



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

Appeal Number: AA/03080/2015

THE IMMIGRATION ACTS

**Heard at Centre City Tower,
Birmingham
On 24 September 2015**

**Determination Promulgated
On 30 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTSON

Between

**S M
ANONYMITY DIRECTION MADE**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Pennington, Counsel, instructed by Pride, Solicitors.

For the Respondent: Mr N Smart, Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

Introduction

1. The Appellant, a citizen of Sri Lanka, whose date of birth is 28 September 1966, appeals against the decision of First-tier Tribunal Judge Jerromes who heard, and dismissed on all grounds, his appeal against the decision of the Respondent to remove him to Sri Lanka after refusing him refugee status, humanitarian protection and leave to

remain in the UK on human rights grounds. Unless otherwise stated, all paragraph references in my determination relate to the determination of Judge Jerromes, promulgated on 10 October 2013.

2. Although in the grounds at paras 3 - 5 it was submitted on behalf of the Appellant that the Judge erred in his assessment of the facts, Miss Pennington accepted that these submissions were simply a disagreement with the findings of the Judge and, in line with the basis on which permission was granted, that she intended to focus her submissions on the Judge's assessment of risk on the basis of the following findings of fact made by the Judge:
 - a. The Appellant is a Tamil and is married with two daughters;
 - b. He supported the LTTE and agreed with their aims but was not an LTTE member;
 - c. His wife went missing in 2000 and that his explanation as to why he did not report her missing was credible;
 - d. That the LTTE borrowed his truck in 2004 and that he was detained and ill treated and kept in detention for a month by the authorities in September 2004; and
 - e. That A's daughter went missing on 15 June 2012.

3. She submitted that there were likely to be records held by the CID of his past detention, that he is therefore known to the authorities, and it was acknowledged in **MP (Sri Lanka), NT (Sri Lanka) v SSHD [2014] EWCA Civ 829** that the situation had changed since the Appellant arrived in the UK and the issues that needed to be considered were whether there were previous links to the LTTE, whether the Appellant supported a separatist state and whether he would seek to pose a threat to the integrity of Sri Lanka as a unitary state. She further submitted that **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** at para 308 provided that during the re-documentation process or on return to Sri Lanka, the Appellant could expect to be asked questions regarding his own and his family's LTTE connections and sympathies. He could expect to be asked the questions referred to at para 7 of the submissions (in which paragraphs 4, 14 and 15 of Appendix C to **GJ** were set out). He would also be asked for biographical details (including those of his family), details of any address with which they had been associated, including their last address in Sri Lanka, their address in the UK and where they intended to stay after leaving the airport. She submitted that the CID were 'capable of connecting the dots', even if the Appellant's name did not appear on a 'stop list', and he would be of further interest. If questioned he would state that he is a Tamil and supports a separatist state, which would put him at risk; he may not be at risk at the airport but there was likely to be an investigation particularly because he was a Tamil. She submitted that risk would arise even if the Appellant was not involved with campaigning in the UK; it would arise because of previous arrest and because he was previously a supporter of the LTTE. He would be honest in his responses on return and could not be expected to lie.

4. Mr Smart submitted that paragraph 308 of **GJ** must be seen in context. Paragraphs 307 and 308 dealt with the re-documentation process. Such questions as were referred to at paras 4, 14 and 15 of Appendix C were in relation to the re-documentation process. Although the Judge did not make a finding of fact on whether or not the Appellant held a valid Sri Lankan passport, it is noted that he left his passport in Sri Lanka at [23], so there is some evidence as to him having held a passport.
5. As to Mr Lewis' evidence, as contained in Appendix C to **GJ**, his evidence was that questions 'might' be asked, at the airport if they had not already been asked in the UK during the re-documentation process. If the Appellant had his own passport, he would travel on a scheduled flight. There was a difference in treatment between those who returned on scheduled flights because they had their own passports and those who were returned on chartered flights because they had an emergency travel document. There were no repercussions for Sri Lankans who had exited without a visa stamp in their passports as there were for those who had left other countries. If he was asked any questions either before or at the airport, he would not be telling the authorities anything they did not already know; that is that he was forced by the LTTE to allow them use of his truck. He may also tell them he was detained and tortured in 2004; they would also already know that. Mr Smart submitted that it was accepted in the head note to **GJ** that the authorities knew full well that a number of people provided some assistance to the LTTE. The Judge stated at [36.3] that he had considered the submission that the Appellant would not lie or hide his views and that he would campaign for Tamil independence on return but had found that the Appellant would not do so because he had not done so since 2004.
6. Miss Pennington, in reply stated that at [36.3] the Judge did not consider the questions that could be put to the Appellant; he would have to respond truthfully and this would put him within the risk categories of **GJ**. He would be identified as someone who had previously supported the LTTE and may engage in separatist activities; he would be identified as a 'trouble-maker' due to previous links and he did not support a single state.
7. Following submissions, I reserved my decision. Both representatives submitted that if I were to find a material error of law in the decision of Judge Chapman, I had sufficient evidence before me on which to reach a decision.

Decision and reasons

8. Although the Judge did not make a clear finding in relation to whether or not the Appellant had ever possessed a Sri Lankan passport, I find that a failure to make such a finding is not a material error of law because no issues were raised before the Judge in relation to the Appellant being without a passport; it was not submitted before him that the Appellant was likely to be asked questions during the re-documentation process.

Furthermore, it is clear that very early on, in his SI, when the Appellant was questioned about his Sri Lankan passport, he did not say that he had never had a passport; he stated that he had left it in Sri Lanka. Bearing in mind that his mother and daughter are in Sri Lanka, this passport would not be inaccessible to him. His AWS simply contradicted the evidence he had given himself at an earlier date and cannot be taken to be the truth, particularly bearing in mind the adverse credibility findings regarding his alleged arrest and torture in 2013 at [36.6].

9. In any event, even if the Appellant had to go through the re-documentation process, as pointed out by Mr Smart, the Appellant would not be telling the CID anything they did not already know. This Appellant had last been detained over 10 years ago; bearing in mind the adverse credibility findings at [36.6], there was no reliable evidence to suggest that he had been of further interest to the authorities since then. It is clear from the decision at [36.2 - 36.3], that the Judge had regard to the risk categories in **GJ** and, having given detailed consideration to the Appellant's claim, he was not satisfied, even to the lower standard of proof, that the authorities would have any interest in the Appellant or that he was likely to campaign or overtly advertise his support for a separatist state on return to Sri Lanka given his lack of active support since 2004. These findings were open to the Judge on the evidence before him and the grounds are simply an attempt to re-argue the merits of the case.

Decision

10. The determination of Judge Jerromes contains no material errors of law and his decision must therefore stand.
11. Anonymity was granted by the First-tier Tribunal. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, anonymity is continued. Unless and until a tribunal or court directs otherwise, 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 the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.

Signed

Date

M Robertson
Sitting as Deputy Judge of the Upper Tribunal

TO THE RESPONDENT FEE AWARD

No fee has been paid or is payable and no fee award is made.

Signed

Date

M Robertson
Sitting as Deputy Judge of the Upper Tribunal