



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

Appeal Number: PA/14301/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 19 July 2019**

**Decision & Reasons Promulgated  
on 16 August 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SUTHERLAND WILLIAMS**

**Between**

**MR PB  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Ms B Jones, Counsel, instructed by AASK Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Watson ('the judge'), promulgated on 16 May 2019, dismissing the appellant's appeal against the respondent's decision to refuse his asylum, humanitarian protection and family and private life human rights applications.
2. The appellant is a citizen of Sri Lanka. On 28 December 2018, he appealed against the decision of the respondent to refuse him asylum based upon his alleged well-founded fear of persecution as a result of political opinion and ethnicity; and in terms of there being substantial

grounds for believing he would face a real risk of suffering serious harm on return from the UK; and that Article 8 was not engaged in accordance with Appendix FM and paragraphs 276ADE and 276CE of the Immigration Rules.

3. In granting permission to appeal, Designated Judge Shaerf indicated that the grounds of appeal disclosed arguable errors of law, in particular that:
  - i. the judge may have erred in her application of the law and guidance contained in *GJ and others (Sri Lanka) CG 2013 UK UKUT 00319 (IAC)*, and that the absence of an arrest warrant was not determinative that the appellant was outside risk category (a), as identified in *GJ and others*;
  - ii. the judge failed to take into account the expert psychiatric reports view that the appellant's suicide risk would increase in the event of an enforced return.
4. It is against this background that the appeal is listed before me.
5. Relevant to the outcome of this onward appeal was a concession made by the Home Office Presenting Officer at the outset of the hearing. Mr Jarvis helpfully indicated that having reviewed the First-tier Tribunal judge's decision, he was satisfied that the judge had found in favour of the appellant in relation to the core elements of his claim, namely that:
  - i. the appellant had left Sri Lanka in 1997 to move to India because his family had felt unsafe in his homeland;
  - ii. in 2008 his father had been arrested on suspicion of moving items to Sri Lanka and was watched from that point; and that the account of the father's activities was reasonably likely;
  - iii. the judge could not find any discrepancy in dates recounted in the asylum interview to cast any doubt upon the core of the appellant's claim;
  - iv. the appellant's account of being stopped at the airport in 2011 when he decided to return after his father's disappearance 'held together well' (paragraph 17 of the decision);
  - v. the scarring report was consistent with the appellant's account;
  - vi. the appellant's account of his travel to Sri Lanka in 2011 and his detention and subsequent interrogation and torture was 'reasonably likely';
  - vii. *GJ* confirms that the risk on return to Sri Lanka, where a person had previously been detained, is not at the airport,

but on return to the returnees home area, and that was consistent with the account given by the appellant of questioning at the airport followed by a visit to his home and detention/torture - paragraph 18;

- viii. the appellant had been photographed at various demonstrations in the UK (mostly shortly before the tribunal hearing or after the decision was made), which the judge found was consistent with his perceived sympathies in the past and in line with his findings relating to his previous return to Sri Lanka and arrest;
  - ix. the judge accepted that the appellant was a member and supporter of the Transnational Government of Tamil Eelam (the Sri Lankan government in exile for the Sri Lankan Tamil diaspora) - para 19;
  - x. the appellant had made a genuine effort to substantiate his claim to asylum and had satisfactorily answered questions put to him;
  - xi. there were no particular gaps in the documentary evidence;
  - xii. the appellant statements were 'coherent and plausible' and generally consistent with the external evidence of the situation in Sri Lanka at the time;
  - xiii. the core of the appellant's account had 'the ring of truth to it' - paragraph 22.
6. Mr Jarvis further identified that there had been three visits to the family home in seven years, that the appellant's brother had also disappeared, that the family had a profile, and that therefore the judge's conclusion that there was no serious risk of persecution upon return was unsustainable to the lower threshold.
7. In particular, he identified what he maintained was a material error at paragraph 26 of the judge's decision, in that a visit on three occasions in the last seven years to his mother's home, when combined with the judge's other findings, would be deemed by the Home Office to amount to a real risk of ill-treatment requiring international protection and that there was support for that from the mother's evidence in that she believed her son would be in danger if he was to be returned. Further, it was arguable that the appellant was likely to be on a watch list, bearing in mind it was accepted by the judge he had been stopped at the airport in 2011.
8. The Secretary of State was of the view that the First-tier Tribunal's decision should therefore be set aside and the appeal allowed.
9. Miss Jones on behalf of the appellant had nothing to add to her grounds of appeal, in the light of the Secretary of State's concession.

10. I am therefore effectively presented with a set aside by consent. I must of course apply my own mind to this matter, but in the circumstances, I see no proper reason to depart from the concession made by the Secretary of State.
11. It is accepted by both parties that the consideration of risk in a matter such as this is set out in the categories identified in *GJ*, in particular:
  - “(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:
    - (a) 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.”
12. I accept that the judge has erred in finding that the appellant would not be at real risk of persecution if returned to Sri Lanka following the factual findings made above and the lower threshold in terms of standard of proof being applied.
13. The judge correctly states that the question is whether the appellant will be *perceived* as falling into this category. The judge’s findings were sufficient to conclude he would be perceived to have a significant role in relation to post conflict Tamil separatism and the judge has not given adequate reasons for why she found that not to be the case.
14. It is an error in law to conflate absence of evidence of an arrest warrant with risk under category (a), as absence of evidence will not always be determinative of a continuing adverse interest by the authorities. Factors that may be viewed as determinative include the judge’s acceptance that the appellant was a member and supporter of the TGTE, that involvement and membership is a material factor in the assessment of risk on return; is in line with the appellant’s accepted pro-Tamil nationalist sympathies; and that the 3 visits from the authorities in the last 7 years were indicative of a serious continued interest and risk of harm. The appellant could not be expected to lie about his sympathies on return.
15. For the above reasons, including the concession, I set aside the decision of the First-tier Tribunal and remake this decision allowing this appeal on asylum and humanitarian protection grounds. There is a well-founded fear of persecution as a result of political opinion and ethnicity; and there are substantial grounds for believing the appellant would face a real risk of suffering serious harm on return from the UK. I do not need therefore to go further and decide the other aspects of this appeal.

**Notice of Decision**

**The decision of the First-tier Tribunal sitting in Birmingham on 30 April 2019 under reference PA/14301/2018 is set aside.**

**AND**

**The appeal is allowed on asylum and humanitarian protection grounds.**

The anonymity direction made by the First-tier Tribunal is preserved in this appeal.

Signed



Date 1 August 2019

Deputy Upper Tribunal Judge Sutherland Williams