya in 1996 and continued his business. He was compelled to deliver goods to the LTTE. The Sri Lankan Army arrested one of his drivers in March 2000 and the Appellant's father left Colombo immediately with his family. The army raided the family home in August 2000 and the family left Sri Lanka and came to the UK.

The Judge's Findings

9. The judge made the following findings at paragraphs 18 and 19 which are the subject of this appeal:

"18. I conclude from the guidance in GJ that this Appellant with his particular profile does not fall within those categories. There is nothing in the subsequent background material that leads me to depart from the guidance in GJ. My conclusion is supported by the fact that members of the Appellant's family, including the Appellant's father have returned to Sri Lanka. The Appellant's father was detained once with others as they were making their way from the airport, but he was not questioned. That the father was not subjected to any questioning about any past activities for the LTTE or about his intentions does lead me to conclude that he was not of interest to the authorities. I note that he has a British passport, but that would not have prevented the authorities from asking the question about his past, they were not concerned about his past profile and so there would be little reason for them to be alerted to any connection between this Appellant and his father's or uncle's past political activities. The father's account is that he was not asked any questions at all. The Appellant's siblings were not even stopped.

19. This Appellant would be returning on his Sri Lankan passport. There is no reason why the authorities would wish to look into his criminal convictions in the UK. He has not been involved in any activities against the Sri Lankan government or in favour of the separatist movements. He may be questioned about what he was doing in the UK, but the investigations would not show that he is wanted by the Sri Lankan authorities for anything or that they have any adverse interest in him. His criminal conviction in the UK is unrelated to separatist activities. The Respondent has satisfied me that there has been a fundamental, stable and durable change in the situation in Sri Lanka such that it is now safe for this particular Appellant to return there. The peace agreement has been in force for many years and the changes that have been brought in satisfy me that this Appellant will not be at risk of the adverse attention of the authorities."

Submissions

10. Ms Iqbal submitted that in coming to the conclusions, at paragraphs 18 and 19, the judge failed to consider the background evidence. The judge had not considered any of the evidence of events postdating the decision of GJ. There was specific evidence submitted and referred to in the Appellant's skeleton argument which was not considered. This evidence showed that Tamils were targeted despite the end of the civil war. The

judge had also failed to take into account the expert report of Dr Chris Smith and she made no reference to it whatsoever.

11. Ms Iqbal referred me to the following paragraphs of Dr Smith's report:

"61. The Client appears to have arrived in the UK using a valid Sri Lankan passport in or around 2000. However, his Sri Lankan passport is now out of date. If he cannot access a genuine and legal passport upon which to return, he would be returned on a document, issued by the Sri Lankan High Commission in London. It is known as an Emergency Travel Document, which is a hand written Non-Machine Readable Passport (NMRP). In order to acquire this document, proof of Sri Lankan citizenship is required. An interview is also required on arrival in Sri Lanka but the NMR passport holder is allowed to retain this passport but it is not an acceptable ID document once the holder enters Sri Lanka. The Client would have to acquire this documentation from the Sri Lanka High Commission in London. As part of this application process, which is mandated by the UK Home Office, returnees must fill in a form to assist the authorities in both the UK and Sri Lanka to ascertain that they are being returned to the correct country of origin. In order to complete the form correctly, the Client will be obliged to provide a considerable amount of detailed personal and family information. Based upon other cases for which I have written reports, it is the case that interviews are extremely detailed and will include probing questions about criminal records. This information would then be placed in the hands of the Sri Lankan authorities in anticipation of his return.

...

65. If the authorities believe that the Client is of potential adverse interest, a straightforward search on Google will identify the Client and the nature of the crime for which he is currently imprisoned. (Indeed, a Google search for 'Babyraj Mohan' brings up a media report on his gang as the first result.) The fact that the Client was a member of a gang comprising mainly Tamil youths will be of considerable interest to the Sri Lankan authorities. Also, it is conceivable that the Sri Lankan High Commission would have been informed that a Sri Lankan national, albeit with refugee status in the UK, not least as a diplomatic courtesy. Alternatively, the High Commission could be already sighted on this case if they monitor the relevant newspapers and, as an intelligence measure, the local Tamil newsletters and websites are sure to be monitored as a matter of course.

...

67. Sri Lankan Tamils in the UK, London especially, have been heavily involved in gang-based crime and organised and semi-organised criminal activity. It had been widely assumed that these criminal gangs were operating on behalf of the LTTE, to raise money for the cause - Eelam, sometimes by sophisticated credit card fraud, at other times through extortion and the threat of violence. The majority of the Tamils involved were from the North of the country and Colombo, as is the Client. However, on closer analysis, the allegiance to the LTTE is far from clear-cut. The *modus operandi* of these gangs involved deliberate ambivalence over the motivation for their actions, often invoking the

LTTE's need for money to justify their actions. Some of these activities, including credit card fraud, could have been managed and directed by the LTTE but British intelligence and security officials were genuinely ambivalent as to the direct extent of LTTE involvement. However, if the LTTE may not have been completely in control of these activities, it is clear that there was some involvement, the only question being how much?

68. The Sri Lankan authorities harbour no such ambivalence. They remain resolutely convinced that the LTTE was and potentially remains a highly criminalised organisation involved in trafficking of all kinds and other illegally revenue raising activities.
 69. As such, if the Sri Lankan authorities are made aware of the Client's conviction for gang-related violence, significant adverse interest will result and, if not already there, his name will be placed on the electronic database, which covers individuals who are of adverse interest to the authorities. This could certainly be an outcome of his interview at the Sri Lankan High Commission to obtain travel documentation."
12. Ms Iqbal submitted that the Appellant is Tamil with a criminal past of associating with a Tamil gang. This was sufficient to bring him at risk within GJ. He also had past links to the LTTE through his uncle who was a member and the arrest of his father's driver/employee. The judge had erred in law in failing to consider the background evidence that the Appellant would be identified and would be questioned. The judge's justification that the Appellant's father had returned to Sri Lanka with no difficulties did not mean that the Appellant would not be at risk on return. The Appellant's father did not have a criminal record and had no profile which was of interest to the authorities. However, the Appellant's profile was entirely different and more likely to put him at risk. The judge had not looked at all the evidence and his reasoning at paragraphs 18 and 19 was inadequate.
 13. Mr Tufan submitted that there was no evidence before the judge to show that the Appellant's father had been treated differently because he held a British passport. The Appellant had refugee status as a family member. Although returnees continued to be arrested at the airport, they would not be at risk of harm unless they fell within the categories set out in GJ. The Appellant's activities did not come anywhere near those referred to in any of the categories set out in GJ. The Appellant may well be subject to screening, as his father was when he returned, but that in itself was not sufficient to put the Appellant at risk. The Appellant's father was detained for a matter of hours and there was no reason to think that the Appellant would not be treated in the same way.
 14. Mr Tufan accepted that there was no reference to the opinion of Dr Chris Smith in the decision, however Dr Smith had given evidence before GJ and his current report was not based on any further evidence that he had gathered since GJ. The report was assessing the situation in 2010 soon after the end of the conflict. The situation was quite different now. The

report of Dr Smith was dated 28th October 2011 and relied on matters which were simply out of date in relation to the assessment of return today. The judge's failure to refer to the report was not material to the decision because there was nothing in the report which affected the judge's conclusions at paragraph 18. The Appellant did not come within any of the risk categories in GJ and therefore would not be at risk on return.

Discussion and Conclusions

15. Ms Iqbal submitted that the judge failed to consider background material which post dated GJ, in particular the evidence set out in the skeleton argument. The Country Information and Guidance - Sri Lanka: Tamil separatism, May 2016 stated:

"In May 2015 it was reported that at least 16 Tamil men from the Batticaloa district had been arrested at Katunayake International Airport over a period of around 100 days after returning from working abroad at Middle Eastern countries. TamilNet reported that, 'Almost all the victims were ex-LTTE members who had undergone SL military 'rehabilitation' and released earlier.' ...

In June 2015 thirty-year-old Tamil and ex-LTTE member Konesapillai Kugadasan was arrested having returned from Bahrain and detained for rehabilitation.

The International Crisis Group noted in an August 2015 report that: 'Tamils returning from abroad continue to be arrested under the PTA [Prevention of Terrorism Act] on suspicion of old LTTE involvement. According to some reports, after police detention, many are sent to the military-run rehabilitation program. Tamil politicians and activists allege that secret detention centres established by the old government continue, though officials deny this.'"

16. According to an August 2015 study of 148 Sri Lankan torture cases perpetrated since the end of the Sri Lankan civil war in May 2009, the majority of those arrested were of Tamil ethnicity (94%) and had an association with the LTTE at some level (96%). More than one third (37%) were detained and tortured in Sri Lanka after returning from the UK following the end of the armed conflict:

"Most had been in the UK as students but three had claimed asylum and were forcibly removed after their asylum claims were rejected. All but seven of these people were detained within weeks of their arrival in Sri Lanka and the majority were specifically interrogated about their reasons for being in the UK, their activities and/or their contacts in the UK. Twenty-one people were accused of attending particular protests and demonstrations in the UK and eleven were shown photographs taken at these events".

17. In a report of January 2016 on survivors of torture and sexual violence, the ITJP documented the experiences of 20 Sri Lankan Tamils and stated:

“In some cases the interrogators showed the victims print outs of photographs of themselves or people close to them attending recent Tamil diaspora commemorative events abroad. ... Some had spent periods in hiding in southern India and it was clear their interrogators regarded this with great suspicion when they returned home”.

18. Ms Iqbal submitted that, had the judge considered the background material and the expert report from Dr Chris Smith, which dealt with the Appellant’s previous conviction, then the Appellant would come within one of the risk categories in GJ.
19. I find that the background material relied on by the Appellant does not disclose a risk on return and does not justify a departure from the risk categories in GJ for the following reasons.
20. The interest in Tamils returning from the UK, which results in detention and interrogation, was of those who were either ex-LTTE members or had some association with the LTTE. This Appellant has never been a member of the LTTE and has no association with them. It is submitted that the link would be made because of his criminal activity in the UK. However, this too is not associated with any LTTE involvement in separatism. The Appellant had been part of a group of Tamil youths who had kidnapped and assaulted an individual. There was no connection to any LTTE fundraising, nor could it be said that the crime would link the Appellant to any separatist movements. The Appellant had not attended any demonstrations in the UK.
21. The Appellant has been convicted of a serious crime which may well come to the attention of the authorities in Sri Lanka either through his application for a travel document, if he is unable to renew his own travel document, or by virtue of a Google search of his name. However, the crime, although committed as part of a Tamil group, was not linked to any separatist activities or demonstrations in the UK.
22. The two pieces of evidence relied on by the Appellant, that referred to in the skeleton argument and the opinion of Dr Chris Smith, are not sufficient to bring the Appellant within the risk categories in GJ. The Appellant’s profile is such that his uncle was a member of the LTTE, his father was not a member of the LTTE, but he ran a business and had been detained previously by the LTTE and forced to provide them with food. One of his drivers had been arrested whilst delivering food to the LTTE. The Appellant’s father had returned to Sri Lanka on his British passport and had been detained for a short while, but asked no questions. Therefore, the Appellant’s father was clearly of no interest to the authorities. The Appellant would not be of interest to the authorities because of his father’s so-called links to the LTTE on the basis that the authorities had no interest in his father. The Appellant would not be at risk because of his uncle’s links on the same basis. The Appellant was not a member of the LTTE and had no connection to the LTTE prior to his arrival in the UK.

23. The Appellant left Sri Lanka during the conflict. The LTTE had been defeated in May 2009. The Appellant was not a member of one of the prescribed Tamil diaspora organisations, nor associated with any separatist movements or anti-Government regimes. His criminal offence in the UK was not politically motivated and would not lead to a perception that the Appellant was working for Tamil separatism in order to destabilise the unitary Sri Lankan state. The Appellant was not on a stop list. He would not be perceived to be a threat to the integrity of Sri Lanka as a single state because he did not have a significant role in the post-conflict Tamil separatism within the diaspora. The Appellant has no connection to the LTTE in Sri Lanka or in the UK. The authorities are clearly not interested in his father's former arrest by the LTTE or the Government arrest of one of his employees, nor were they interested in the uncle's membership of the LTTE in 1987 because the Appellant's father was not at risk on return and had not been asked any questions during his short detention. Many of the Appellant's siblings had returned to Sri Lanka without any difficulties whatsoever.
24. The only matters which make the Appellant different from the rest of his family is his criminal conviction in the UK and his lack of British citizenship. These matters were insufficient to put him at risk because he was not connected to any Tamil separatist movement. It could not be said that the Appellant was associated with raising money to support Tamil separatism. The fact that he had committed a particularly serious assault on another person as part of a Tamil gang in itself was insufficient to put him at risk when assessed in the light of the background material referred to in the skeleton argument and the opinion of Dr Chris Smith.
25. The judge took into account the fact that the Appellant's father held a British passport when he was detained on return to Sri Lanka. His conclusion that this did not prevent the Appellant's father from being questioned was open to him on the evidence before him.
26. Dr Smith's report is dated October 2011, which is relatively soon after the cessation of the conflict and it predates GJ. His opinion is that, if the Appellant cannot access a genuine and legal passport upon his return, he would be returned on a document issued by the Sri Lankan High Commission in London known as an "Emergency Travel Document". The Appellant has not shown that he is unable to renew his current Sri Lankan passport, but even if his criminal conviction becomes known, either because of his application for a travel document or because of a Google search by the authorities, then it is clear from those reports on the internet that the Appellant is not involved in Tamil separatism and there would be no reason for the authorities to suspect as much. The Appellant's criminal convictions and his lack of links with the LTTE in Sri Lanka mean that the Appellant would not be at risk on return.

27. The judge's findings at paragraphs 18 and 19 were open to him on the evidence before him. His failure to refer to the expert report of Dr Chris Smith was not material given that report was dated October 2011 and predated GJ. The judge properly applied the risk categories in GJ and it was not suggested that the report of Dr Chris Smith or indeed the background material justified a departure from the application of the risk categories GJ. The evidence in those reports would not lead to a conclusion that the Appellant was at risk following GJ.
28. Accordingly, there was no material error of law in the judge's conclusions at paragraphs 18 and 19. There was no challenge to the deportation order or the refusal of the human rights claim on Article 8 grounds. I dismiss the Appellant's appeal

Notice of Decision

Appeal dismissed.

No anonymity direction made.

J Frances

Signed

Date: 9th October 2017

Upper Tribunal Judge Frances

TO THE RESPONDENT
FEE AWARD

This is a fee exempt appeal.

J Frances

Signed

Date: 9th October 2017

Upper Tribunal Judge Frances