



IAC-FH-NL-V1

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

Appeal Number: AA/06252/2015

THE IMMIGRATION ACTS

Heard at Stoke

On 18 March 2016

**Decision &
Promulgated
On 18 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**PG
(ANONYMITY DIRECTION MADE)**

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr. H. Sarwar, Counsel instructed by Biruntha Solicitors

For the Respondent: Mr. A. McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge N. J. Bennett, promulgated on 30 October 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. Permission to appeal was granted as follows:
"In an otherwise careful and well reasoned Decision and Reasons it is nonetheless arguable that the Judge makes no express findings in respect of the

Appellant's claim to have assisted [MB] and [TR] by collecting and depositing money from 2007 to 2008. The Appellant's claim for asylum is based upon this activity; the Appellant gave evidence that he had been questioned about allegedly fund raising for the LTTE on account of these activities. It is further arguable that the judge failed to adequately assess what the Sri Lankan authorities may believe or suspect in relation to the Appellant."

3. The Appellant attended the hearing. I heard oral submissions from both representatives, following which I reserved my decision.

Submissions

4. Mr. Sarwar relied on the grounds of appeal.
5. Mr. McVeety submitted that the judge did not doubt that the events which the Appellant said had happened in relation to collecting funds in 2007/2008 had occurred. I was referred to paragraph [28]. The judge had proceeded on the basis that he accepted this part of the Appellant's case. He had not made any express finding because he had accepted it. I was referred to paragraph [32] where the judge cited the country guidance which shows that the government are only interested in what individuals are doing now. He submitted that the Appellant's case did not fit within the risk categories in GJ. The judge was bound to follow GJ, which he had done, as he had found that the Appellant did not fit into the risk categories set out there. He submitted that what the Appellant had done in 2007/2008 was of no relevance now. The judge had adopted the country guidance case, which itself had been upheld twice in the Court of Appeal.
6. Mr. Sarwar submitted in response that there was an error of law in the judge's failure to make a direct finding on an issue which was a cornerstone of the Appellant's case. It was presumptuous to state that the judge had accepted it, as there was no wording to that end. Paragraph [28] merely recorded the Appellant's case, and he disputed that the judge had accepted the Appellant's case. The Appellant's initial activity was recorded in paragraphs [3] and [5] of the decision. The fact that the Appellant had been involved in collecting and depositing money in 2007/2008 had informed his detention in 2013. There was an analysis of the 2013 arrest in paragraph [27]. The judge found that it was difficult to see why the Appellant would have been of any interest to the Sri Lankan authorities in 2013, but this was without reference to the claimed events of 2007/2008, and without having made a finding that they did or did not take place. It could not be assumed that he had accepted the Appellant's account of what happened in 2007/2008.
7. I was referred to the case of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), in particular paragraph [6]. The Appellant's case was synonymous. The judge had failed to make a finding on a cornerstone issue. The Appellant's account of what he had done in 2007/2008 was of great import. It had not been rejected by the Respondent in the reasons for refusal letter, but had been considered unsubstantiated.

8. In relation to materiality, I was referred to paragraphs [4] and [5] of the grounds of appeal. There were wider considerations to the case set out at paragraphs 5(a) to (f). I was referred to paragraph [7] of the grounds. There was additional objective evidence before the First-tier Tribunal which postdated GJ. This went to the credibility of the Appellant's account of his detention in 2013, but this had been materially discounted by the judge.

Error of law

9. Paragraph [27] states:

"This guidance [GJ] is about the risks faced by Tamils returning to Sri Lanka. However, no evidence was placed before me that would justify me in concluding that Tamils who lived in Sri Lanka were treated any differently. On the basis of this guidance, it is very difficult to see why the Appellant was of any interest to the Sri Lankan authorities in 2013. He did not fit into any of the risk categories identified in paragraph 7. The Tribunal said that the Sri Lankan authorities knew that everyone in the Northern Province had some level of involvement with the LTTE during the civil war and that, in post-conflict Sri Lanka, an individual's past history would only be relevant to the extent that it was perceived by the Sri Lankan authorities to indicate a present risk to the unitary Sri Lankan state or the Sri Lankan Government. I was not referred to any background evidence showing that Tamils from the east of Sri Lanka are viewed any differently."

10. I find that the judge rejects the Appellant's account of having been detained in 2013 on the basis of the guidance in GJ indicating that he would not have been of any interest to the authorities in 2013. He finds that the Appellant does not fit into any of the categories set out in paragraph [7] of GJ. He does this without any reference to what the Appellant claims to have done in 2007/2008. He quotes paragraph [8] of GJ which states that the Sri Lankan authorities' approach is based on sophisticated intelligence. He rejects the Appellant's claim to have been detained in 2013 on the basis that those who were in Sri Lanka should be treated no differently to those who were returning from Sri Lanka, to whom the guidance in GJ applies.
11. In the grounds of appeal, paragraph [5], it is submitted that the Upper Tribunal recorded evidence in GJ which suggested that the authorities were still searching for and detaining persons suspected of being operatives or sympathisers. It was submitted that this evidence had been before the judge.
12. Having rejected the Appellant's claim to have been detained in 2013, the judge then turns to the Appellant's account of his involvement in 2007/2008. Paragraph [28] states:

"The Appellant's case is that his involvement with the LTTE in 2007/8 was indirect, at a very low level and that, by March 2013, had long since ended. It is therefore very difficult to see how it could have been seen as showing that he was a present risk to the unitary state or to the Government of Sri Lanka. His involvement was indirect because he was never a member of the LTTE or of any organisation that was connected with the LTTE or that he was otherwise

associated with any such organisation. His involvement was at such a low level that he did not even realise at the time that he was helping the LTTE: he said that he thought he was collecting money for those who were suffering as a result of the civil war. His account shows that he did this at a very low level. He said in paragraph 12 of his statement that he was sometimes asked to collect money from houses or businesses and he was sometimes asked to meet someone who would give him money in a public place. He does not claim to have asked anyone for financial support or even to have collected money publicly, for example in a collection box. He does not claim to have taken the money to any building occupied by the LTTE: he says that he either gave it to friends or paid it into someone's bank account. He does not claim to have handled any particularly significant sums."

13. There is no clear finding in this paragraph that the Appellant assisted the LTTE in 2007/2008 by collecting money as he claims. It appears that the judge may have accepted the Appellant's account by his statement that "his account shows that he did this at a very low level." However, the language of the rest of the paragraph is in terms of his "claims" to have carried out, or not to have carried out, certain activities. I find that it cannot be inferred from this paragraph that the judge accepted the Appellant's account of events in 2007/2008.
14. This part of the Appellant's claim was considered in paragraphs [14] to [16] of the reasons for refusal letter. The Respondent considered this part of the claim to be unsubstantiated. The only reason that she did not give the Appellant the benefit of the doubt, finding that he did not meet the requirements of paragraph 339L, was because he had failed to claim asylum at the earliest possible opportunity available. In the light of this, I find that it was particularly important for the judge to make findings on this issue, as it was rejected by the Respondent not because of inconsistencies in the Appellant's account, nor because it was inconsistent with the background evidence, but because the Appellant had delayed in claiming asylum. I find that it remains unclear whether the Appellant assisted the LTTE in 2007/2008. I find that the failure to make a clear finding on the basis of the Appellant's claim is an error of law.
15. Whether or not this amounts to a material error of law rests to a certain extent on whether the Appellant would fall within the categories set out in GJ, had the judge found that he had assisted the LTTE in 2007/2008, and then as a result had found that it was reasonably likely that he had been detained as claimed in 2013. It was submitted by Mr. McVeety that the Appellant simply did not fit within the risk categories set out in GJ.
16. I find that whether or not the Appellant assisted the LTTE in 2007/2008 is relevant to the finding that he was detained in 2013. The judge made a finding that the Appellant had not been detained in 2013 without reference to his previous activity. I was referred to paragraph [7] of the grounds of appeal which cites the COIR report on Tamil Separatism dated 28 August 2014, to which the judge in the First-tier Tribunal was referred. This postdates GJ, and confirms that the Sri Lankan government continues to detain LTTE sympathisers. The Appellant's account is consistent with

this; he assisted the LTTE so would have been seen as an LTTE sympathiser. However, the judge made no clear finding as to whether or not the Appellant assisted the LTTE as claimed. I find that, had he made a finding on this issue, and had he taken into account the evidence contained in the COIR, it is possible that he would have come to a different conclusion about the Appellant's claim to have been detained in 2013. I find that this in turn affects consideration of the risk factors set out in GJ.

17. I find that whether the Appellant assisted the LTTE in 2007/2008 is central to the Appellant's case. It is the basis of his claim for asylum. It is his case that when he was detained in 2013 he was questioned about fundraising for the LTTE in 2007/2008, and about fundraising in the UK. I find that the extent to which he assisted the LTTE, and the extent to which he is perceived as having assisted the LTTE, is central to a consideration of the extent to which he falls within the risk factors identified in GJ.
18. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, and having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.
19. I have made an anonymity direction.

Notice of Decision

The decision involves the making of a material error of law and I set it aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

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 14 April 2016

Deputy Upper Tribunal Judge Chamberlain