



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/04993/2015

**THE IMMIGRATION ACTS**

Heard at Centre City Tower Birmingham  
On 20<sup>th</sup> July 2018

Decision & Reasons Promulgated  
On 15<sup>th</sup> August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

TS  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Vokes of Counsel instructed by Central England Law Centre

For the Respondent: Mrs H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant is a female Sri Lankan citizen of Tamil ethnicity born in June 1995. She appealed against the decision of Judge Juss (the judge) of the First-tier Tribunal (the FtT).

2. The Appellant arrived in the UK as a student on 9<sup>th</sup> January 2013. She applied for asylum on 25<sup>th</sup> January 2013. Her claim was based upon persecution and ill-treatment in Sri Lanka because of her LTTE membership and support.
3. The application was refused on 9<sup>th</sup> March 2015. The Appellant appealed to the FtT and her appeal was heard by Judge Andrew and dismissed in June 2015. That decision was set aside by the Upper Tribunal in August 2016 and the appeal remitted back to the FtT to be heard de novo.
4. The appeal was heard by the judge on 20<sup>th</sup> April 2017 and dismissed on all grounds. The judge found the Appellant to be lacking in credibility. It was not accepted that she had been detained or ill-treated in Sri Lanka. It was not accepted that the Sri Lankan authorities would have any adverse interest in the Appellant.
5. With reference to sur place activities the judge noted the Appellant had produced photographs but concluded that they did not show the Facebook account from which they were downloaded, and the Appellant had not been able to show that they related to the time and place claimed. The judge found the Appellant had delayed claiming asylum for a period of two years. It was accepted that the Appellant may have demonstrated with protest banners denouncing the Sri Lankan government, but given the sophistication in counter insurgency, the judge found the Sri Lankan authorities would know the Appellant presented no risk to the Sri Lankan state.
6. Following dismissal of the appeal the Appellant applied for permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by Judge O'Garro. Renewed grounds were submitted directly to the Upper Tribunal.
7. The challenge related to the consideration by the judge of the Appellant's sur place activities. With reference to the photographs referred to by the judge it was submitted that the TGTE Facebook account is at the top of the photographs and the dates are numerically printed. It was contended that the judge had erred by failing to take into account a letter from S Yogalingam, a TGTE MP. The Appellant had been involved in supporting the TGTE which is a banned organisation, by organising events and fundraising.
8. Permission to appeal was granted by Upper Tribunal Judge Hanson and I set out below, in part, the grant of permission;

“The Appellant asserts the judge erred in failing to properly assess and give appropriate weight to the evidence submitted in support of the Appellant's sur place activities. The decision of the judge, whilst brief, is to the point. The judge did not find the core of the Appellant's claim to be credible. The question considered by the judge was whether it was safe for the Appellant to return to Sri Lanka. The judge at [23] finds 'The two year delay in claiming asylum also does not bode well for the Appellant, especially given that her brother has already gone down that route before her. She may have set out to show she was involved in alleged sur place activities with protest banners denouncing the Sri Lankan government but given the sophistication in counter insurgency, they will know

she presents no risk to them back home.’ At [24] the judge finds the Appellant is not a refugee.

It is arguable that the judge failed to make specific reference to the fact the evidence showed the Appellant’s possible connection or involvement with a banned organisation, the TGTE. There are no specific findings regarding the credibility of the claimed involvement in organising events and fundraising for this organisation which is arguably required in light of the judge’s recognition of the sophisticated counter insurgency techniques. It is not clear from reading the decision what the judge’s findings are in relation to the view of the Sri Lankan authorities if it was shown the Appellant has a role in supporting Tamil separatists in the UK as an event and fundraising organiser. On this issue permission to appeal is granted.”

### **Error of Law**

9. On 16<sup>th</sup> April 2018 I heard submissions from both parties in relation to error of law. On behalf of the Appellant reliance was placed upon the grounds submitted with the application for permission to appeal. On behalf of the Respondent reliance was placed upon a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was submitted that the judge had engaged with the evidence and made findings open to him.
10. I found there was a material error of law disclosed in the FtT decision and set aside the decision, but preserved the findings made by the FtT in relation to the Appellant’s claimed activities in Sri Lanka.
11. Full details of the application for permission to appeal, the grant of permission, the submissions made by both parties, and my conclusions are contained in my decision dated 17<sup>th</sup> April 2018, promulgated on 27<sup>th</sup> April 2018. I set out below paragraphs 13 – 19 of that decision, which contain my conclusions and reasons for setting aside the FtT decision;
  13. The challenge to the FtT decision relates to the consideration by the judge of the Appellant's sur place activities only. There has been no challenge to the findings made by the judge that the Appellant was not of adverse interest to the authorities in Sri Lanka, before leaving Sri Lanka, and that she was not detained or ill-treated. Those findings are therefore preserved.
  14. I am persuaded that the judge erred in law in consideration of the sur place activities by failing to make findings on potentially material evidence which had been submitted on behalf of the Appellant.
  15. There is no reference to the letter from the TGTE MP dated 12<sup>th</sup> April 2017 which confirms the Appellant's support for the TGTE which is a banned organisation, and makes reference to her organising events and fundraising. If no weight was to be attached to this letter, reasons needed to be given as to why not.

16. It is accepted that the TGTE is a banned organisation in Sri Lanka, and as pointed out by the judge granting permission to appeal, there are no specific findings regarding the Appellant's role in supporting Tamil separatists in the UK as an event and fundraising organiser.
17. It appears from the evidence that the judge was in error in making reference to a two year delay in claiming asylum. Documentary evidence submitted on behalf of the Appellant does in fact contain dates and a Facebook account reference, which appears to have been overlooked by the judge.
18. In conclusion, the judge erred in failing to make findings upon potentially material evidence, overlooked some evidence, and failed to give adequate reasons for concluding that notwithstanding the Appellant's sur place activities, she would not be of adverse interest to the Sri Lankan authorities.
19. The decision needs to be re-made in relation to sur place activities. It is not appropriate to remit this appeal to the FtT. There will be a further hearing before the Upper Tribunal. This will relate to the Appellant's sur place activities only.

### **Re-Making of the Decision**

12. At the Upper Tribunal hearing on 20<sup>th</sup> July 2018 the Appellant attended the hearing and the Tribunal had arranged for an interpreter in Tamil. Mr Vokes however advised that no further evidence would be called and he would be proceeding by way of submissions.
13. Mr Vokes made an application to admit further evidence in the form of a bundle containing 45 pages. This included an expert report prepared by Dr Smith dated 19<sup>th</sup> July 2018. The bundle had been received on 19<sup>th</sup> July 2018 in breach of directions as to service. Mrs Aboni had received the bundle and did not object, and therefore I decided that it was in the interests of justice to admit the bundle into evidence.
14. I ascertained that I had on file all documentation to be relied upon. I had the Respondent's bundle with annexes A - N. In total seven bundles had been submitted on behalf of the Appellant during the course of these proceedings, five of which had been submitted late and in breach of directions.

### **The Oral Submissions**

15. I heard oral submissions from both representatives which are summarised briefly below.
16. Mr Vokes relied on his skeleton argument. I was asked to note that the Respondent in the refusal decision dated 9<sup>th</sup> March 2015 accepted that the Appellant had undertaken sur place activities since her arrival in the UK in 2013. The Respondent's view was that these activities would not put her at risk in Sri Lanka.
17. The Appellant's case is that she has carried out significant activities for the Transnational Government of Tamil Eelam (TGTE) which the Sri Lankan government

views as an illegal organisation. An MP of the TGTE described the Appellant as an organiser.

18. The Appellant had now been carrying out activities in the UK in opposition to the Sri Lankan government for a period of five years and it was therefore likely that she had come to the attention of the Sri Lankan authorities. Reliance was placed upon the expert report at paragraphs 23 - 25 on this point. Reliance was also placed upon paragraph 19 of the expert report in which Dr Smith comments that the TGTE is an organisation viewed by the Sri Lankan government as seeking to undermine the Sri Lankan unified state.
19. The Appellant operates a Facebook account which clearly shows her opposition to the Sri Lankan government. Another substantial factor is that her brother is resident in the UK having been granted refugee status as he was a suspected LTTE member. It was submitted that it was highly likely that his details are on a centralised database and reliance was placed upon paragraph 52 of the expert report on this point. If the Appellant was removed to Sri Lanka her details would be known to the authorities as would her family link to the LTTE and she would be likely to be seen as a destabilising threat to the Sri Lankan state, because of her activities in the UK and her brother's previous alleged activities.
20. Mrs Aboni relied upon the refusal decision dated 9<sup>th</sup> March 2015 and the preserved findings of Judge Juss. It was submitted that the Appellant had not established that she had a profile that would make her of adverse interest to the authorities in Sri Lanka.
21. It was accepted that the Appellant's brother had been granted refugee status, but Mrs Aboni pointed out that he fled to the UK in 2009 and was granted refugee status in 2011, prior to the country guidance decision GJ (Sri Lanka) CG [2013] UKUT 319 (IAC).
22. Mrs Aboni argued that the risk categories are now set out in GJ, and the Appellant claimed to fall within headnote (7)(a) on the basis of having a significant role in post-conflict Tamil separatism. Mrs Aboni argued that the Appellant had not proved that she had a significant role and the counter insurgency techniques used by the Sri Lankan authorities would recognise this.
23. The Appellant had not established that she was on either a stop or a watch list. It was submitted that much of Dr Smith's report was based upon his personal opinion and speculation. While the Appellant had attended demonstrations, so had large numbers of other people, and it had not been established that she would be recognised because of her attendance at demonstrations.
24. In response Mr Vokes argued that the relevant point in relation to the Appellant's brother is that he has been granted refugee status on the basis of his LTTE support, and it is relevant that the Appellant would be linked to him.

25. The Appellant's claim was not based simply on attending demonstrations. She is a fundraiser and organiser for the TGTE which is an illegal organisation in the eyes of the Sri Lankan state. Reliance was placed upon the MP's letter, and it was argued that the Appellant's activities go far beyond mere attendance at demonstrations. In addition, the Appellant has a social media platform.
26. Mr Vokes argued that the main issue in this appeal is whether the Appellant has "a significant role" in opposition to the Sri Lankan government, and the evidence indicates that she does. With reference to Dr Smith's report, Mr Vokes acknowledged that reliance was only placed upon parts of it, and accepted that Dr Smith had taken the Appellant's claim at face value, but that did not devalue the conclusions. If detained in Sri Lanka, Mr Vokes pointed out that GJ confirms the Appellant would be at risk of ill-treatment.
27. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

28. The burden of proving that she would be at risk in Sri Lanka is on the Appellant, and the standard is a reasonable degree of likelihood, which is a lower standard than a balance of probabilities.
29. The issue before me relates to the sur place activities of the Appellant. The findings made by the FtT that the Appellant was not detained or ill-treated in Sri Lanka are preserved, as is the finding that she was of no adverse interest to the authorities before she left Sri Lanka.
30. GJ sets out the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka. The Appellant's claim is that she falls within the risk category at headnote (7)(a) which is set out below;

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.
31. The Respondent accepted in the refusal decision dated 9<sup>th</sup> March 2015 that the Appellant had undertaken activities in the UK, in opposition to the Sri Lankan government. At paragraph 24 of that decision, the Respondent noted the Appellant's claim to be a member of the BTF (British Tamil Forum) and the Kili people, and that the Appellant taught at a Tamil school as a volunteer. The Respondent noted the Appellant's claim to have joined the BTF in November 2013, and that she claimed to help organise demonstrations. She submitted with her initial application photographs of her present at demonstrations and two links for YouTube videos.
32. The Respondent accepted that the photographs submitted were consistent with the Appellant's account that she has attended demonstrations in the UK. In conclusion, in relation to the Appellant's activities in the UK, the Respondent stated at paragraph

24, "It is considered you have provided a consistent account regarding your activities in the UK, therefore this aspect of your claim has been accepted."

33. At paragraph 41 of the refusal decision the Respondent found "Your sur place activity in the UK has been accepted however you have not shown how the Sri Lankan authorities would be aware of your sur place activity." The Respondent did not accept that the Appellant would be perceived to be a threat to the integrity of Sri Lanka, and did not accept that she had a significant role in relation to post-conflict Tamil separatism.
34. It is accepted that the TGTE is regarded as an illegal organisation by the Sri Lankan government. There is a letter dated 12<sup>th</sup> April 2017 from Mr Yogalingam, who is a TGTE MP and wrote the letter on behalf of the TGTE. This confirms that the aim of the organisation is to create a Tamil state in the north and east provinces of Sri Lanka. The Appellant is confirmed as a member of the TGTE, and is described as having joined as a volunteer, and has volunteered in organising several public events in the UK. She is described as attending many meetings, and taking an active role in organising events and public demonstrations.
35. The letter confirms that the Appellant has been given "responsible roles such as organising events of the TGTE and fundraising."
36. The Appellant is described as helping with social media awareness for the TGTE, lobbying local MPs, and playing a key role in Heroes Day, Remembrance Day and taking part in a hunger strike in front of 10 Downing Street. It is confirmed that the Appellant spreads "the TGTE news through social media called Voice of Freedom." There is some evidence to support what is stated in this letter. There are numerous photographs of the Appellant attending meetings and demonstrations in opposition to the Sri Lankan government. It is not clear that the Appellant could be identified in all of the photographs, and in some she has written on the photograph, indicating her position in the group.
37. At paragraph 19 of the expert report, Dr Smith records that GJ clearly states that anyone who has a commitment to undermining Sri Lanka as a unitary state will be of adverse interest to the authorities. He comments, "By definition the TGTE and its members and supporters are actively engaged in working towards a separate Tamil state within Sri Lanka's border which directly seeks to undermine Sri Lanka."
38. At paragraph 20 Dr Smith gives the opinion that "there is clear evidence that supporters and those associated in any way to the TGTE and BTF are of adverse interest and at risk. I have recently been provided with information that supports this."
39. At paragraph 23 of the expert report Dr Smith records that the Appellant has publicly criticised the Sri Lankan government, and the criticism appears in the Tamil media and elsewhere. Dr Smith comments that he has had sight of numerous examples between 2013 and 2018 of the Appellant's participation in protests and anti-

Government events staged in the UK and posted, inter alia, on Facebook and other sites on social media and the internet. Dr Smith goes on to comment that “The Appellant may not have a role of exceptional significance or importance. However, this does not mean, ipso facto, that she will not be of adverse interest on return, with all the implications for risk and vulnerability”.

40. At paragraph 25 Dr Smith gives the opinion that “it is reasonably likely that the Appellant is known to the authorities.”
41. I attach weight to the opinion of Dr Smith as set out above. His conclusions support the Appellant, with the exception of his comment at paragraph 23 that she may not have a role of exceptional significance or importance.
42. I do place weight upon the letter from the TGTE MP, which I find is supported by other evidence. I accept that the Appellant has undertaken anti-government activities in the UK since her arrival in 2013. That is a substantial period of time. It is not simply the case that she has been attending demonstrations. I accept the Appellant’s claim at paragraph 3 of her witness statement dated 10<sup>th</sup> April 2018 in which she states, “I continue to run the Facebook page Voice of Freedom, sharing TGTE posts and events.”
43. I accept that the Appellant’s brother has been granted refugee status in the UK as a result of his opposition to the Sri Lankan government. I set out below paragraph 308 of GJ;
 

“During the re-documentation process in the United Kingdom, or at the airport on return, a forced returnee can expect to be asked about his own and his family's LTTE connections and sympathies.”
44. Therefore the Appellant would be expected to disclose that her brother had been granted refugee status as a Sri Lankan Tamil.
45. I conclude that the Appellant would be at risk of persecution or serious harm on return to Sri Lanka. I reach this conclusion on the basis that the Appellant has proved that she would be perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora. This is because I accept that she has done considerably more than simply attending meetings and demonstrations. She has made her views publicly known, over a considerable period of time since 2013. She is a member of an illegal organisation, which specifically seeks to set up a new Tamil state. Her brother has been granted refugee status as a Tamil and I find that the Sri Lankan authorities would be aware of that. This alone would not put the Appellant at risk, but I am considering the cumulative effect of the evidence. I find it significant that the Appellant does operate a TGTE social media platform and as the Sri Lankan authorities’ approach is based on sophisticated intelligence in relation to activities in the diaspora, I find, to the lower standard of proof, that the authorities would be aware of this. I attach weight to the letter dated 12<sup>th</sup> April 2017 from Mr Yogalingam who confirms that the Appellant takes an active role in organising events and public demonstrations.



46. I am therefore persuaded, that the totality of the evidence indicates that the Appellant does fall within the risk category set out at headnote (7)(a) of GJ.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. I substitute a fresh decision as follows.

The appeal is allowed on asylum grounds.

The appeal is allowed on human rights grounds with reference to Article 3 of the 1950 Convention.

**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 her 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 29<sup>th</sup> July 2018

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT  
FEE AWARD**

No fee has been paid or payable and therefore there is no fee award. If a fee had been paid or was payable I would not have made a fee award because this appeal has been allowed because of evidence presented to the Tribunal that was not before the original decision-maker.

Signed

Date 29<sup>th</sup> July 2018

Deputy Upper Tribunal Judge M A Hall