



IAC-FH-CK-V1

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

Appeal Number: AA/00255/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 10 August 2015**

**Decision & Reasons Promulgated
On 27 August 2015**

Before

UPPER TRIBUNAL JUDGE FINCH

Between

**J P
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mackenzie, Counsel instructed by Theva Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, who was born on 22 June 1989, is a national of Sri Lanka. He first entered the United Kingdom as a Tier 4 (General) Student on 24 September 2009. He remained here in that capacity until 5 December 2011 when he returned to Sri Lanka after he had been refused further leave and a subsequent appeal had been dismissed. In January 2012 started a relationship with the woman, who was also a national of Sri Lanka, and they became engaged in April 2012.

2. The appellant left Sri Lanka on 23 October 2012 and entered the United Kingdom illegally on 26 October 2012. He called the Home Office the same day and made a formal application for asylum on 19 November 2012. The respondent refused his application on 18 December 2012 and he appealed.
3. His first appeal was allowed but was overturned by the Upper Tribunal and was remitted to another First-tier Tribunal Judge. This appeal was heard by First-tier Tribunal Judge Aujla, who dismissed his appeal on 9 July 2014. But in his determination and reasons the First-tier Tribunal Judge made very positive findings of fact in favour of the appellant. In particular, he found that the Appellant's fiancée had been working as a teacher and had met the son of the President of Sri Lanka when he attended a sports day event at her school on 12th September 2012. This man asked her to join him at his hotel that evening but she declined his offer. She was then abducted the next morning and has not been seen or heard from since. The Appellant informed the police of her abduction on 14th September 2012 but they failed to take any action. The Appellant then filed what I presume was a *habeas corpus* action in the High Court in Sri Lanka on 1st October 2012 for her to be produced and this led to him being detained by members of the CID the same day. He was then held until 23rd October 2012 and interrogated and tortured before being released as the result of his uncle paying a bribe. He then fled to the United Kingdom via India arriving here on 25th October 2012.
4. However, in paragraph 53 of his decision and reasons he went on to find that the Appellant was not entitled to asylum as he had not been suspected of being a political person in the past or the present. He also found that there was no reason to assume that he could be of continuing interest to the Sri Lankan authorities or that his name would be on the "stop list" at the airport. Therefore, he concluded that he was not at risk of persecution in Sri Lanka in the light of *GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)*.
5. In paragraph 50 of his decision and reasons the First-tier Tribunal Judge found that there were no material credibility issues left that undermined the Appellant's account. At paragraph 52 he went on to find that, whilst in detention, the Appellant was fingerprinted and photographed and he was asked questions about the LTTE. He also accepted that his ID was taken from him.
6. In addition, having considered the psychiatric report by Dr. Dhumad, he found that his removal to Sri Lanka would not give rise to a breach of Article 3 of the European Convention on Human Rights as, although he had attempted to commit suicide in the past, he could be treated and supported in Sri Lanka.
7. The Appellant appealed against this decision. Permission to appeal was refused by First-tier Tribunal Judge Grant-Hutchison on 29th July 2014 but was granted by Upper Tribunal Judge Kebede on 30th October 2014 on both asylum and human rights grounds.

8. In a Rule 24 response, dated 21st November 2014, the Respondent asserted that the credibility findings of the First-tier Tribunal Judge were inadequately reasoned.

ERROR OF LAW HEARING

9. The Appellant's counsel noted that the First-tier Tribunal Judge had found the Appellant's account to be credible in its entirety. He also noted that the Appellant had said that whilst he was in detention he had been accused of being involved in the LTTE and asked to sign a document which he could not read. He then reminded me that in *GJ and Others* the Tribunal found that a person could be at risk because he was "perceived to be" political.
10. The Home Office Presenting Officer replied and argued that perceived involvement in the LTTE on a limited basis was not sufficient to attract a need for protection in the context of *GJ and Others*. He also argued that there was no evidence that the Appellant would be on the "stop list". In addition, he noted that Dr. Smith had said that there was no evidence that the President's son had previously been involved in any sexual assaults or attacks.
11. He then went on to say that he accepted in the light of the medical evidence that the Appellant suffered from post traumatic stress disorder and posed a suicide risk but [refer to page 57 of objective evidence] referred to *KH (Afghanistan)*. In addition, he said that he was not going to pursue the argument raised in the Rule 24 Notice that the Appellant's account had not been credible. He explained that this was because it was clear from paragraph 3 of the Notice that the Respondent had not been in possession of a complete copy of the decision and reasons when the Notice was drafted. He went on to note that the First-tier Tribunal Judge had been very generous to the Appellant but accepted that even though the account was extraordinary the First-tier Tribunal Judge had believed it and he would have to live with these findings.
12. The First-tier Tribunal Judge accepted the Appellant's account in its entirety. In particular, at paragraph 50 of his decision and reasons the First-tier Tribunal Judge found that there were no material credibility issues left that undermined the Appellant's account. At paragraph 52 he went on to find that, whilst in detention, the Appellant was fingerprinted and photographed and he was asked questions about the LTTE. He also accepted that his ID was taken from him. In her decision letter the Respondent had asserted that the Appellant not produced any documentary evidence to support his case but at paragraph 49 of his decision and reasons the First-tier Tribunal Judge found that "the Appellant had provided a letter from a member of Parliament, Mr. Pon Selvarasa in which ... he confirmed that the Appellant had filed a suit seeking justice as a result of which he was arrested on 1 October 2012 ... He further confirmed that the Sri Lankan authorities had not given up their interest in the Appellant as they were still visiting and making enquiries about him from his parents".

13. Therefore, the accepted evidence indicated that not only had the Appellant been previously detained and tortured, he had been suspected of being connected to the LTTE, the Sri Lankan authorities had his ID card, fingerprints and photograph and were still looking for him. Therefore, he clearly was of interest to the Sri Lankan authorities.
14. It was against this factual matrix that the First-tier Tribunal Judge should have considered whether or not the Appellant fell within the risk categories contained in *GJ* but he failed to do so.
15. For example, in paragraph 53 the First-tier Tribunal Judge said that there was no reason to assume that the Appellant would be of continuing interest to the authorities. This was in direct contradiction with his finding of fact in paragraph 49 that there was a letter from an MP which stated that the Sri Lankan authorities were still visiting the Appellant's home and asking about him.
16. He also did not explain the basis upon which he had found that the Appellant would not be on any "stop list" when he had escaped from detention by the use of bribery and the Sri Lankan authorities had retained his ID card and fully documented him.
17. The First-tier Tribunal Judge also asserted that the situation in Sri Lanka had fundamentally changed but did not explain what had changed and when. The incidents upon which the Appellant relied occurred long after the LTTE had been defeated and the Sri Lankan authorities had re-gained control of the island. Therefore, if the First-tier Tribunal Judge was basing his decision in part that the Appellant was not entitled to international protection, he needed to explain the significance of this assertion.
18. Furthermore, in *GJ* the Tribunal held at paragraph 7(c) of the head note that "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.'
19. The findings of fact were that the Appellant had been accused of involvement with the LTTE and had made a very serious allegation about the President's son. These were capable of being viewed as political actions. Therefore, the First-tier Tribunal Judge should have considered whether the Appellant was perceived to be a threat to the integrity of Sri Lanka because of the accusations he had made about the President's son.
20. In addition, the First-tier Tribunal Judge failed to consider whether even if the Appellant were not perceived to be a threat on account of any involvement with the LTTE, the particular circumstances of his case placed him at risk of detention and torture if removed to Sri Lanka.

21. In paragraph 56 of his decision and reasons the First-tier Tribunal Judge also accepted the evidence of Dr. Dhumad, which was that the Appellant was suffering from post-traumatic stress disorder and his suicide risk was likely to be significant if he were to be returned to Sri Lanka. Then in paragraph 57 he found that the MP who had submitted a letter on behalf of the Appellant's family could assist in securing the requisite mental health treatment for the Appellant and that Sri Lanka had reasonable psychiatric facilities available, although not to the same standard as those in the United Kingdom or another European country. The evidential basis for these assertions was unclear and did not accord with the accepted evidence at paragraph 454 of *GJ*. This said that "... there are only 25 working psychiatrists in the whole of Sri Lanka". Although there are some mental health facilities in Sri Lanka, at paragraph 4 of the April 2012 UKBA Operational Guidance Note on Sri Lanka, it records an observation by Basic Needs that "... money that is spent on mental health only really goes to the large mental health institutions in capital cities, which are inaccessible and do not provide appropriate care for mentally ill people"¹.
 22. As a consequence, I find that the First-tier Tribunal Judge's decision and reasons in relation did include material errors of law and should be set aside.
 23. However, the Respondent did not seek to challenge the First-tier Tribunal Judge's findings of fact and, therefore, I do not set them aside but retain them as the factual basis upon to remake the decision.
 24. The First-tier Tribunal Judge accepted that the Appellant had been detained and tortured in the past by the Sri Lankan authorities and that they were still looking for him. This clearly amounted to serious harm for the purposes of Article 15 of the Qualification Directive. Article 4.4 of the Directive also notes that the fact that an applicant has already been subject to persecution or serious harm is a serious indication of the applicant's well-founded fear of persecution or real risk of suffering serious harm.
 25. The Appellant was accused of an involvement with the LTTE whilst in detention but the trigger point for his detention and ill-treatment was the accusation he made that the President's son had abducted his fiancée and the fact that he had taken legal proceedings against him for her return. The fact that this man was a member of the ruling party in Sri Lanka and that the security forces had detained and tortured the Appellant meant that the Appellant had been subject to state persecution for the purposes of Article 6(a) of the Qualification Directive. I also find that, given the fact that the Appellant is a Tamil, his very public accusations of misconduct aimed at the President's son may have been viewed as a challenge to the integrity of the Sri Lankan state.
 26. In reaching this conclusion, I have reminded myself that Article 10.1(e) of the Qualification Directive provides a wide definition of political opinion, which includes "the holding of an opinion, thought or belief on a matter related to the potential actors or persecution mentioned in Article 6 and to their policies or
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methods, whether or not that opinion, thought or belief has been acted upon by the applicant”.

27. Furthermore, the fact that the Appellant had taken appropriate legal action against the President’s son does not prevent his actions from being imputed with a political motive and as found in *Adan v Secretary of State for the Home Department* [1998] Imm AR 251 political opinion may be express, implied or imputed. When considering imputed political opinion consideration must be given to the opinion attributed to the victim, rightly or wrongly. (See *Danian v Secretary of State for the Home Department* [1999] INLR 533 and *Asante* [1991] Imm AR 78.)
28. The fact that the Appellant was accused of involvement with the LTTE, was documented and was detained gives rise to a serious possibility that his political opposition to the Sri Lankan government was being imputed to him, whether or not cover up the accusations he was making.
29. The fact that the accusations were being levelled at an MP and the President’s son and that the Appellant was still being looked for also confirms that he could not seek protection from the state.
30. I have also taken into account the fact that in *GJ* the Upper Tribunal held that “if a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection”. It also found that “internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport”.
31. In addition I note the fact that the Sri Lankan authorities retained the Appellant’s ID card and for this reason alone he will inevitably have to have contact with the authorities if he is removed to Sri Lanka. Then on the findings of the First-tier Tribunal Judge, which still stand, he will be revealed as someone who was documented in detention and then escaped.
32. Taking all of this into account I find that there is a serious possibility that the Appellant will be persecuted on account of his purported political opinion if he is removed to Sri Lanka.

Notice of Decision

1. The First-tier Tribunal Judge’s decision and reasons to dismiss the Appellant’s appeal did include material errors of law and I set aside his decision.
2. However, these errors did not undermine the positive credibility findings made by the First-tier Tribunal Judge in his decision and reasons and I do not set these aside.
3. I remake the decision under Section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and allow the Appellant’s appeal against the decision by the Respondent to refuse to grant him asylum.

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

Date 18th August 2015

Upper Tribunal Judge Finch