



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

Appeal Number: PA/00401/2018

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 21 December 2018

On 22 January 2019

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

P R

(ANONYMITY ORDER MADE)

Respondent

Representation:

For the Appellant: Mr Tony Melvin, a Senior Home Office Presenting Officer

For the Respondent: Mr A Bandegani, Counsel, instructed by Duncan Lewis & Co, Solicitors (Harrow Office)

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal, allowing on asylum grounds the claimant's appeal against the Secretary of State's decision to make a conducive deportation order against him pursuant to sections 3(5)(a) and 5 of the Immigration Act 1971.
2. As set out in the Secretary of State's decision, this is not an automatic deportation appeal under sections 32 and 33 of the UK Borders Act 2007.
3. An anonymity order was made by the First-tier Tribunal and is maintained.

Background

4. It is unarguable that the claimant is a persistent offender. Between March 2003 and 21 August 2017, he accrued 41 convictions for 53 offences, including driving with excess alcohol, driving a vehicle whilst uninsured, being drunk and disorderly, committing theft, using disorderly behaviour or threatening abusive or insulting words, causing harassment, alarm and distress, battery and destroying or damaging property. It is unsurprising that the Secretary of State should seek to remove him.

First-tier Tribunal decision

5. The claimant made an international protection claim, which succeeded before the First-tier Tribunal based on the findings of fact and credibility made at paragraphs 72 to 79 of the First-tier Tribunal decision, with particular regard to the fact that the claimant is a vulnerable person because he has significant mental health difficulties and alcoholism. The core of the judge's findings is at paragraph 72:

"72. I reiterate that I have taken into account the [claimant]'s vulnerability and mental health problems when assessing his credibility. I find his account of attending numerous diaspora activities in the United Kingdom to be credible bearing in mind the photographic and other evidence now available which evidence was not available to Judge Malcolm. Consequently, I consider that I am entitled and indeed obliged by that evidence to depart from those particular findings. I find as a fact that the [claimant] has participated in the activities claimed by him in his statement which statement is detailed and persuasive and which bears broad consistency with the [claimant]'s oral evidence.

73. Bearing in mind the totality of the available evidence as set out above and the low standard of proof applicable I also accept that the Sri Lankan authorities have shown an adverse interest in the [claimant] certainly in 2016 and possibly thereafter, by seeking him at his parental home in Sri Lanka. I find such, in itself to be sufficient for the [claimant] to be entitled to the grant of asylum both with reference to the country material set out above and also applying the relevant country guidance."

6. At paragraph 74, the judge went on to identify additional risk factors concerning the claimant's unchallenged account: that his brother fought for the LTTE and disappeared in 2011; that there are informers in the diaspora; that London is a diaspora hotspot; and that the Sri Lankan government monitors protests, take photographs and employs facial recognition programming.
7. At paragraph 75 the judge noted the similarity of this claimant's family name to that of Prabhakaran, the former leader of the LTTE. In the light of the anonymity order, I simply record here that the claimant's family name is not identical to that of Prabhakaran and that it is not apparent to me that it is similar, though I appreciate that transcription from Tamil to English may have resulted in that similarity being lost in translation.
8. The judge takes as part of his **Devaseelan** starting point the finding by Adjudicator Martin that it was likely that the claimant would be detained at the airport and enquiries made resulting in his past coming to light including the fact that he was previously detained and tortured albeit he was released and that his brother was killed as a fighting member of the LTTE.
9. The judge explained carefully why he was departing from the conclusions of Adjudicator Martin in relation to the claimant's detention and release in Sri Lanka before he came to the United Kingdom.
10. At paragraph 77 there is an alternative finding:
 - "77. However, and in any event, even if the [claimant] was of no adverse interest when he previously escaped from detention, or because of his escape from detention, I have already indicated that I have considered his diaspora activities in the United Kingdom for the TGTE a proscribed terrorist organisation which is deemed by the Sri Lankan authorities to be associated with the LTTE would in itself result in adverse interest in him. There is now significantly more evidence before me than was before Judge Malcolm in December 2016.
 78. I reiterate that the available country material, to elements to which I have referred above, indicates that returnees who participate in TGTE activities abroad e.g. protest demonstrations and commemoration days are monitored in the United Kingdom and are liable to be arrested under terrorism laws. Such arrest gives rise to a real risk of torture, applying GJ."
11. At paragraph 79 the judge said this:
 - "79. In all the circumstances, I find the available evidence overwhelmingly establishes that there is a real risk to the [claimant] of detention and consequent ill-treatment should he be removed to Sri Lanka. *Whilst it is certainly arguable that the [claimant] is not a high profile participant in diaspora activities, although the photographic evidence suggests that is not necessarily so, it is clearly the perception of the Sri Lankan authorities which is relevant to the question of risk. I accept that*

the decision in *Gj* would indicate that attendance at demonstrations in the United Kingdom per se is insufficient to create a real risk that a Tamil person would be at risk on return to Sri Lanka. However, in this instance I bear in mind my finding that the [claimant] has been actively involved with the TGTE, together with his entire history as referred to, coupled with my finding that adverse interest has been shown in him recently in Sri Lanka by the authorities there.”

The passage in italics is the only part of that paragraph which is quoted in the grounds of appeal and is clearly taken out of context.

Grounds of appeal

12. The Secretary of State’s grounds of appeal are difficult to follow and consist principally of various prepared standard paragraphs. Paragraph 1 of the grounds notes that the claimant is a foreign criminal and that Section 117D(2) is applicable. It notes the First-tier Judge’s finding that the claimant is entitled to refugee status as a member and activist in the TGTE. The Secretary of State submits, without particulars, that *Gj and Others* (Sri Lanka) CG [2013] UKUT 319 (IAC) has not been properly applied.
13. At paragraph 2 of the grounds the Secretary of State notes that the claimant’s appeal has already failed twice in the First-tier Tribunal. At paragraph 3, the grounds misstate the test in *Gj* and at paragraph 4, they misstate the effect of paragraph 79 thereof, quite significantly. At paragraph 5, they note that the claimant appeared to have posed for some of the photographs relied upon and at paragraph 6 they appear to suggest that his brother’s previous involvement with the LTTE was insufficient on its own and again appeared to misstate or misrepresent the test in *Gj*.
14. Finally, at paragraph 7, the Secretary of State questions the First-tier Judge’s finding of fact that the claimant’s name is similar to that of a famous LTTE leader (Prabhakaran) and argues that even if the name is similar it is unlikely to lead to a risk on return today, given the sophistication of the Sri Lankan intelligence-led approach to the return of Sri Lankan citizens from abroad.

Permission to appeal

15. Permission to appeal was granted by First-tier Tribunal Judge Grimmett in the following terms:

“It is arguable that the judge erred in his assessment of the risk to the claimant from his TGTE activities at paragraph 78 in light of the requirement in *Gj* CG [2013] UKUT 319 (IAC) that a claimant show a significant role. All grounds may be argued.”

Rule 24 Reply

16. There was no Rule 24 reply by the claimant's representatives.

Analysis and decision

17. It is unclear from the grounds whether they are intended to be a challenge to the findings of fact made by the First-tier Tribunal, but even if they were, such challenge is unarguable. The First-tier Judge's reasoning in this 40-page decision is proper, intelligible, and adequate to support his findings of fact and credibility, and the conclusions he drew therefrom.

18. Nothing in these grounds of appeal amounts to a material error of law by the First-tier Judge who plainly did apply *GJ* properly when reaching his conclusion. The *R (Iran)* standard of perversity is not met.

19. The Secretary of State's appeal is dismissed.

DECISION

20. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of no error on a point of law

I do not set aside the decision but order that it shall stand.

Signed **Judith AJC Gleeson**

Date: 10 January

2019

Upper Tribunal Judge Gleeson