Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/03769/2015**

THE IMMIGRATION ACTS

Heard at Glasgow	**Determination Promulgated**
On 20 August 2015	**On 4 September 2015**

Before

UPPER TRIBUNAL JUDGE DAWSON
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

L R
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs M. O'Brien, Senior Home Office Presenting Officer
For the Respondent: Mr T. Ruddy, Jain, Neil & Ruddy Solicitors

DECISION ON ERROR OF LAW

1. This is an appeal by LR against the decision of First-tier Tribunal Judge Bradshaw promulgated on 27 May 2015. We make an order pursuant to Rule 14 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 her or any member of their 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.

Background

2. The appellant is a citizen of Sri Lanka born on December 1988. She entered the UK on a Tier 4 student visa in June 2010. She left the UK in 2011 and applied for a further Tier 4 visa which was granted on 8 March 2012, giving her leave to enter until 15 August 2014. The appellant re-entered the UK on 4 April 2012. On 15 March 2013 the licence of the Tier 4 sponsoring organisation was revoked and on 26 September 2013 the appellant's leave was curtailed to 25 November 2013. On 23 September 2013 the appellant requested an appointment at the Asylum Screening Unit and claimed asylum on 16 October 2013. The respondent refused that application on 18 February 2015 and a decision was made to refuse to vary the appellant's leave and to remove her by way of directions under Section 47 of the Immigration, Asylum and Nationality Act 2006.

3. The appellant appealed on the basis that she is a refugee as defined within The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (hereinafter referred to as "The 2006 Regulations") or alternatively she claimed humanitarian protection as defined within paragraph 339C of the Immigration Rules. The appellant further relied on the Human Rights Act 1998, and specifically Article 2 of the ECHR.

4. Judge Bradshaw accepted, as had the respondent, that the appellant has been involved in activities in the UK with the TGTE, a pro-Tamil organisation active in the UK. The judge further accepted (again as the respondent did) that it is possible to identify the appellant from the photographs in question. However, the judge did not otherwise accept the appellant's account and was not satisfied that she would be of adverse interest to the Sri Lankan authorities.

5 On 22 June 2015 the appellant was granted permission to appeal to the Upper Tribunal on the basis that there may be arguable errors in the judge's findings, in particular in relation to handwritten amendments made by the appellant and the judge's credibility findings on the basis of his understanding of those amendments.

6. The appeal came before us. As accepted by Mr Ruddy there were two main grounds of appeal amongst the somewhat discursive lengthy grounds before us: the first ground being an alleged error by the judge in his application of the country guidance case of **GJ & others (post civil war returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. The second ground was an alleged misinterpretation of the evidence, specifically with reference to the manuscript notes on the interview which were added in the five days following the asylum interview.

Ground 1

7. Mr Ruddy argued that although Judge Bradshaw noted the respondent's acceptance that it was possible to identify the appellant from the photographs that the appellant had produced, the judge failed to adequately assess the issue of recognition and detection of the appellant

from the photographs. The judge had noted that TGTE is alleged by the Sri Lankan authorities to be a front for the LTTE and the judge noted the submission that TGTE is a banned organisation and claimed by the Sri Lankan authorities to be terrorists with the individuals involved being at extreme risk. He argued that, although the judge noted that he was specifically referred to paragraph 338 of **GJ & others** in connection with the Sri Lankan authority's use of facial recognition technology which also stressed the significance of the Sri Lankan authorities' perception of such individuals and highlighted that they are targets of the Sri Lankan authorities, the judge failed to adequately consider these issues particularly at paragraph [98] of his decision and reasons.

8. In addition it was argued that although the judge indicated, at [104] of his decision, that he had taken into account that there was video footage of the appellant's speech at the TGTE conference in September 2013, he failed to state how he had taken this into account. Mr Ruddy submitted that the judge's analysis of **GJ & others** was also flawed because of the error set out at ground 2. He asserted that the judge had clearly misinterpreted paragraph 119, 121 and 124 of the appellant's asylum interview record. It was Mr Ruddy's case that the judge's analysis of **GJ & others** was also flawed because he had based it only on the issue of the photographic evidence and not additionally on the basis of the two alleged incidents with the appellant's family which the judge had found had not occurred; Mr Ruddy argued that this finding arose from his misinterpretation of the asylum interview record.

9. Our analysis of this ground is as follows. The judge in assessing **GJ & others** placed weight, at [97] of his decision, on the fact that the appellant had never been named and that she had used a different name of 'Layanya' when working with the TGTE in the UK.

10. The judge considered paragraph 336 of **GJ & others** and noted that photographs are taken of public demonstrations and that the Government of Sri Lanka (GOSL) may be using face recognition technology to identify participants. He went on to direct himself that the question which concerns the GOSL is identification of Tamil activists working for Tamil separatism and to destabilise the unitary Sri Lankan State. The judge noted that the Upper Tribunal did not consider that the attendance at demonstrations in the diaspora alone as sufficient to create a real risk or a reasonable degree of likelihood that a person will attract adverse attention on return to Sri Lanka.

11. The judge did not accept that the appellant had been identified by the Sri Lankan authorities from the images of her at various demonstrations and relied at [101] of his decision on his earlier findings that he did not accept that the appellant's family had been the subject of interest from the Sri Lankan authorities in September and December 2013.

12. The judge also reminded himself of what was said at head note (8) of **GJ & others** as to the Sri Lankan authorities' approach being based on sophisticated intelligence, both as to activities within Sri Lanka and in the

diaspora and that the authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the northern province has some level of involvement with the LTTE during the civil war. The judge set out that the head note went on to state that 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 Lanka state or the Sri Lankan government.

13. The judge found at [103] of his decision that:

'Taking into account of my above stated findings it is my conclusion that if the Appellant is returned to Sri Lanka she would not be of adverse interest to the authorities. In my view the Appellant has not demonstrated that her involvement with the said TGTE activities have resulted in a profile of any significance which puts her into any of the risk categories outlined in the said case of **GJ & others.'**

14. Mrs O'Brien argued that when considering the entirety of the judge's findings he was fully aware that the respondent had conceded it was possible to identify the appellant. In her submission, from [96] to [104] of the decision, it was clear that the judge had considered all the factors and held, given the level of activity and the lack of acceptance that the appellant's family had been targeted in Sri Lanka, that the appellant would not be at risk on return.

15. However, notwithstanding the judge's findings that he did not accept that the appellant has been identified by the Sri Lankan authorities and that he did not accept that the appellant's family had been targeted in Sri Lanka, we conclude that the judge erred in failing to make adequate or clear findings of the risk to the appellant of being identified on return and targeted due to her activities in the UK with the TGTE despite rejection of her claim of adverse interest in her family in Sri Lanka.

16. As noted above the judge was aware that the TGTE is a banned organisation in the UK. The judge also noted, at [96] of the decision, the presenting officer's concession that it was not disputed that she 'has been involved in the activities specified by her'. The respondent had also made a concession in the refusal letter, as it was noted that the appellant had:

'provided a detailed and consistent account of the issues which this group campaigns for as well as accounting for the reasons why you chose to join. You have provided a similarly detailed and plausible account of the particular activities which you participated in with the organisation'.
We note that the appellant, at paragraph 45 of her asylum interview identified the aims of TGTE including 'Tamil Ealam, i.e., 'separate the state' and that TGTE 'wants the Tamil rights regained or achieved through politics rather than violence'.

17. Given that the judge had accepted that the respondent had noted it was possible to identify the appellant from the photographs provided and the judge took into account the country guidance findings that the GOSL may

be using face recognition technology, we are of the view that the judge placed undue weight on the fact that the appellant has never been named and used a different name when she worked for the TGTE.

18. Whilst this finding may not by itself be material, the judge also erred in our view in failing to make adequate findings as to the risk of the appellant being identified by the Sri Lankan authorities on the basis of the photographs and video of her and her activity in the UK for TGTE. It was insufficient in our view to find that she had not been identified thus far and that her family had not been targeted, but not go on to make an evaluative assessment of the risk to the appellant on the basis of her particular profile and her accepted activities in the UK for TGTE.

19. Although the judge found, at [103] of his decision, that:

> 'the appellant has not demonstrated that her involvement with the said TGTE activities have resulted in a profile of any significant which puts her into any of the risk categories outlined in the said case of **GJ & others'**,
>
> he failed in our view to engage with her specific activities and how those would be perceived by the Sri Lankan authorities. The judge has conflated his negative credibility findings, that the appellant had not (to date) been identified by the Sri Lankan authorities and that her family had not been targeted in Sri Lanka, with a separate finding that she would not be of adverse interest to the GOSL if returned now. In our view the judge made a material error in making inadequate separate findings on that risk, given the acceptance of her TGTE activities in the UK, the acceptance that the appellant can be identified from the photographs she provided and that the GOSL may be using facial recognition technology, together with the acceptance that the TGTE is a banned organisation considered by the GOSL to be a front for the LTTE.

20. It is not in dispute that appellant has been involved in activities in the UK including her membership of TGTE in the UK. That included petitioning in relation to the UK Prime Minister's trip to Sri Lanka, passing a petition to her MP, Mike Gapes and confirmation from TGTE of the appellant's attendance at a number of meetings. The appellant in her witness statement set out in detail her activities for TGTE in the UK including speaking at a 'Tamil Genocide Conference' on 28 and 29 September 2013 which the appellant indicated was broadcast live and has also been able to view on YouTube. The appellant in her witness statement (at pages 9, 10 and 11) set out the details of her speech which included allegations of abuses carried out by the Sri Lankan authorities against Tamils.

21. Although the judge at [104] of his decision stated that he took into account 'what the Appellant has specified about video footage of her speech at the TGTE conference in September 2013' given the respondent's acceptance of the appellant's activities in the UK including as set out in the Reasons for Refusal letter and as noted by the judge at [95], it is a material error in our view that he then failed to analyse at all the extent of the appellant's activity and failed to give any adequate reasons

as to why, given her activity and given the country guidance findings including at paragraph 336 of **GJ & others** that the diaspora is 'heavily penetrated by the security forces', the appellant would not be identified and would not be perceived as indicating a present risk to the unitary Sri Lanka state or the Sri Lankan government.

22. It is not a foregone conclusion in our view, that if the judge had proceeded to make such separate findings with reasons, that the appellant would not have succeeded, notwithstanding the judge's negative credibility findings.

23. We do therefore find a material error of law in relation to Ground 1.

Ground 2

24. In respect of ground 2, the judge cannot be faulted *per se* for making the best of hand written annotations to the interview record which had been submitted to the respondent in the five days subsequent to the asylum interview.

25. However there were a number of errors in the judge's approach to the entirety of this evidence, which specifically related to the appellant's claim that her family had been approached in Sri Lanka.

26. The judge, at [48] of his decision interpreted the end of the answer to question 119 of the asylum interview, as follows:

'Then I did the presentation afterwards and that they came to know so afterwards when I after the presentation phoned they wouldn't answer but they called me after this 3 months the authorities came to say about this.'

27. Mr Ruddy at the hearing before us indicated that with the handwritten annotations it should have read:

'Then I did the presentation afterwards and that they came to know so afterwards when I phoned they wouldn't answer but they called me after this. Three months after the presentation the authorities came to my home about this'.

28. Although Mrs O'Brien stated that it was not made sufficiently clear what the judge was to take from the amendments and she argued that it was still not clear whether it was the error of the interpreter or the transcriber, Mr Ruddy indicated at paragraph 2 of his grounds that he had referred the judge to this answer being key to the appellant's credibility and the judge had not indicated that he did not understand any of the handwritten amendments and had declined Mr Ruddy's offer to read over the amendment accurately.

29. Question 121 of the asylum interview record reads as follows:

'Since your sister's arrests, and 3 months later, have the authorities been to your house again'?

The judge at [87] of his decision and reasons did not accept Mr Ruddy's submission that this question indicated that the interviewing officer understood there to be two incidents, one in September 2013 and one in December 2013 as the judge 'did not take this meaning out of the question'. However the judge fails to adequately explain why this was the case or what alternative meaning he took from question 121.

30. Mr Ruddy submitted that it was not rationally open to the judge to interpret question 121 as he did and that he had not explained adequately why he did.

31. He also submitted that the judge erred in his approach to the appellant's answer to paragraph 124 of the asylum interview where she referred to 'first time when they have been to house'. It was Mr Ruddy's submission that this was further evidence that the appellant had clearly referred to two visits by the Sri Lankan authorities. He argued that the judge was wrong at [87] of his decision to interpret this as meaning 'at first' in relation to one alleged incident and that the judge had completely misinterpreted core aspects of the appellant's account.

32. Although the provision of barely legible hand written annotations, without further, was clearly inadequate in our view, nonetheless the judge did fail to give adequate reasons for his overall interpretation of the appellant's cumulative evidence at interview as, in his findings (at [87] of his decision), not containing 'any reference' to the December 2013 incident. Even without the handwritten amendments to question 119 of the asylum interview, we are of the view that the recorded reference at 119 to something happening after 3 months, together with the interviewer's reference at paragraph 121 to the appellant's 'sister's arrest and 3 months later' and the appellant's reference at paragraph 124 of her asylum interview to the 'first time when they have been to house', leads to the conclusion that there was likely to have been evidence given at interview as to a second visit by the Sri Lankan authorities, 3 months after the first date.

33. Although taking an opposing view may have been a finding open to the judge, given the cumulative evidence referred to above and the appellant's subsequent witness statement confirming that there were two incidents, in our view he failed to give adequate reasons for reaching the findings he did.

34. Although we note that the judge's negative credibility findings were clearly not based solely on this identified error and that the judge made a number of other negative credibility findings, including in relation to the appellant's evidence as to the claimed first visit to her family by the Sri Lankan authorities in particular and in relation to the appellant's actions in the UK after her college was closed, the material error in respect of the appellant's evidence about the claimed second visit has in our view infected the entirety of the credibility findings; we note for instance the

judge's finding at [89] of his decision and reasons, in relation to the disputed second incident in December 2013:

'this is another instance where the Appellant has not provided full and accurate information to the Respondent and her failure to do so further damages the credibility of her claim in general.'

Remaining Grounds

35. Mr Ruddy indicated that he continued to rely on his remaining grounds including in relation to alleged typographical and other errors in the judgment. We are not of the view that there is any material error disclosed in this regard. However for the reasons we have set out above in relation to grounds 1 and ground 2 the decision falls to be set aside.

36. We consider that the judge has materially erred in law such that the decision and reasons cannot stand. Although we considered remaking the decision in the Upper Tribunal, we are of the view that under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2, the nature and extent of judicial fact finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. This is particularly the case as fresh credibility findings will need to be made in their entirety.

Notice of Decision

37. The appeal is allowed. The determination of the First-tier Tribunal is set aside and the case is to be remitted to the First-tier Tribunal for a fresh hearing. No findings are to stand. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Bradshaw.

Signed Date: 3 September 2015

M. M. Hutchinson
Deputy Judge of the Upper Tribunal