



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

Appeal Number: HU/04670/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2017**

**Decision & Reasons Promulgated  
On 14 December 2017**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**K U  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Fisher, Counsel instructed by JCWI

For the Respondent: A Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision dated 6<sup>th</sup> February 2017 of First-tier Tribunal Judge Walker which found that the appellant had not made out an asylum or human rights claim such that he could defeat deportation.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue the anonymity order made by the First-tier

Tribunal. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim and to his minor children.

3. This matter has a somewhat complicated history of which I set out the salient points now. The appellant was born in 1962 in Sri Lanka. He came to the UK on 7 June 1981 as a visitor with leave for one month. His application to extend his leave as a student was refused on 29 March 1982. An appeal against that refusal was dismissed on 14 March 1983.
4. On 21 August 1987 the appellant married a British citizen. However, on 21 January 1997 his wife reported him for assault and the marriage broke down, ending in divorce.
5. He then claimed asylum in 1989, the respondent refusing that application on 18 September 1992. However, due to country conditions then pertaining in Sri Lanka he was granted exceptional leave to remain until 8 September 1999.
6. On 24 July 1991 the appellant married a British citizen. He has two daughters from that marriage, one born on 10 September 1998 and one born on 5 August 2003. The appellant and his second wife separated and, very sadly, she died on 13 June 2012 whilst the appellant was in prison.
7. On 21 May 2008 the appellant was sentenced to nine months' imprisonment for theft from a vehicle and handling stolen goods. On 13 April 2012 he was convicted of two counts of failing to surrender to custody and handling stolen goods and sentenced to nine months' imprisonment. That led to deportation proceedings being taken out against him. The appellant appealed and First-tier Tribunal Judge Walker allowed the appeal in a decision dated 4 December 2012.
8. The respondent sent the appellant a warning letter dated 11 December 2012 informing him that deportation would be considered again if he came to adverse notice in the future. The appellant went on to offend again. On 21 April 2015 he was convicted of handling stolen goods and was sentenced to thirty months' imprisonment. Inevitably, deportation proceedings were recommenced. On 5 February 2016 his asylum and human rights claim was refused and he was served with a deportation order. The appeal happened to come before the same judge, First-tier Tribunal Judge Walker, on 26 January 2017. Nothing turns on the same judge hearing the two deportation appeals.
9. The written grounds run to 44 paragraphs and set out argument under eleven heads of challenge. The permission decision dated 13 September identifies that Ground 1, challenging the decision refusing the protection

claim, was arguable. This ground is set out in paragraphs 6-10 and maintains that the judge failed to take into account material from the appellant's 1989 asylum claim. That material stated that the appellant had been a supporter of the LTTE who was compelled to carry out tasks for them such as carrying messages, helping to organise meetings and taking food to LTTE members who were in hiding. The decision on the protection claim was also stated to be in error as it ignored a Freedom from Torture report which post-dated GJ. The report identified a risk to Tamils with an actual or perceived association with the LTTE.

10. I do not find this ground is made out. Even taking the appellant's profile at its highest and together with the Freedom from Torture report, the judge's conclusion at [37.4] is entirely sound. Nothing shows that the appellant's case before the First-tier Tribunal here was argued on the basis of the material in his 1989 asylum claim. In his witness statement dated 13 January 2017 the appellant stated only that prior to coming to the UK in 1981 he attended some LTTE meetings whilst he was at college. He makes no reference there to the activities set out in the earlier, unsuccessful claim. Nothing explains the difference in his accounts of his alleged activities prior to coming to the UK.
11. Also, the appellant's statements from his 1989 claim were not referred to in the skeleton argument before Judge Walker. The skeleton argument did not even seek to rely on the profile set out in the 13 January 2017 witness statement but stated at paragraph 15 the basis of the asylum claim was that the appellant "would be perceived as opposed to the current regime due to his length of absence from Sri Lanka".
12. The skeleton argument also made no reference to the Freedom from Torture report at all and nothing indicates that there was any argument to the effect that it raised serious new evidence capable of leading the judge to distinguish GJ. On the contrary, the skeleton argument referred specifically to GJ in paragraph 14 as the source of country evidence against which to assess the claim.
13. It is also not "irrelevant" as the grounds suggest that the appellant did not raise a protection claim at all in the 2012 deportation appeal and the judge was entitled to place weight on that being so; see [37.2].
14. The grant of permission dated 13 September 2017 also identifies that:

"the judge was unarguably entitled to take into account the fact that the appellant had learned nothing from the previous deportation proceedings and continued to offend at a more serious level. Although the merit of some of the other grounds of appeal is questionable, I grant permission on all grounds given that an assessment of risk on return also impacts on the Article 8 assessment."
15. I have concluded above the First-tier Tribunal was correct to find no risk on return and, following the grant of permission, there can be no "impact on

the Article 8 assessment". The remaining grounds of appeal are, in my view, unarguable even viewed independently of arguments on the protection claim.

16. There is no merit in the suggestion that Judge Walker failed to follow the guidance in Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka [2002] UKIAT 00702. It is now well-understood that an earlier asylum decision is only a starting point. Judge Walker acknowledged the finding from 2012 that deportation was disproportionate on the basis of the appellant's relationship with his daughters; see [37.10]. The background set out above, as the judge pointed out at [37.32], makes it manifest that "the situation is very much different now to it was in 2012". The appellant had reoffended in the face of previous deportation proceedings. His offence was significantly more serious. The children were older. They had lived for a longer period of time with their grandmother as primary carer and legal guardian, the appellant being in prison for a further extended period. The grounds are wholly wrong in stating at paragraph 14 that "the facts had not changed by the time of the 2017 determination". The First-tier Tribunal took a correct approach to the earlier determination in line with Devaseelan \*.
17. Ground three is merely a disagreement with the findings of the First-tier Tribunal on the appellant's relationship with his children and the impact on them if he is deported. The question of how much weight to place on the independent social work report was for the First-tier Tribunal. The judge takes the social work report into account, accepting that the appellant's deportation would be a "potentially severe loss" for the children; see [37.9], [37.15] and [37.16]. Notwithstanding the conclusions of the social work report at its highest, the "unduly harsh" assessment under paragraph 399(a) of the Immigration Rules also required the appellant's conduct and other factors to be taken into account. The facts here were such that it was open to the judge to find that that deportation would not be unduly harsh; see for example [37.12] and [37.13] on his secondary role in the children's lives and his criminal profile.
18. Having reached that conclusion, the objection in the grounds to further comments in [37.16] to the children possibly visiting the appellant in Sri Lanka and being in contact with him indirectly cannot be material. At the time of the hearing, the evidence was that the children were cared for by their grandmother and the judge was not required to look ahead in order to assess the situation were she to become more seriously unwell. The judge's comments at [37.32] and [37.14] on the appellant's shortcomings as a partner and parent are uncontentious, his own evidence being that he suffers from guilt in these regards.
19. Ground 5 argues that the judge erred in his assessment that it would not be unduly harsh for the appellant's current partner to remain in the UK without him. This submission has no merit at all. As the judge indicated at [37.17]-[37.19] the relationship was formed when the appellant was here without leave and had already faced deportation proceedings. He had

been in prison for part of the time that the couple had been together and the evidence was that the partner had a large extended family including seven children who she saw on a regular basis. It was entirely open to the judge to conclude that they could provide some support to the partner and that all of these factors, together with the appellant's serious reoffending, indicated that paragraph 399(b) could not be met.

20. It is also unarguable that the judge took a lawful approach in finding that the appellant was not socially and culturally integrated into the UK, demonstrated by his offending behaviour; see [37.21]. The judge was equally entitled to find that there would not be very significant obstacles to his reintegration in Sri Lanka where he spent all of his formative years there.
21. The ground at paragraphs 34-39 really only seek to reargue the Article 8 proportionality assessment which the First-tier Tribunal Judge set out at [37.31]-[37.32]. The judge makes proper reference to earlier assessments under paragraphs 399 and 399A. The weight to be placed on the appellant's reoffending in a significantly more serious manner was a matter for the judge and the approach taken was eminently rational.
22. The grounds at paragraphs 40 - 43 argue that the First-tier Tribunal did not apply correctly the legal tests of J v SSHD [2005] EWCA Civ 629 to the appellant's medical evidence and his risk of self harm or suicide. The First-tier Tribunal addressed this matter at [37.24]-[37.30].
23. The first of the criteria from J is for:

“an assessment to be made of the severity of the treatment which it is said that the applicant would suffer if removed. This must attain a minimum level of severity. The court has said on a number of occasions that the assessment of its severity depends on all the circumstances of the case.”

The judge here considered carefully the medical evidence concerning the records of the appellant's expression of ideas of self harm or suicide and his treatment across those paragraphs. The grounds do not suggest that the judge omitted to consider material parts of any of the medical evidence. The conclusion at [37.29] is that:

“... his declared intentions of self harm and suicide have been intermittent and varied. There is no reference of any incidents of self harm or attempted suicide in recent years. Nevertheless, as and when the appellant is removed then proper provision should be made to facilitate his removal in a secure and safe fashion.”

That conclusion was open to the judge and it is a lawful finding that the first criteria in J was not met.

24. In addition, the second criteria in J states that a :


“... causal link must be shown to exist between the act or threatened act of removal or expulsion and the inhuman treatment relied on as violating the applicant’s Article 3 rights.”

As the judge noted at [37.28], the evidence here was that the appellant’s risk of self harm and suicide did not arise from fear of return to Sri Lanka but from his family circumstances in the UK and his distress at having not looked after his former wife and children sufficiently well. In addition, the judge properly finds at [37.30] that the appellant can obtain in Sri Lanka the medication that has used in the UK.

25. In summary, the First-tier Tribunal Judge here was entitled to reach the decision he did on the Article 3 suicide claim. He considered the material evidence within the correct legal matrix and no error arises.
26. For all of these reasons, the decision of the First-tier Tribunal Judge does not disclose a material error on a point of law.

### **Decision**

27. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed 

Date: 27 November 2017

Upper Tribunal Judge Pitt