



**Upper Tribunal
(Immigration and Asylum Chamber)
Number: AA/08561/2014**

Appeal

THE IMMIGRATION ACTS

**Heard at Field House
On 23 December 2015**

**Decision & Reasons
Promulgated
On 20 January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**M.R.R
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel instructed by M & S Solicitors
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought pursuant to permission granted by Upper Tribunal Judge Blum on 30 September 2015. The appeal relates to a decision of First-tier Tribunal Judge S L Farmer which was promulgated on 3 July of 2015.
2. Judge Blum identified a discrete issue which merited consideration today as being an arguable error of law. It relates primarily to the consequence of the inclusion of the appellant's name on a stop list having regard to the authority of the Upper Tribunal in the country guidance case of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**

(IAC). I am grateful to Counsel for the appellant for the narrow and focused way in which that single ground of appeal has been developed before me.

3. I can take the history and background to this matter relatively shortly. The appellant is a citizen of Sri Lanka born on 20 August 1984 who was refused asylum on the basis that he had failed to demonstrate a well-founded fear of persecution.
4. The immigration history is that the appellant came to the United Kingdom in September of 2006 on a student visa. That was extended twice and was due to expire on 19 May 2015. On 28 May 2014 that visa was curtailed. Prior to coming to the United Kingdom the appellant had lived in Dubai with his mother and his sister. He had visited Sri Lanka in March 2014 for a holiday and to get married and returned from Sri Lanka to the United Kingdom on 28 April 2014, claiming asylum upon arrival at Heathrow Airport.
5. The view taken by the Secretary of State was that the options for the appellant on his return to the United Kingdom were either to seek judicial review in relation to his student visa or to claim asylum and, put shortly, the asylum option was pursued as a spurious claim in the Secretary of State's view, because the judicial review claim was bound to fail.
6. The decision of the First-tier Tribunal went into considerable detail as to the background to the matter and came to certain conclusions based upon concessions on the part of the respondent. The following matters were not in issue before the First-tier Tribunal:
 - (1) the appellant's identity and nationality,
 - (2) the appellant's Muslim faith,
 - (3) the fact of return to Sri Lanka and of marriage to a Muslim woman,
 - (4) an attack by Buddhists in March and April 2014,
 - (5) the fact that the mother's house in Chilaw had been attacked, that the police had visited his wife's flat in Colombo and that a warrant for his arrest had been issued in Sri Lanka,
 - (6) that the appellant had attended three protests against the BBS and the Sri Lankan government in the United Kingdom in April and May 2014, all of which were subsequent to his return from Sri Lanka.
7. There were therefore two factual matters which remained in dispute on which the First-tier Tribunal Judge was required to make findings. The first related to the appellant's participation in demonstrations earlier than the admitted ones in April and May 2014; and the second concerned whether or not the appellant was on a stop list in Sri Lanka. For the purposes of this determination I need not explore the factual evidence in relation to the earlier demonstrations because argument before me has quite properly been focused upon whether or not the appellant's name was included on a stop list.

8. The First-tier Tribunal Judge came to the conclusion that “I do not accept that [the appellant] is on the stop list or the wanted list in Sri Lanka. He does not therefore fall within paragraph 7(d) of **GJ**”. It seems that the judge’s reasoning for coming to that conclusion was that in her assessment the offence in relation to which an arrest warrant had been issued was “a low level offence”. Paragraph 17 of the decision states as follows:

“I find that the appellant is not on the stop list or the wanted list. I accept the respondent’s submission that the arrest warrant is a low level offence, ‘fail to present to court in connection with charges’ and therefore I find that the appellant has not satisfied me to the correct standard of proof that he would be stopped at the airport if he returned to Sri Lanka.”

9. I have been taken today to a letter which was in the appellant’s bundle before the First-tier Tribunal at pages 10 and 11. That letter is from A M. He is an attorney-at-law with a professional address in Colombo. The letter is dated 22 September 2014 and at page 12 of the bundle is what appears to be a business card indicating membership of the Bar Association of Sri Lanka. I need not rehearse the bulk of that letter which deals with various background matters but the concluding paragraph of the first page reads as follows:

“The status of the arrest warrant is ‘live’ and I have had sight of the original arrest warrant, on 5 September 2014 which remains at the Magistrates’ Court of Chilaw. If [the appellant] comes to Sri Lanka he will be arrested.”

10. On the second page of that letter at the concluding part of the first paragraph is a clear statement from attorney A M that “[the appellant’s] name listed in the wanted/stop list in the airport to arrest him on his return or departure”. It is regrettable that this material piece of evidence is not mentioned at all by the First-tier Judge in coming to the conclusion which he did. It is evidently a material piece of evidence and one which goes to a key matter of dispute. I have not had sight of the record of the First-tier proceedings, nor were the representatives before me today in a position to comment on whether submissions were made with regard to that document.
11. However, Mr Tufan, who appears as Home Office Presenting Officer today, quite properly concedes that there may be an error of law in that letter not being dealt with. I am of the view that clearly there was. Mr Tufan says that notwithstanding that error of law, I should not consider it to be material because, having regard to all of the surrounding circumstances, it did not necessarily follow that the appellant would attract the interest of the authorities in Sri Lanka and it cannot therefore be demonstrated that the appellant has a well-founded fear of persecution.
12. With respect to Mr Tufan, I find that submission to be optimistic in the extreme. I have read with care the lengthy decision of an experienced

panel of the Upper Tribunal in **GJ** (above) and have had particular regard to the features summarised in the head note, in particular, paragraph 7(d) which reads as follows:

“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.”

14. In the body of the decision at paragraph 347 is reference to checks which are made at the airport. That paragraph concludes: “If on a ‘stop’ list [individuals] will be interviewed by the TID and that is likely to involve physical abuse engaging international protection.”
15. Having regard to all of the circumstances in this case, it is clear to me for the reasons I have briefly outlined that in this instance there was a clear error of law on the part of the First-tier Tribunal Judge in not dealing with evidence which was before the Tribunal and accordingly coming to a conclusion which was not open to the Tribunal on the evidence as to whether the appellant’s name was included on a stop list. For that reason the decision of the First-tier Tribunal must properly be set aside.
16. The issue then is how should the decision be remade? Neither the appellant nor the Secretary of State wished to put any additional evidence before this Tribunal and were content for me to deal with the matter on the material that was before the First-tier Tribunal. I specifically invited submissions as to the Secretary of State’s position on the letter from attorney A M from which I quoted extensively above, and it was indicated that no contrary evidence was to be put forward. In those circumstances, I come to the inevitable conclusion that the appellant’s name at the material time was included on a stop list.
17. I am of the view, on a proper reading of the decision of **GJ** and notwithstanding the submissions made on behalf of the Secretary of State to the contrary, that mere inclusion of a name on a stop list is sufficient for me to be satisfied that the appellant was likely to be detained at the airport in a manner likely to involve physical abuse engaging international protection. In those circumstances it follows that a well-founded fear of persecution is made out.
18. Even if mere inclusion on a list is arguably not enough, it seems to me that there is more than sufficient material in this case both in respect of sur place activities and other matters to make this appellant an individual of interest to the Sri Lankan authorities and someone in relation to whom there is a well-founded fear of persecution.
19. Therefore, in remaking this decision I allow the appeal on asylum grounds. In the light of that determination it is unnecessary for me to address the

alternative arguments both on humanitarian protection grounds and in relation to the separate human rights grounds.

Notice of Decision

Appeal 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 *Mark Hill* Date 18 January 2016

Deputy Upper Tribunal Judge Hill QC

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed *Mark Hill* Date 18 January 2016

Deputy Upper Tribunal Judge Hill QC