



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

Appeal Number: PA/14257/2018

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
On 6 June 2019**

**Decision & Reasons Promulgated  
On 19 June 2019**

**Before**

**UPPER TRIBUNAL JUDGE DAWSON**

**Between**

**UC  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Winter, instructed by Drummond Miller (Glasgow)

For the Respondent: Mr A Govan, Senior Presenting Officer

**ANONYMITY**

I make an order that the disclosure of any matter leading to the identification of the appellant or her children is prohibited pursuant to r.14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. Failure to comply with this order may result in contempt proceedings.

**DECISION AND REASONS**

1. The appellant is a national of Sri Lanka, where she was born in 1986. She has been granted permission to appeal the decision of First-tier Tribunal

Judge McGrade who, for reasons given in his decision dated 5 February 2019, dismissed her appeal against the Secretary of State's decision refusing to grant asylum and humanitarian protection for reasons given in a letter dated 16 December 2018. The appellant claims to have arrived in the United Kingdom on 3 August 2018 and claimed asylum seventeen days later. She was interviewed substantively about her claim on 30 November 2018.

2. The judge summarised the appellant's circumstances and her claim in [6] of his decision as follows:

"6. The Appellant was born in Batticalao, in the Easter province of Sri Lanka but moved to Karaitvu shortly after she was born. She first met her husband, [VV] in August 2006. There are three children of the marriage namely [with appropriate anonymity being applied] S C (born ...2007), S C M (born ...2013) and M C (born... 2017]. Following their marriage, the Appellant's husband advised her that he had been a member of the LTTE between 1995 and 2000. From 2010 onwards, the Sri Lankan police repeatedly visited her home looking for her husband. To avoid arrest, her husband began to live elsewhere and only returned home on an occasional basis. Her husband was eventually arrested by the Sri Lankan police towards the end of 2017. However, he was released the same day. The Appellant continued to be contacted by the Sri Lankan authorities regarding the whereabouts of her husband. She considered it was no longer safe to remain in Sri Lanka. She therefore left Sri Lanka along with her children on 2 August 2018. They left Sri Lanka on their own passports but were assisted by agents. They flew to London and then travelled to Glasgow. Following their arrival in Glasgow, the Appellant claimed asylum. She has since been advised that her father-in-law was detained and ill-treated by the authorities. He died shortly after his release. She fears ill-treatment by the authorities if she and her family are returned to Sri Lanka, because of her husband's past involvement with the LTTE."

3. The judge heard evidence from the appellant and confined his consideration to the asylum claim, an approach endorsed by the appellant's representative.
4. After setting out the appellant's evidence and expressing a conclusion on its reliability and bearing on the claim, the judge concluded at [25] as follows:

"25. Given the discrepancies and the issues of credibility that I have identified above, I completely reject the Appellant's account of having been repeatedly approached by the Sri Lankan authorities over a period of around eight years between 2010 and 2018, as they were interested in her husband. I also reject her account that her husband was detained briefly in 2017 and that her father-in-law was detained and ill-treated for a period of one week after she left Sri Lanka, and died shortly thereafter. Finally, I reject the information contained in the letter that purports to have been forwarded by the Appellant's mother that the Sri Lankan police

remain interested in the Appellant. I consider the Appellant's account is so unsatisfactory that I reject even to the lower standard of proof her claim that her husband was involved in the LTTE between 1995 and 2000."

5. The grounds of challenge, in essence, argue that the judge failed to consider the country evidence in reaching his conclusions on credibility. In particular:

(a) The judge failed to consider page 147 of the appellant's first inventory of productions which refers to those at particular ongoing risk of torture, including Tamils with a real or perceived association with the LTTE in his conclusion at [19]:

"19. It is therefore extremely unclear as to why the Sri Lankan authorities would continue to have any interest in the appellant's husband as late as 2017, when his involvement with the LTTE ended in 2000."

(b) By concluding at [23], "It is therefore unclear why she is of any interest to the authorities", it is argued with reference to page 20 of the first inventory of productions, the judge did not take into account, "In 2012 the UNHCR identified a range of people with real or perceived links to the LTTE ... Persons with family links or those who are dependent on or otherwise closely related to persons within the above profiles".

(c) There was error relating to the judge's conclusion at [25] cited above. It is argued that the judge erred in law by failing to consider the evidence at page 42 of the first inventory "... former LTTE fighters and their social circles face special scrutiny and are repeatedly questioned by authorities ...".

6. In granting permission to appeal First-tier Tribunal Chohan observed at [3]:

"3. In respect of the appellant's credibility, the judge has made adverse findings, which were open to the judge on the facts and evidence available. However, there is nothing to indicate in the decision that the judge considered relevant jurisprudence and background evidence. That is important particularly in relation to risk on return to Sri Lanka irrespective of the adverse credibility findings. Indeed, it does seem that the judge failed to consider the issue of return."

7. After setting out the context for the case and a summary of the submissions, from [14] to [26] the judge set out the aspects of the appellant's evidence which gave him concerns about her credibility. I quote in particular [15] to [23].

"15. There are a number of inconsistencies in the Appellant's account. In her statement provided along with the preliminary information questionnaire, the Appellant described how her husband had to leave the family home from around 2011, in order to avoid the attention of the Sri Lankan police. She set out the position as follows:-

“So from 2011 or so, my husband was not living permanently with the children and me. From 2011 he would come and visit has once or twice a week.” (B35, para 13)

16. In her asylum interview, the Appellant indicated that her husband worked in a garment factory in Colombo. She indicated in her oral evidence that he was working in a garment factory in Colombo between 2007 and 2017. She also accepted that because of the distance between her home and Colombo, her husband was only able to come home once per month. This directly contradicts her claim that the husband was not living with her permanently from 2011 onwards because he was being sought by the Sri Lankan authorities and that he would visit only once or twice per week.
17. In her oral evidence, the Appellant accepted that the Sri Lankan authorities were aware that her husband worked in a garment factory in Colombo from 2011. Despite this, on the Appellant's account, they repeatedly came to her home enquiring after her husband, when both the Appellant and the Sri Lankan authorities knew that he was working in a garment factory in Colombo and presumably could have easily made arrangements to find and detain him there.
18. On the Appellant's account, the Sri Lankan authorities visited her home for around seven years in an effort to find and detain her husband. She indicates that by 2017, they were coming to her home up to 3 times each month (B36, para 15). Having finally caught up with him, the Appellant indicates that he was released the same day. She is unable to give any explanation as to why he was released so quickly. Given the Sri Lankan authorities had spent seven years visiting the Appellant's home in an effort to find her husband, it is extremely surprising that they should choose to let him go so quickly. I also consider it damages the credibility of the Appellant's account that she was unable to provide even the month in 2007, when her husband was arrested.
19. On the Appellant's account, her husband was involved in the LTTE as a fighter between 1995 and 2000. He left Sri Lanka in 2000 and worked in Qatar for a period of five years. Shortly after his return to Sri Lanka, he married the Appellant and operated a school bus service before moving to work in a garment factory in Colombo. It is therefore extremely unclear as to why the Sri Lankan authorities would continue to have any interest in the Appellant's husband as late as 2017, when his involvement with the LTTE had ended in 2000.
20. On the Appellant's account she and her family left Sri Lanka on their own passports. She claims that she was able to do so as the passports used contained her family name, which differed from that of her husband. Given the Appellant claims the Sri Lankan authorities visited her home for a period of seven years, it seems surprising that they had no record of the Appellant's own surname. This is particularly so, given the sophistication of the security checks operated by the Sri Lanka authorities for passengers departing from airports in Sri Lanka (cf p116-117 Respondent's bundle).

21. It is the Appellant's position that, following her departure from Sri Lanka, her father-in-law was arrested by the Sri Lankan authorities and detained for one week. She describes how he was attacked during his period of detention and that he died within one week. I have two concerns regarding this aspect of the Appellant's account. Firstly, I cannot understand why the Sri Lankan authorities would have thought it necessary to detain the Appellant's father-in-law for a period of one week and subject him to serious ill-treatment when they had chosen to release his son, who appears to have been the object of their enquiries, having detained him for less than one day.
22. Secondly, the Appellant has given no indication of when her father-in-law was detained or died, other than stating that it happened after she left Sri Lanka, despite being specifically asked for a date in her oral evidence. Given the significance of these events, it is very surprising that the Appellant was unable to recall when these very significant events took place.
23. A letter and translation were produced on the day of the appeal. I was advised this letter had been sent to the Appellant by her mother. The letter is very general in its terms and indicates that the police are searching for the Appellant's husband and have indicated to the Appellant's mother that they wish the Appellant to surrender to the police authorities. Given the Appellant was approached by the Sri Lankan authorities regularly over a period of seven years, they are presumably aware that she has had no involvement with the LTTE. It is therefore unclear why she is of any interest to the authorities. What I consider is also of significance is the information that is omitted from the letter. On the Appellant's account her mother refuses to speak with her, but speaks with her children. She indicated that her mother had told her children of the circumstances of her father-in-law's detention, ill-treatment and subsequent death. Despite this, the letter makes no reference to his detention, ill-treatment or subsequent death. Given the significance of this event, this is extremely surprising."

**8. The judge's conclusions were expressed at [25] and [26]:**

- "25. Given the discrepancies and the issues of credibility that I have identified above, I completely reject the Appellant's account of having been repeatedly approached by the Sri Lankan authorities over a period of around eight years between 2010 and 2018, as they were interested in her husband. I also reject her account that her husband was detained briefly in 2017 and that her father-in-law was detained and ill-treated for a period of one week after she left Sri Lanka, and died shortly thereafter. Finally, I reject the information contained in the letter that purports to have been forwarded by the Appellant's mother that the Sri Lankan police remain interested in the Appellant. I consider the Appellant's account is so unsatisfactory that I reject even to the lower standard of proof her claim that her husband was involved in the LTTE between 1995 and 2000.

26. The Appellant's solicitor accepted that the article 2 and 3 claims stood or fell with the asylum claim. I have rejected in its entirety the Appellant's account of the events that she claims caused her to flee Sri Lanka. I therefore reject her claims on the basis of articles 2 and 3. No other human rights arguments were advanced and I do not consider any other human rights issues arise in this appeal."

9. Unprompted, Mr Winter acknowledged that the credibility findings were not challenged but qualified this by adding that were error established, another judge may approach the evidence differently. He accepted that the first passage in the decision that is challenged in the grounds is [19]. It is argued that the judge had failed to consider the background evidence that was submitted. Specific reference is made to a report by Asylum Research Consultancy dated March 2016 which is described as a Sri Lanka COI Query Response - Update. At page 147 reference is made to a UK NGO Freedom From Torture Report dated August 2015 covering torture from May 2019 to September 2013. A key finding included:

"The Sri Lanka authorities take a strong interest in the activities of the Tamil Diaspora in the UK and many returning to Sri Lanka with a real or perceived past connection to the LTTE, at whatever level and whether directly and/or through a family member or acquaintance, have been tortured and interrogated about their activities and contacts in the UK."

10. Mr Winter also acknowledged that there was no challenge to the judge's findings at [20] and [21]. I asked him whether there was evidence that family members were detained when there was adverse interest in another member and he drew my attention to an Amnesty Report dated September 2014 that was before the judge, in particular an extract at page 84:

"The Sri Lankan intelligence services have continued to hunt down people who fail to admit their association with the LTTE and according to former detainees who have spoken to Amnesty International the treatment meted out against them by detaining authorities is very harsh. Systematic abuse including torture and sexual violence of former LTTE members who fail to surrender to the authorities or people suspected of unacknowledged LTTE links and abuse by their families by members of the security forces continues to be reported to Amnesty International by victims."

11. Mr Winters continued his submissions with confirmation there was no challenge to the reasoning in [22] but as to [23], he relied on the second ground which argues the judge had failed to properly consider the background evidence with reference to a report by INFORM for 2017, in particular the reference at 3.48:

"In 2012, UNHCR identified a range of people with real or perceived links to the LTTE:

...

Persons with family links or who are dependent on or otherwise closely associated to persons with the above profiles.”  
...”

- 12.** The third ground argues the judge had erred by failing to consider evidence from the Asylum Research Consultancy Report I have referred to above, in particular, the extract:  
“Former LTTE fighters and their social circles face special scrutiny and are repeatedly questioned by authorities, infiltrated by intelligence personnel, and encouraged to inform on their associates.”
- 13.** Mr Winter acknowledged the guidance given by the Tribunal in *GJ and Others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC). He contended however that the appellant was not an “airport case” in the sense of what would happen to her on arrival but instead whether she would be at risk in her home area.
- 14.** By way of response, Mr Govan submitted that Mr Winter had sought to argue matters beyond the grounds. He contended that the judge was entitled to take into account the plausibility point regarding the lapse of time since the appellant’s husband’s claimed involvement in the LTTE and the continuing interest it is said the authorities had in him. He challenged particularly that the second ground ignored the reasoning given by the judge for his credibility findings. Nowhere had the judge said that the events could not have happened but that they had not happened to this appellant or her husband. Mr Winter had nothing to add by way of response except to acknowledge that although the grounds tail off with a reference to a failure by the judge to assess risk on return, this would stand and fall with the assessment of the appellant’s credibility.
- 15.** In my judgment, the judge gave cogent reasons for questioning the credibility of the appellant’s account by reference to an acknowledged serious inconsistency. Otherwise the adverse findings were largely based on plausibility concerns. At the beginning of his decision, the judge set out the evidence for the appellant which included two inventories of productions and a letter and translation. There was no reason to believe that the judge did not take these into account. It is surprising however that the judge made no specific reference to *GJ and Others* the headnote of which was produced at the hearing. The case is referred to in the refusal letter found in the respondent’s bundle to which the judge made reference as to the interview (at [15] and [18]) and as to an article from Refworld (at [20]).
- 16.** Whilst a judge does not need to refer to every piece of evidence before him, specific reference to country information and relevant country guidance cases is desirable if there is an adverse finding based on external implausibility. The challenge in this appeal is to the sustainability of findings in the light of particular evidence identified in the grounds. Whilst I am not necessarily persuaded that the judge failed to have proper

regard to the country information as a whole, I have nevertheless considered this case on the basis that the specific passages relied on in the grounds were not taken into account and asked the question whether on any reasonable view had the judge done so, whether it would have made any difference.

- 17.** The guidance given in *Gj and others* makes it clear what is currently driving the Sri Lankan authorities' approach. In particular at [8], the Tribunal explained:

"8. The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the Diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. 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 Lankan state or after the Sri Lankan government."

- 18.** As will be seen from the decision at [19] the judge raises a point which I consider fundamental. Why would the Sri Lankan authorities continue to have any interest in the appellant's husband as late as 2017? There was no evidence before the judge of the appellant's husband undertaking any activities that could come within the category of those at risk or of interest identified by the Tribunal in *Gj and Others*. The country information to which I was directed by Mr Winter and recorded in the grounds needs to be considered in the context of the comprehensive assessment of evidence undertaken by the Tribunal in *Gj and Others*. This includes the ongoing risk reported by ARC at p 147 of the bundle from the Freedom from Torture report issued in August 2015 that covered torture between 2009 and 2013 and thus within the time frame considered in *Gj and others*. Likewise, the extract from the UNHCR report in ground 2 predates *Gj and Others*. The final ground refers again to the ARC report which cites a Minority Rights Group report for 2015 refers to scrutiny faced by former LTTE fighters and their social circles, their repeated questioning, infiltration and the encouragement on them to report on others. Taking account of the appellant's evidence of the events in her husband's life recorded at [19] and the guidance given in *Gj and Others*, I am not persuaded that this general evidence from MRG is sufficient to undermine the reliability of the judge's finding that it was unclear why the authorities would continue to be interested in the appellant until as recently as 2017. The country guidance decision represents an authoritative statement on the situation in 2013 and in my judgment none of the evidence relied on in the grounds is sufficient to justify a departure from the tribunal's findings.
- 19.** The judge is not required to state how he or she has factored in every piece of evidence relied. Instead it is for the judge to explain in clear terms what evidence was taken into account in reaching a conclusion and the reasons for that conclusion. To that extent I am satisfied that Judge



McGrade erred but I do not consider it material. Had the judge specifically referred to the country information referred to in the grounds and the guidance given in *Gj and Others*, I do not consider it could have made any difference to the safety of his findings. Despite this error I do not consider the decision requires to be set aside and I dismiss the appellant's appeal.

Signed

Date 14 June 2019

UTJ Dawson

Upper Tribunal Judge Dawson