Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02158/2015

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 January 2018	**On 23 January 2018**

Before

UPPER TRIBUNAL JUDGE KEKIĆ

Between

[A S]
~~(ANONYMITY ORDER NOT MADE)~~

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms B Asanovic, Counsel instructed by D J Webb and Co Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a Sri Lankan national of Tamil ethnicity [ ] 1973. He challenges the decision of First-tier Tribunal Judge O'Garro who dismissed his appeal against deportation on asylum grounds by way of a determination promulgated on 9 August 2017. The matter had been remitted to her following the decision of First-tier Tribunal Judge M B Hussain on 25 July 2015 to dismiss the asylum and humanitarian protection claims but to allow the appeal on article 8 grounds. No

cross appeal was made by the respondent in respect of the article 8 decision. Judge O'Garro accepted that the appellant had been detained and tortured by the authorities in Sri Lanka in 1997 but found that he would no longer be of interest on return at the present time despite his sur place activities.

2. The appellant entered the UK clandestinely in 1997 and applied for asylum. Although his claim was dismissed on appeal in January 1999, he was subsequently granted indefinite leave to remain outside the rules in June 2010. In March 2013 he was convicted of causing death by dangerous driving and driving a motor vehicle with excess alcohol. He was sentenced to 15 months' imprisonment and a deportation order was signed. He then raised asylum grounds.

3. The respondent rejected his claim, relying on the determination of the judge who had in 1999 found that it lacked credibility. It was not accepted that the events concerning the family would place the appellant at risk if her returned now. The respondent applied country guidance and concluded that low level activities or attendance at demonstrations would not give rise to a risk of adverse attention from the authorities. The appellant was found to be excluded from humanitarian protection on account of his criminal conviction.

4. Permission was granted by Judge Pooler on 30 October 2017.

5. **Submissions**

6. The matter came before me on 11 January 2018 when I heard submissions from the parties.

7. For the appellant, Ms Asanovic submitted that this was a limited challenge to the determination and the issue was only in respect to whether the appellant would express his political opinion in Sri Lanka. The judge was required to consider whether the appellant had political beliefs and then whether he would conceal those for fear that he would be persecuted if they were revealed. This was the HJ (Iran) point. The judge summarized the test at paragraph 48 but she erred in requiring the appellant to hold a deeply held political opinion.

8. Ms Asanovic relied on RT Zimbabwe [2012] UKSC 38 where the court held that the HJ (Iran) principle applied to any person who has political beliefs and is obliged to conceal them (at 26) and that *"A focus on how important the right not to hold a political or religious belief is to the applicant is wrong in principle"* (at 42). She referred me to paragraph 51 where the court held that it was not relevant to determine how important the right was to the individual. Given that guidance, she submitted that the judge had applied the wrong test when she required the appellant to show that he held deep political opinions and principles. In requiring the appellant to show deep thoughts and principles she was searching for something which did not form part of the rights test.

9. Ms Asanovic pointed out that the judge had accepted that the appellant had been tortured and detained. When concluding that he would not be of interest to the authorities, she failed to have regard to her own findings. The decision should be set aside and the matter determined afresh.

10. Mr Tufan responded. He submitted that the photographs of the appellant attending some demonstrations would be insufficient to bring him to the attention of the authorities. He referred to GJ (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) at paragraphs 335, 336 and 351 and submitted that someone who took part in protests would not be viewed as a threat to the Sri Lankan state. The judge considered this issue at paragraph 48. She employed a very generous criterion but the appellant did not fall into a risk category. Even if the wrong test had been applied his profile would not bring him to the attention of the authorities. He relied on E G v United Kingdom European Court of Human Rights on 31 May 2011 (paragraphs 76, 77, 79 and 80). He reminded me that the appellant had been away from Sri Lanka for over 20 years.

11. Ms Asanovic replied. She argued that the case law cited did not apply to the appellant's circumstances. She submitted that the Sri Lankan government was paranoid and had clamped down on human rights activists and journalists as well.

12. That completed submissions. At the conclusion of the hearing, I reserved my determination which I now give with reasons.

13. **Discussion and Conclusions**

14. I have considered the submissions and the evidence with care. The judge had regard to all the evidence before her (at 25-26). She directed herself appropriately (at 27) and she set out the basis of the claim, the respondent's case and the background history (at 28-31). She took the findings of the first Tribunal as her starting point and then proceeded to consider the account in the light of the medical report and relevant case law (32-35). She then accepted that the appellant had been detained and tortured in the past and that he had been released on payment of a bribe (36-37). No issue is taken with any of these findings.

15. The judge then comes to the crucial question to be determined: *"Having found that the appellant was detained by the authorities as he claims, I have to consider if on return to Sri Lanka he will be of interest to the authorities because of his past detention which occurred nearly 20 year* (sic) *and whether the appellant's activities in the UK which is attending demonstrations would have brought him to the attention of the authorities"* (at 38). Neither party suggested that this was not the correct issue for determination. It is plain to me from what the judge says here that she did indeed have full regard to her

own findings in respect of the appellant's past detention, contrary to what Ms Asanovic maintained in her submissions.

16. The judge next considers the guidance in GJ and sets out the categories of individuals who would be at risk on return to Sri Lanka (at 39). She reminds herself that the objective of the Sri Lankan government was to identify Tamil activists in the diaspora who were working for Tamil separatism and to destabilise the unity of the Sri Lankan state. She notes that the government had access to sophisticated intelligence in respect of activities within Sri Lanka and outside it and that they had a computerised intelligence led watch list (at 40).

17. The judge then set out her findings. She confirms that she accepts his ethnicity, his account of detention on one occasion (in 1997 because of a sister's involvement with the LTTE), his 'escape' (on payment of a bribe) and the absence of any interest in him thereafter. She notes that his parents had remained in Sri Lanka until at least 2007 (for around ten years after his detention) and that they had not had any difficulties with the authorities. She notes that the parents had then travelled to Switzerland where they claimed asylum but notes there was no evidence as to the basis of their claim or indeed its outcome (at 41). The judge notes that the appellant would have to complete a form and attend an interview in order to obtain a travel document (at 42). The judge finds that given the sophisticated intelligence gathered and held by the authorities, they would know that the appellant was a low level LTTE supporter at best and that he had not been involved with the LTTE since he left detention (at 43). She finds there was no warrant issued against him and that he would therefore not be on a stop list. As there had been no interest shown in him after he left detention and for the ensuing years until 2007, he would not be on a watch list either (at 44). The judge concludes: *"For these reasons, I find that the appellant has not established on the facts that there is a real risk or that it is reasonably likely that the Sri Lankan authorities would regard him as a threat to the integrity of Sri Lanka as a single state"* (at 45). Those are sound findings properly made in the context of the accepted facts and country guidance.

18. The judge then proceeds to consider the appellant's activities in the UK. These consist of attending protests outside the Sri Lankan High Commission in London. The judge accepted that the authorities would be aware of this but found that in accordance with GJ, such activities would not place him at risk particularly due to the absence of any prior profile (at 46).

19. It is what the judge says next that the appellant takes objection to. She takes account of the HJ principle which she confirms applies to anyone who has political beliefs and is obliged to conceal them so as to avoid persecution. She then states: *"If the appellant holds deeply held political opinion, critical of the Sri Lankan government, then I accept that he would be at real risk of serious ill treatment on return*

as the Sri Lankan authorities would regard him as a threat to the integrity of Sri Lanka as a single state" (at 48). *The case depends entirely on whereabouts or not I believe the appellant's claim about his political convictions*" (at 48). These are the sections of the determination singled out for criticism, it being argued that the importance of one's beliefs is of no relevance. Heavy reliance was placed on RT where the court held that: *"A focus on how important the right not to hold a political or religious belief is to the applicant is wrong in principle"* (at 42 and repeated in similar terms at 51). Whilst I understand the point Ms Asanovic seeks to make, I consider that the judge's findings and standpoint have been taken out of context and misinterpreted.

20. It seems clear to me that what the judge was saying was that because the appellant is not a committed LTTE supporter/member/activist, the authorities would be aware of this via their sophisticated means of gathering and holding intelligence and would, therefore, not perceive him to be a threat to the unity and integrity of the state. Had the appellant been on ongoing interest to the authorities because of his elder sister (who has now been out of Sri Lanka for over twenty five years) or his younger one (who died in 2001 and who herself had no LTTE involvement but was married to a supporter), then there would have been some sign of ongoing interest in him after he left detention. Whilst he appears to have left at some point prior to 1999, his parents remained until 2007 and in those ten years no enquiries were made of his whereabouts and there was no suggestion that the authorities disapproved of his activities here and made their views known to his parents. The judge was, therefore, entitled to conclude he was not seen as someone with any significant profile, not perceived as a threat to the Sri Lankan state and despite knowledge of his activities in the UK he would be seen as someone who was a run of the mill Tamil and not one who was so committed to the cause as to amount to a threat. That was what the judge meant. That was the approach she took and I cannot see that that amounts to an error of law which renders her decision invalid. Her analysis of how the appellant would be perceived was sound and conclusions sustainable.

21. In conclusion, therefore, I find that the judge did not make any errors of law which necessitate the setting aside of her decision on asylum grounds. There having been no challenge by the respondent to the earlier successful article 8 appeal, that decision stands.

22. **Decision**

23. The First-tier Tribunal did not make any errors of law. The decision to dismiss the appeal on asylum grounds is upheld.

24. **Anonymity**

25. I was not asked to make an anonymity order and there is no reason for me to do so.

Signed

Upper Tribunal Judge
Date: 19 January 2018