



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

Appeal Number: PA/00864/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 15 November 2019**

**Decision & Reasons Promulgated  
On 7 January 2020**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**B B (SRI LANKA)  
[ANONYMITY ORDER MADE]**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr Don T C W Kumudusena, an OISC registered legal adviser with Liyon Legal Limited

For the respondent: Mr Ian Jarvis, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) the Tribunal has ORDERED that no one shall publish or reveal the name or address of B B who is the subject of these proceedings or publish or reveal any information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.*

**Any failure to comply with this direction could give rise to contempt of court proceedings.**

1. The appellant is a citizen of Sri Lanka, born in India, who appealed against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision to refuse to grant him international protection on asylum or humanitarian protection grounds, or leave to remain in the United Kingdom on human rights grounds.
2. On 14 May 2018, I set aside the decision of the First-tier Tribunal and ordered that the decision in this appeal be remade in the Upper Tribunal on a date to be fixed. The appeal came before me on 23 November 2018 at the Bradford hearing centre but was adjourned, partly because of interpreter difficulties but also because the appellant's representatives successfully applied under rule 15(2A) to adduce additional evidence, albeit served electronically very late the preceding day. I considered that it was in the interests of justice for the new documents to be admitted. The hearing was adjourned for the respondent to consider the new documents and indicate whether she wished to cross-examine the applicant.
3. The respondent has not indicated any intention to cross-examine the appellant. I approach this appeal on the basis that the applicant's updated evidence is to stand unchallenged. I considered that further submissions would assist me in determining this appeal and directed that they be provided, reserving to the Upper Tribunal the question whether a further hearing was required or whether the appeal could be decided on the submissions and documents.
4. On 15 November 2019, the appeal came back before me at Field House for a case management review. It was agreed at the hearing that as the respondent had not amplified her position, the appropriate course was for me to remake the decision on the papers.

**Evidence before the Upper Tribunal**

5. In my decision of 15 May 2018, setting aside the First-tier Tribunal decision, I was directed to the appellant's witness statement and to the risk categories in *GJ and ors (post-civil war: returnees) Sri Lanka* [2013] UKUT 00359 (IAC). The appellant in his witness statement (which now stands unchallenged) said that he was born in India in Tamil Nadu, but moved to Sri Lanka in the 1990s with his parents. In 2001, he returned to India to study for his 'A' levels, returning to Sri Lanka in April 2004.
6. From 2007, the appellant worked as a cashier in a district of Colombo, Sri Lanka, which supplied building materials to customers across Sri Lanka. Two of the business' main customers, whom he got to know, were from Vavuniya in the northern province of Sri Lanka. They would come in once a month and buy building materials, and over time he learned that they

were not running a shop in Vavuniya but were buying the materials for the LTTE, including electrical items and generators.

7. The appellant told no one about this. He was afraid that the authorities would consider him to have links to the LTTE. In December 2007, he agreed to allow these two clients, who were preparing to flee abroad, to stay in his home in Colombo until they travelled. They stayed for two weeks, until one day they went out to meet the agent arranging their travel, but did not return.
8. Four or five days later, the police came to the appellant's house and asked whether he knew the two men. He denied knowing them at first. He was taken to Wellawatta police station, where his denials were not accepted and the appellant admitted that the two men had been staying with him. After 4 days in detention, his sister's husband located the appellant and bribed the police to release him.
9. Six months later, in June 2008, the CID came back to the appellant's house and blindfolded him, taking him to an unknown location in a van. He was questioned again about the two men and accused of supporting the LTTE. He was told that the two men had been arrested and that they had alleged that he was an LTTE supporter. The appellant said he was tortured and beaten: he was beaten with a wire, burned with cigarette butts, suspended upside down and beaten. He was not given any medication nor was he given food or water regularly. He has marks on his body from that torture.
10. Once again, his brother in law was able to locate the appellant and bribe the CID to release him. He was bailed on condition that he remained in Sri Lanka. He spent two days in hospital receiving treatment for his injuries.
11. The appellant consulted his parents, who advised him to go to live with his uncle in Kandy to avoid further problems. The civil war in Sri Lanka had not yet ended and Kandy was far enough away for safety. The appellant spent two months in Kandy, then returned to Colombo to stay with a friend from approximately August 2008 until January 2011. The appellant's mother said that the police did come to the house looking to arrest him, but it seems that they did not look elsewhere in Sri Lanka or even in Colombo.
12. The appellant produced a preliminary CID investigation report dated 10 May 2018 (with a translation) which indicated that an arrest warrant would be sought on 11 May 2018, under sections 3(A) and 5(B) of the Prevention of Terrorism Act No 48 of 1979 (as amended). The investigation report noted that the principal suspect was arrested in May 2010 but that the appellant's whereabouts could not be established and they were unable also to arrest him.
13. The charge against the appellant was to be 'maintaining close relationships with the LTTE's international network and assisting the LTTE

members by providing them accommodation and helping them to get building materials for their operation'. The investigator recorded that the appellant knew the two men were LTTE members and purchasing building materials for the LTTE, but failed to inform the authorities about the LTTE members, instead helping them in their activities and offering them accommodation. A copy of the arrest warrant (with translation) was provided.

14. In May 2010, the appellant's brother in law was arrested and released, following payment of a bribe. After the brother in law was released in May 2010, he arranged a Tier 4 student visa for the appellant through an agent. The appellant travelled from Sri Lanka openly on his own passport, passing through Colombo airport and arriving in the United Kingdom on 20 January 2011 to take up his student visa.
15. The appellant left Sri Lanka in January 2011, but the United Kingdom college which the appellant's brother in law had chosen was subsequently closed down. His Tier 4 visa expired on 30 September 2013 and was not renewed. He has had no leave since then.
16. The appellant relies on a court order from Colombo Magistrates' Court dated 1 February 2011 authorising his arrest at the airport on return to Sri Lanka, because the CID had received information that the appellant had escaped Sri Lanka. From that point on, he was a person on the 'stop list'.
17. The appellant remained unlawfully in the United Kingdom from October 2013 until 16 November 2017, when he was encountered working illegally. He took no steps to regularise his position, because he was afraid of the police here.

### **Refusal letter**

18. On 15 January 2018, the respondent refused international protection or leave to remain on human rights grounds. Although the appellant was born in India in 1985, the respondent accepted that he was a Sri Lankan citizen.
19. There was then no Rule 35 report dealing with his claimed torture or scarring arising from it. The appellant's account was rejected in its entirety, with reference to paragraphs 339L and 339N of the Immigration Rules HC395 (as amended), and section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004. The respondent applied the country guidance in *Gj (Sri Lanka)*: she considered that the appellant had not asserted any involvement with the LTTE in Sri Lanka or the United Kingdom, and that he could not bring himself within any of the other categories identified by the Upper Tribunal in *Gj*. His humanitarian protection claim failed for the same reasons.
20. The appellant's human rights claim was also refused: although he had lived in the United Kingdom for 8 years, he could not meet the

requirements of paragraph 276ADE. He had not demonstrated that there would be very significant obstacles to his integration into Sri Lanka on return; his parents, sister and brother in law were still living there and the appellant spoke Tamil, Hindi and English. He was familiar with the culture and traditions of Sri Lanka and would be able to find lawful employment on return. No exceptional circumstances had been established.

21. On 6 February 2018, the respondent acknowledged receipt of a Rule 35 report from a medical practitioner at Harmondsworth Detention Centre, which indicated that the appellant had cigarette burn scars on his chest, and laceration scars on his back. The appellant had depression and nightmares, and was experiencing poor sleep, all of which had worsened in detention. The appellant was now saying that in addition to the abuse previously disclosed, he had suffered sexual abuse, but was too traumatised to discuss it.
22. The respondent considered that the appellant could not be relied upon to comply with any immigration requirements and that as a long-term overstayer, whose asylum claim had not been made until he was discovered working unlawfully, it was lawful to continue his detention pending his appeal. The respondent did not revisit her refusal letter on the basis of the Rule 35 report.

### **The 2018 evidence**

23. The appellant's new evidence produced in 2018 comprised:
  - (1) a medico-legal report dated 19 November 2018 from Dr Baha Al-Wakeel, FRCP FFAEM, prepared with reference to the Istanbul Protocol, which found injuries typical of torture on the appellant's body: cigarette burn marks (aged scars) on the front of his chest and a healed lesion on his back, typical of his account of being suspended upside down and beaten with pipes and wires;
  - (2) a faxed letter from A A F Farhana, attorney at law in Colombo, explaining how the arrest warrant documents relied upon were obtained. Mr Farhana said that the appellant's brother in law had asked him to provide the letter. He confirmed that at the request of the brother in law, he had obtained documents in connection with the appellant from the Registrar at Colombo Magistrates' Court: he said that the documents 'show an 'Arrest Warrant' for the above-named to be arrested', and
  - (3) a letter from the appellant's brother in Sri Lanka, with translation, indicating that there is indeed continuing interest in this appellant.

### **Appellant's written submissions**

24. The appellant in his written submissions relied on the medical evidence that the appellant's injuries were 'typical of' the account he gave, with reference to the Istanbul Protocol, and relied on the respondent's CPIN and Fact-Finding Mission of March 2017, which confirmed that those

considered to be associated with the LTTE were still being arrested and detained in the north of the country. Rights Now was unaware of any arrests in Colombo. Former LTTE cadres were treated worse than normal criminal detainees. Extrajudicial killing had stopped but beatings of the type described by the appellant were regarded as normal.

25. The appellant relied on the evidence of Mr Anton Punethanayagam recorded in *GJ (Sri Lanka)* at [26]-[27] and assessed as 'useful and reliable' at [275] thereof. The appellant had given a detailed account and explained the discrepancies relied upon by the respondent. His appeal should be allowed.

### **Respondent's submissions**

26. The respondent did not provide written submissions as directed by the Tribunal, nor did Mr Jarvis cross-examine the appellant or make oral submissions. That is the evidential basis on which the Tribunal must remake the decision in this appeal.

### **The *GJ* guidance**

27. In *GJ (Sri Lanka)* the Upper Tribunal gave the following relevant guidance on the post-conflict situation in Sri Lanka and the risks it presents to particular groups:

*"... (2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.*

*(3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.*

*(4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.*

*(5) 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.*

*(6) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.*

(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. ...*

*(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.*

*(8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.*

*(9) The authorities maintain a computerised intelligence-led "watch" list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.*

*(10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the "Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", published by UNHCR on 21 December 2012."*

***SB (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 160***

28. In *SB (Sri Lanka)*, handed down in February 2019, Lord Justice Green, with whom Lord Justice Moylan and Lord Justice Baker agreed, reminded himself at [49] that the risk to an individual arises from the perception of his involvement, not his actual involvement. If there was a real risk that an appellant was perceived as a threat, that was sufficient to engage international protection.

***RS (Sri Lanka) v The Secretary of State for the Home Department*  
[2019] EWCA Civ 1796**

29. The Court of Appeal considered the question of the computerised stop list in *RS (Sri Lanka)* which was handed down on 28 October 2019. The appellant in *RS* had not been able to produce the arrest warrant or the airport stop notice, unlike the present appellant. Lord Justice Floyd, with whom Lady Justice King and Lord Justice Henderson agreed, held at [22] that the existence of an unexecuted arrest warrant was likely to lead to the person the subject of the warrant being included on the airport computerised ‘stop list’. The court took into account the respondent’s CPIN report, noting that the evidence showed that the Sri Lankan army had conducted a search for ‘escapees’.

**Remaking the decision**

30. The core facts in this appeal are no longer in dispute. The appellant has a known connection to the LTTE, having had two of its members as his customers in the building materials shop, and accommodated them in his home. The authorities know of it and arrested him on two occasions, in 2007 and 2008, both before the end of the civil war. On the second occasion, he was tortured, and he still has scars and mental health problems which, to the Istanbul Protocol standard, are accepted as typical of the abuse he suffered.

31. In May 2009, the civil war came to an end. In 2010 and 2011, the authorities showed a continuing interest in the appellant. He was able to leave Sri Lanka openly on a Tier 4 visa in January 2011, but that was before the arrest of the two LTTE men that he harboured in his home, in May 2011, and before they told the authorities that he had LTTE links.

32. The appellant in this appeal has established past persecution and I bear in mind that pursuant to paragraph 339K of the Rules:

“339K. The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person’s well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.”

33. In this case, there has been a change of circumstances in Sri Lanka following the end of the civil war, but the arrest warrants relied upon post-date the end of the war and there are indications, sufficient for the lower standard of proof applicable in international protection claims, that the authorities remain interested in the appellant. The respondent has not attempted to show good reasons to consider that the persecution or serious harm will not be repeated.

34. The evidence shows that this appellant has been charged in absentia with ‘maintaining close relationships with the LTTE’s international network



and assisting the LTTE members by providing them accommodation and helping them to get building materials for their operation'. There is an arrest warrant against him and a stop order for his arrest at the airport on return. He comes within the *GJ* guidance on that basis at sub-paragraphs 7(a) because the authorities perceive him as maintaining close relationships with the international network and at 7(d) because there is a stop notice requiring him to be arrested at the airport on return.

35. The appellant cannot safely relocate to live with his uncle in Kandy. There is no longer any area within Sri Lanka where the LTTE has control (see sub-paragraph [5]) and internal relocation is not available now. If arrested and detained, he remains at risk of further ill-treatment or harm and international protection is required (sub-paragraph [4]).
36. I have considered whether the exclusion clauses (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive) are engaged, as [10] of the guidance requires. The respondent has not sought to rely on exclusion and, whatever the Sri Lankan government's perception, it does not appear to me that it is appropriate to invoke exclusion in this appeal.
37. For all of the above reasons, and treating the appellant's account as fully credible, I am satisfied that he has shown a risk engaging the Refugee Convention and is a refugee. I therefore substitute a decision allowing the appeal.

## **DECISION**

38. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. I remake the decision by allowing the appeal.

Signed **Judith AJC Gleeson**  
2020

Date: 2 January

Upper Tribunal Judge Gleeson