



IAC-FH-AR-V2

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

Appeal Number: AA/01980/2015

THE IMMIGRATION ACTS

Heard at Birmingham

**On 27 January 2016
Prepared 27 January 2016**

**Decision & Reasons
Promulgated
On 06 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**[C M]
(~~ANONYMITY ORDER NOT MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms N Ahmad, Counsel instructed by Nag Law Solicitors
For the Respondent: Mr D Mills, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth [] 1978, appealed against the Respondent's decision dated 23 January 2015 to refuse a claim for Refugee and Humanitarian Protection status dated 23 January 2015.

2. The centrepiece of the Appellant's claim was a fear of persecution because of his suspected involvement with the LTTE based on past events. His appeal came before a panel of First-tier Tribunal Judge Frankish and Garbett (the panel). First-tier Tribunal Judge Garbett wrote the decision promulgated on 24 April 2015.
3. What is plain is that a number of positive findings were made that the Appellant had been subject to an arrest warrant which was regarded as reliable and yet the panel failed to identify a *Robinson* obvious point, namely that the Appellant in those circumstances fell within *GJ and Others (Sri Lanka)* CG [2013] UKUT 00319, paragraph 356(7)(d), as 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.
4. For reasons that are unexplained, it appears that the Appellant's representative did not address category (7)(d) although as Mr Mills accepted it was a *Robinson* obvious point. It was, he said, a point which an experienced Immigration Judge would have picked up when following the required exercise of considering the risk categories for those on a return to Sri Lanka. There was no dispute between the parties and the findings unchallenged that there was a valid arrest warrant and in those circumstances it is a matter which not only reflected on the assessment of risk but also the Appellant's credibility.
5. Accordingly the parties were agreed, with which I also agreed, that the Original Tribunal's decision could not stand. On the basis of the findings of fact and information provided it is clear that the Appellant was to be regarded as on a stop list and therefore falling within sub-paragraph (7) (d). Accordingly in the light of the submissions made I was satisfied that the Original Tribunal's decision in terms of an assessment of risk on return

were flawed. The parties' submissions invited me to remake the decision on the basis that the appeals should be allowed on Refugee Convention grounds because of the risk of persecution faced by the Appellant and of proscribed ill-treatment contrary to Article 3 ECHR.

6. In the circumstances I agree that the other findings of fact stand and that notwithstanding the somewhat historic events of some longevity now the Sri Lankan Authorities have not given up their pursuit of former LTTE members particularly those identified as LTTE fighters or current actual or perceived LTTE or secessionist tamil eelam supporters.
7. In the circumstances therefore the following decision is substituted.
8. The appeal of the Appellant is allowed on Refugee Convention and Article 3 ECHR grounds.
9. No anonymity order is made.

Signed

Date 14 March 2016

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in promulgation due to the case file being mis-located.