Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01134/2018

THE IMMIGRATION ACTS

Heard at Birmingham Civil Justice Centre	**Decision & Reasons Promulgated**
On 6 March 2019	**On 25 March 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

M A F
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr M Karnik, Counsel, instructed by Halliday Reeves Law Firm
For the Respondent: Ms H Aboni, Home Office Presenting Officer

DECISION AND REASONS

The Appellant is a national of Sri Lanka born on [~] 1972. His wife and son are also dependent on his claim.

He initially arrived in the UK on 31 January 2010 on a student visa and subsequently made an in time application for asylum, which was refused and an appeal was dismissed. Further representations were made in support of a fresh claim, which were also refused but following a judicial review these were still refused. On 5 September 2016 submissions were made on the basis of the

Appellant's private life, given it was asserted his child had been resident for more than seven years. However, factually that was not the case at the time. Further representations were made on 14 March 2017, which were refused in a decision dated 5 January 2018.

The Appellant appealed against this decision. His appeal came before First-tier Tribunal Judge Hussain for hearing on 5 March 2018. In a Decision and Reasons promulgated on 6 March 2018 the judge allowed the appeal with regard to Article 8 on the basis that it would not be reasonable to expect the Appellant's child to leave the UK.

Permission to appeal was sought in time, by the Appellant, on the basis that the judge had erred in failing to make any findings in relation to the Appellant's protection claim, which had also been raised for determination, along with the Article 8 claim. Permission to appeal was granted by Judge Hodgkinson in a decision dated 10 April 2018 on the basis that the grounds of appeal had arguable merit. In a rule 24 response dated 14 June 2018, the Respondent did not oppose the application for permission to appeal and invited the Upper Tribunal to determine the appeal.

Hearing

At the hearing before the Upper Tribunal, Ms Aboni on behalf of the Respondent accepted that the judge had made a material error in failing to make any findings in respect of the Appellant's protection claim. The parties agreed that it would be appropriate to remake the decision in that respect, there being no challenge to the judge's Article 8 findings in respect of the Appellant's son.

Mr Karnik on behalf of the Appellant submitted that the judge was required by Section 86 of the NIAA 2002 to determine a ground of appeal and asylum has clearly been raised as a ground of appeal, which the judge had noted at [4] of his decision.

In terms of submissions on the substantive asylum claim, Ms Aboni sought to rely on the refusal letter and the findings of Judge Renton in the Upper Tribunal in the determination dated 19 July 2012, who considered the Appellant's case in line with the relevant country guidance, which at the time was LP CG [2007] UKAIT 00076 (IAC) and consequently found that the Appellant would not be at risk on return at that time. At [25] Judge Renton made specific findings that the Appellant was not a member of the LTTE and did not have links with them at all. Whilst he accepted that the Appellant was arrested and detained on suspicion of being in the LTTE, he found the Appellant would not be of any real interest to the authorities and there was no reason to think that interest in him would have increased during his absence from Sri Lanka. Ms Aboni submitted that Judge Renton's findings were the starting point today. The Appellant had still not established that he would be of adverse interest to the authorities if returned to Sri Lanka now.

Ms Aboni submitted that whilst there is a copy of a letter from a Sri Lankan attorney and an arrest warrant, that this did not take the matter any further. The Appellant has never claimed to have had any involvement in the LTTE nor to be involved with any *sur place* activities which would have created a prior risk profile or brought him to the attention of the Sri Lankan authorities.

In respect of GJ CG [2013] UKUT 00319 (IAC), Ms Aboni submitted that this identifies current risk categories at head notes (3) and (7) and identifies that this can apply to Tamils in the Diaspora. However, the Appellant has never claimed to have been involved in any such activities and does not fit into any of the risk categories. She submitted that he is not somebody who would be seen as an individual threatening the integrity of the Sri Lankan state and there is no reason to believe he would be on any computerised stop list: see GJ at (7) subparagraph (d).

Ms Aboni acknowledged that whilst head note (8) of GJ highlights the sophisticated nature of intelligence used by the Sri Lankan authorities, she submitted this case is still as it was before Judge Renton. The Appellant has no profile and has not established to be at risk of persecution or ill-treatment on account of his perceived political opinion. Thus, the appeal should be dismissed. Ms Aboni also informed the Upper Tribunal that the Appellant had been granted 30 months' discretionary leave on a ten year route settlement.

In his submissions, Mr Karnik adopted much of what Ms Aboni had said. However, he submitted that GJ (op cit) represents a significant departure from the country guidance at the time the appeal came before Judge Renton, i.e. LP (op cit). Judge Renton's findings start at [21]. The Appellant was found to be a credible witness and in those circumstances the primary contention is that he falls squarely within (7)(d) of GJ, i.e., a person whose name appears on a computerised stop list due to an extant court order or arrest warrant. One of the accepted facts is that the Appellant absconded whilst on bail and in those circumstances, it is not at all surprising that there would be an arrest warrant.

Ms Aboni replied by stating that the Home Office position at [13] of the refusal dated 5 January 2018 asserts that there is no independent evidence to support the Appellant's claim and that ought to carry substantial weight. There is no evidence that the letter from the Sri Lankan attorneys dated 12 June 2015 has been addressed, considered or even put before the Respondent, albeit was accepted that it was served, along with the Appellant's witness statement by fax to the First-tier Tribunal by the Appellant's current solicitors.

I reserved my decision, which I now give with my reasons.

Findings and Reasons

14. In light of the decision in Devaseelan [2002] UKIAT 00702, I take the decision of Upper Tribunal Judge Renton as the starting point. The key findings at [25] summarised at [7] above are that whilst the Appellant was not a member of the LTTE and did not have links with them, he was arrested and detained by the Sri Lankan authorities on suspicion of being

in the LTTE. In light of the country guidance then in force – LP CG [2007] UKAIT 00076 (IAC) Judge Renton did not find the Appellant would be at risk on return if returned to Sri Lanka.

15. Since that determination was promulgated on 19 July 2012, the Appellant's previous representatives, Nag Law solicitors, obtained a letter from a Sri Lankan attorney, T. Purushotthaman dated 12 June 2015, in which he states that he was instructed by the Appellant's father due to the fact that police officers visit his home looking for his son; that the attorney contacted the Terrorist Investigation Division, who informed him that the Magistrates Court of Colombo have issued an open arrest warrant against the Appellant, due to the fact that he violated bail conditions and escaped from Sri Lanka. The attorney states that he then undertook a search of the records at Colombo Magistrates Court on 8 June 2015 and had sight of the original arrest warrant issued against the Appellant on 25 March 2010, case no. 3736/8/9. The attorney states that the records showed that the Appellant was involved in a business partnership with an LTTE member, as a result of which he was arrested on 27 April 2009 and remanded in Welikada prison; he was bailed on 9 October 2009 on condition he report to TID on a fortnightly basis but failed to report on 29 January 2010, as a result of which TID applied to the Magistrate to issue an arrest warrant against him. It would appear that this letter was served on the Respondent as part of a fresh asylum claim made on 2 July 2015.

16. A copy of the arrest warrant dated 25 March 2010, bearing the case no. 3736/8/9, with an English translation, is appended to the letter. I bear in mind the judgment of Lord Justice Fulford in PJ (Sri Lanka) [2014] EWCA Civ 1011 at [41]:

> "*41. In my judgment, Judge Woodcraft doubted the validity of these documents (certainly, to a material extent) on a significantly false basis. Thereafter, Judge Kekic – having accepted Mr Jayasinghe's status as a lawyer – failed to address the key issue that then arose, given the suggested source of these documents (a court in Sri Lanka) and the route by which they were obtained (two independent lawyers who sent them directly to the appellants' solicitor in the United Kingdom) … In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material – retrieved independently, it is to be stressed, by two lawyers from the Magistrates' court on separate occasions – is that the appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities.*"

17. The Appellant's asylum claim was very narrowly pleaded by Mr Karnik, who submitted, in essence, that based on the findings of Upper Tribunal Judge Renton, the Appellant's appeal now falls to be allowed when considered in light of the current country guidance: GJ CG [2013] UKUT 00319 (IAC) at (7)(d) which provides:

> *"(7) The current categories of persons at real risk of persecution or serious harm on return to (d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant."*

18. I find, based on the findings of Judge Renton, the letter from the attorney, Mr T. Purushotthaman, appending an arrest warrant and translation, that the Appellant would be at risk of persecution if returned to Sri Lanka in light of the guidance set out in GJ at (7)(d) and that at [168] of the judgment, the Respondent's representative accepted that: "*individuals in custody in Sri Lanka continue to be at risk of physical abuse, including sexual violence, and that such risk is persecutory."*

Notice of Decision

19. The appeal is allowed on asylum grounds

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 his 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 Rebecca Chapman Date 20 March 2019

Deputy Upper Tribunal Judge Chapman