



IAC-FH-NL-V1

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

Appeal Number: AA/06115/2015

THE IMMIGRATION ACTS

Heard at Field House

On 18 March 2016

**Decision &
Promulgated
On 28 April 2016**

Reasons

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

**MISS VIPITHRA AMIRTHALINGAM
(ANONYMITY DIRECTION NOT MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Ms J Jegarajah, Counsel instructed by A & P Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka whose appeal against the decision of the respondent dated 20 March 2015 to refuse to grant her asylum was dismissed by First-tier Tribunal Judge Chohan.

2. The appellant has been granted permission to appeal the decision of Judge Chohan on grounds which argued that his conclusions on credibility in respect of the bribe paid in order to be released from custody and exiting Sri Lanka without coming to the attention of the authorities arguably contradicted the findings of the Upper Tribunal in **JG (Sri Lanka) [2013] UKUT 00319 (IAC)**. It was also arguable that the judge's findings on the appellant's delay in claiming asylum were based on an inaccurate assessment of the evidence. The judge appeared not to have addressed the evidence given by the appellant's mother in her statement dated 1 December 2015.
3. The appellant is a citizen of Sri Lanka born on 15 December 1986. She entered the UK on 29 August 2010 with a student visa. She did not claim asylum until 17 December 2013.
4. She claimed that from April 2002 until January 2005 she was the secretary of the student wing of the LTTE. In her role she organised pro-Tamil demonstrations, protests and other programmes. She had been employed as a reporter by the Uthayn Newspaper Company from 21 May 2006 until November 2009. Her job was to inform the newspaper of events involving the army in her area.
5. She claimed that a cousin, Thevian, was a member of the LTTE and was the security guard to the leader of the LTTE. Thevian introduced the appellant to another LTTE member, Karikalan. Between 2003 and 2004 the appellant provided Karikalan and two other LTTE members with food on five or six occasions and with accommodation on three occasions. She also allowed the two members who accompanied Karikalan to hide their weapons in bushes in her village on two occasions in 2004.
6. She claimed that on 10 August 2010 she was arrested by the army at a checkpoint. Karikalan was at the checkpoint with the army and had told them that the appellant had assisted the LTTE. The appellant claimed that Karikalan had begun working for the army. The appellant was taken to Joseph Army Camp where she was interrogated. During her detention she was subjected to torture. Her father paid an agent, Mohammad, who organised the appellant's release from the camp on 16 August 2010 and arrangements were then made for her to leave Sri Lanka.
7. The appellant has a daughter who was born in the UK on 16 January 2014. The appellant's partner Ramanathan Nirujan, entered the UK on 30 September 2008. He made an asylum claim which was refused on 7 October 2008. His appeal against that decision was heard on 16 December 2008 and dismissed. The appellant claimed that she is culturally married to Mr Nirujan and not legally.
8. She claimed that whilst in the UK she has been a member of the British Tamil Forum and has taken part in four pro-Tamil events. She now fears

returning to Sri Lanka because she believes she will be arrested and detained by the Sri Lankan authorities and will be persecuted.

9. In support of her claim that she was tortured when she was detained between 10 August 2010 and 16 August 2010, the appellant produced a medical report by Mr Martin dated 20 August 2015. He noted four scars – two on her hands and two on her legs. Mr Martin concluded that *“the individual’s scars are consistent of injuries intentionally caused by a third party, then [sic] other possible explanations are also possible such as an accidental mechanism of injury”*.
10. The judge found that the appellant was a low-level student member of the LTTE in Sri Lanka who appears to have assisted them between 2003 and 2004. He also accepted that the appellant worked for a newspaper for a period of over three years. He found however that she had simply provided information to the newspaper and there was nothing to suggest that she wrote any articles against the Sri Lankan authorities.
11. The judge considered the appellant’s claim to have actively assisted the LTTE between 2003 and 2004. He found it quite incredible that the authorities would have any interest in her six years later in 2010 despite her claim that Karikalan had begun working for the army and informed on her. Whilst the judge accepted that the appellant worked for a newspaper for three years, between 2004 and the time of her claimed arrest in 2010, he found that for the authorities to have had no interest in her prior to August 2010 was not credible. Consequently, the judge found that the appellant was never arrested by the authorities for the reasons given by her.
12. The judge considered the appellant’s claim that she was released from custody by the payment of the bribe. Whilst he acknowledged, based on the objective material that corruption is prevalent in Sri Lanka, he did not find the appellant’s account to be credible. This was because if the authorities had considered the appellant to be a serious threat to the security of Sri Lanka, he did not find it credible that any official would take a risk, even by the payment of a bribe to release the appellant. He found that the appellant’s credibility was further undermined by the fact that she was able to leave Sri Lanka using her own passport and with a student visa. The appellant was released from custody on 16 August 2010 and she left Sri Lanka on 29 August 2010. During this time the appellant experienced no difficulties from the authorities. The judge then went on to say that the appellant cannot have it both ways in the sense that if her account were to be accepted and that she was released by the payment of a bribe, then official records would not state that she was released by the payment of a bribe but released for other reasons. Therefore, if she were to be returned to Sri Lanka there was nothing to suggest that her name was on an official stop list or that there was an outstanding warrant for her arrest.

13. The judge considered the appellant's evidence that she has undertaken sur place activities. He noted that the appellant is a member of the British Tamil Forum and that is confirmed by a letter from the organisation dated 28 May 2014. The appellant had submitted photographs to support her claim that she has attended four pro-Tamil events in the UK. During her oral evidence the appellant stated that photographs had been loaded on YouTube and that her friends in Sri Lanka and the United Kingdom had seen the photographs and therefore others will have seen them too. The judge did not accept that the appellant would be at risk by virtue of this because there was nothing to suggest that she was a high profile activist.
14. The judge relied on the letter from the British High Commission in Colombo dated 25 July 2014. The letter, acknowledged that sixteen Tamil Diaspora organisations, including the British Tamil Forum, have been proscribed by the Sri Lankan authorities. The letter went on to say:

"There have been no reports in local press of anyone being arrested because of their membership of, or association with, one of the proscribed Tamil Diaspora organisations. Members of civil society had not raised this as an issue with the High Commission."
15. The judge also relied on the country guidance case of **GJ (Sri Lanka) [2013] UKUT 00319 (IAC)**. **GJ** said that the focus of the Sri Lanka Government's concern has changed since the civil war ended in May 2009. If a person is detained by the Sri Lankan security forces there remains a real risk of ill-treatment or harm requiring international protection. In respect of journalists, **GJ** states that journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan Government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan Government remain at risk.
16. The judge noted the submissions by the parties, the HOPO claiming that the appellant had not written any articles for the newspaper she worked for and there was no evidence to that effect. While the appellant's Counsel submitted that it was the perception of the Sri Lankan authorities that mattered and that there was continuing adverse interest in the appellant and therefore she will be at risk on return. The judge preferred the former argument finding that she simply provided information to the newspaper, that there was nothing to suggest that she wrote any articles against the Sri Lankan authorities.
17. The judge said it was interesting to note that the appellant only joined the British Tamil Forum after claiming asylum in December 2013. He found it incredible that she delayed undertaking sur place activities for many years and only undertook them following her claim for asylum. He found that she was simply undertaking the sur place activities in order to enhance her asylum claim and nothing more. He found that those activities would not put her at risk were she to be removed to Sri Lanka.

18. The judge considered the medical evidence which said that the appellant suffers from serious psychiatric disorder, including major depression and PTSD most probably secondary to the post trauma the appellant claimed. The judge noted that Dr Persuad who had written that report made no mention of the proceedings taken against him before the General Medical Council. Nevertheless it was not clear to him why this particular report has been submitted as part of the appellant's claim. There were no significant submissions made in respect of the appellant's mental health and certainly no argument had been put forward that the appellant could not return due to her mental health problems. In any event, it was difficult to see how the appellant could meet the high threshold as set out in the case of **N v UK**.
19. At the hearing before me Ms Jegarajah drew my attention to paragraph 288 of **GJ** wherein the Upper Tribunal said that the UNHCR had revised its guidelines issued on 21 December 2012 to reflect the post-conflict changes in Sri Lanka. Previous UNHCR guidelines were issued in July 2010. Ms Jegarajah relied on paragraph 289 of **GJ** which identified a list of groups which require "particularly careful examination" who may be, and in some cases are likely to be, in need of international protection. The list included journalists. Ms Jegarajah argued that the judge failed to consider and apply **GJ**. His finding that the appellant had not been arrested before was unlawful because there was no objective risk prior to 2012.
20. She also challenged the judge's finding that it was incredible that the appellant would be released from custody by payment of a bribe and able to leave Sri Lanka without experiencing any difficulties from the authorities. She relied on paragraph 146 of **GJ** which recorded evidence from Mr Punethanayagam regarding information held on his client database about the use of bribery. He had said that bribery is very common in the IDP camps as well as the detention centres from which even known LTTE leaders have managed to escape on payment of bribes. Hence it cannot be argued that only people of low interest to the authorities are able to secure their release through a bribe. In his opinion it is plausible that the detainee was released following the payment of a bribe, even if of significant adverse interest to the authorities. It is unlikely that the person who accepts the bribe would access the detainee's record and change them as released or no longer wanted. Hence such cases would normally be recorded as escaped from detention in the database of the police. Subsequently an absconder action will be commenced and the detainee's details will be passed to the National Intelligence Bureau.
21. Ms Jegarajah relied on Mr Punethanayagam's evidence that it is possible to leave the country using bribery with the help of an agent. The security officers and Immigration Officers at the international airports are no exception to the widespread bribery and corruption in Sri Lanka. Ms

Jegarajah submitted that the Upper Tribunal found that Mr Punethanayagam was an expert whose evidence they found reliable.

22. Ms Jegarajah challenged the judge's finding that the appellant would not be at risk on account of her evidence that she worked for a newspaper. She argued that the judge did not look at the evidence contained in the appellant's interview. At question 22 the appellant had been asked what kind of reporting she did, and she replied that for example, if the army arrested someone, she would go to the newspaper and report this. If there was something she would give the newspaper a call; if there is any protest in an area she will call and report it to her company and photographs would be taken of the event and the company will then publish it. If there were any incidents involving the army she would report them e.g. if the army shot someone such as the LTTE or LTTE supporters she would report it. Ms Jegarajah argued that the appellant was a regional and roving reporter and reported various incidents. She disclosed human rights abuses by the Sri Lankan army. These were post-conflict matters which have become important and because of this, the newspaper would be seen as a nationalist paper. There was no real engagement with this evidence by the judge.
23. Mr Clarke submitted Ms Jegarajah failed to pursue the two other matters upon which the appellant had been granted permission to argue. These were the judge's findings on the appellant's delay in claiming asylum and the judge's failure to address the evidence given by the appellant's mother. He submitted that her failure to pursue them indicated that the judge did not err in law on those matters.
24. Mr Clarke submitted that it was accepted by the Secretary of State and the judge, in accordance with head note 7(b) of **GJ** that "*journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan Government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan Government*" remain at risk. Mr Clarke submitted that looking through the appellant's bundle he struggled to see what evidence there was that the articles written by the appellant were in fact anti-government. In the absence of evidence that the editorial presentation of events which they reported were anti-government, the judge's finding that whatever she had done did not bring her to the adverse attention of the authorities disclosed no error of law.
25. Ms Jegarajah submitted that the judge accepted that the appellant was a journalist and an LTTE supporter and had been secretary to the Tamil union. The argument that she had not written articles that were expressly anti-government was misconceived because there was massive censorship prior to 2012 and if journalists had reported human rights abuses in government controlled territory, they would have been shot. That is why it was from December 2012 because of the changes in the country that the UNHCR revised their guidelines.

26. I find that Ms Jegarajah's arguments did not disclose an error of law in the judge's decision.
27. I accept that the UNHCR has revised its guidelines issues on 21 December 2012 to reflect the post-conflict changes in Sri Lanka. I also accept Ms Jegarajah's submission that prior to 2012 no journalist would have taken the risk of criticising the government's human rights abuses for fear of being shot. However, this evidence does not assist the appellant. It rather supports the judge's finding that the appellant simply provided information to the paper and there was nothing to suggest that she wrote any articles against the Sri Lankan authorities. Indeed there was no evidence that the appellant herself had written any articles. She said her job was to inform the newspaper of events involving the army in her area. That was the evidence contained in answer to question 22 which the judge had properly considered. There was no evidence from the appellant that the newspaper was seen as a nationalist paper or anti-government or that the newspaper company and its reporters came to the adverse attention of the authorities on account of their views, their reporting and editorial content. Indeed the judge had applied **GJ**, paragraph 7(b) of its head note and his findings in this respect disclosed no error of law.
28. The other issue challenged by Ms Jegarajah was the judge's finding that it was not credible that the appellant would have been released on payment of a bribe and would have left the country without experiencing any difficulties. I have noted the evidence of Mr Punethanayagam in **GJ**. The judge's findings have to be seen in the round. The judge found that by her own evidence she had assisted the LTTE between 2003 and 2004. She had also worked for a newspaper company for over a period of three years, from 21 May 2006 until November 2009. Because the judge found that she had not been of adverse interest to the authorities up until that point, he did not believe that she was detained in August 2010. That was his primary finding. It was in light of this primary finding that the judge did not believe that she would have been released by payment of a bribe and noted, furthermore, that between her claimed release from custody on 16 August 2010 until she left Sri Lanka two weeks later, she experienced no difficulties from the authorities. In reaching his findings, the judge took into account the objective evidence that corruption is prevalent in Sri Lanka. Indeed that was what Mr Punethanayagam said in **GJ**.
29. Accordingly I find that the judge did not err in law. The judge's decision dismissing the appellant's appeal shall stand.

Notice of Decision

The appellant's appeal is dismissed

Signed

Date

Upper Tribunal Judge Eshun