



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01873/2015**

THE IMMIGRATION ACTS

**Heard at Birmingham
On 3 March 2016**

**Sent to parties on:
On 19 May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**S U
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Vokes instructed by Duncan Lewis & Co Solicitors
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a Sri Lankan national. He claimed asylum in the United Kingdom on 18 June 2013. The Respondent refused to recognise him as a refugee and on 19 January 2015 made a decision to remove him as an illegal entrant under s10 of the Immigration and Asylum Act 1999. The Appellant appealed against this decision under s82 of the Nationality, Immigration and Asylum Act 2002. His appeal was heard by First-tier Tribunal Judge Juss and in a decision promulgated on 10 June 2015 he dismissed the appeal. He found that the Appellant was not a refugee, did

not qualify for humanitarian protection and that his removal would not breach his rights under Articles 3 and 8 of the European Convention on Human Rights.

2. The Appellant sought permission to appeal against that decision and permission was granted by First-tier Tribunal Judge Reid on 29 June 2015 on the basis that it was arguable that the Judge's findings on the risk on return were irrational in the face of his findings in relation to the Appellant's account of what happened to him on return to Sri Lanka in 2013.

The Grounds

3. The grounds assert that the First-tier Tribunal Judge appeared to accept the Appellant's evidence that he had been ill-treated between 20 April 2013 and 24 May 2013 due to his actual/past political opinion. He found the Appellant to be a credible and plausible witness. Nevertheless, relying on the country guidance case of **MP (Sri Lanka) and NT (Sri Lanka) [2014] EWCA Civ 829**, the Judge concluded that the Appellant was not a Tamil activist and was not working to destabilise the Sri Lankan state and would not be subject to ill-treatment on return. It is submitted that in so doing the Judge failed to take into account that the Sri Lankan authorities had operated a "watch" list in 2013 when the Appellant visited Sri Lanka and the Appellant was not then, nor now, a Tamil activist working to destabilise the Sri Lankan state. He was nevertheless detained and tortured. The Judge therefore did not take into account the fact that the Sri Lankan authorities might regard him as posing a threat to the integrity of Sri Lanka was a single state even in the absence of evidence that he had been involved in diaspora activities. It is submitted that his findings were irrational and/or that he failed to give adequate reasons for his finding that he would not be subject to ill-treatment on return.

The Rule 24 Response

4. The Respondent submits that the finding by the First-tier Judge that the Appellant would not be viewed as a threat to the unitary Sri Lankan state was open to him and that the grounds are merely a disagreement with the findings of fact.

The Hearing

5. I heard brief representations from both advocates. Mr Mills informed me that he did not maintain the Respondent's stance in the Rule 24 Response. He agreed with the Appellant that there was an error of law in the decision of the First-tier Tribunal. The First-tier Tribunal had accepted that the Appellant had been detained and tortured on his return to Sri Lanka in May 2013. The Appellant had been detained after the civil war ended in May 2009 and therefore fell in to the risk categories set out in **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319**. Further, in

the light of the findings of fact made the decision of the First-tier Tribunal should be reversed and the appeal allowed on asylum grounds.

Discussion and Findings

6. The First-tier Tribunal found, at paragraph 14, that the Appellant was a credible and plausible witness. He accepted that a medical report in relation to the Appellant's injuries claimed to be the result of torture was "well-balanced, careful and generally credible". The expert concluded that the physical evidence strongly supported his account of torture in Sri Lanka (paragraph 16). However, at paragraph 17, the First-tier Tribunal concluded that the latest country guidance made it clear that the Appellant would not in future face such ill-treatment. He came to this conclusion on the basis that the Appellant's diaspora activities were not sufficient to put him at risk.
7. The Appellant was, on the findings of the First-tier Tribunal, detained and subject to ill-treatment in May 2013 which was within the scope of the evidential period of the country background information covered in **GJ and others**. In the light of the fact that he was found to have been detained and ill-treated in this period the only conclusion open to the First-tier tribunal was to find, in accordance with the country guidance and **MP (Sri Lanka) v SSHD [2014] EWCA Civ 829** that the Appellant was perceived to be a threat to the integrity of Sri Lanka as a single state or that the evidence showed that the Government might regard him as posing a current threat to the integrity of Sri Lanka as a single state even in the absence of evidence that he had been involved in diaspora activism. There was no evidence to show that there was a change of country circumstances preventing this happening again. In the circumstances the First-tier Tribunal's finding that the Appellant would not be at risk of persecution on return was irrational and on the findings made his appeal must be allowed.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I re-make the decision in the appeal by allowing it on asylum grounds and under Article 3 ECHR.

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

Date 19 May 2016

Deputy Upper Tribunal Judge L J Murray