



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/04117/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2<sup>nd</sup> May 2018

Decision & Reasons Promulgated  
On 25<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MR SS  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms Emma Stuart-King, Counsel instructed by Tamil Welfare Association (Romford Road)

For the Respondent: Ms N Willocks-Briscoe, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against a decision of the Secretary of State of 13<sup>th</sup> April 2017 to refuse his application for asylum in the UK. First-tier Tribunal Judge Davidson dismissed the appeal in a decision dated 9<sup>th</sup> November 2017. The Appellant now appeals to this Tribunal with permission granted by Deputy Upper Tribunal Judge Zucker on 8<sup>th</sup> March 2018 following a renewed application for permission to appeal to the Upper Tribunal.

2. The background to this appeal is that the Appellant claims that he joined the LTTE in 2001 at the age of 14 and undertook training between 2001 and 2006 before working in intelligence until the end of the war in 2009. He claims that in 2009 he was arrested by Sri Lankan officials because of his presence in a Sri Lankan army controlled area without registration and was detained on suspicion of being connected to the LTTE, forced to sign a document which he did not understand and tortured. He claims that he was released from detention in 2011 on payment of bribe by his uncle and on reporting conditions. Instead of reporting he claims that he fled to Colombo with the help of an agent. He obtained a Tier 4 (General) Student visa to enter the UK and arrived on 11<sup>th</sup> July 2011. He claimed asylum in May 2013. He claims to have been involved in sur place activities with the Transnational Government of Tamil Eelam (TGTE) in 2013 and 2017.
3. The First-tier Tribunal Judge found that the Appellant was involved with the LTTE in Sri Lanka to some degree. The judge accepted that there was evidence that he was a supporter of the LTTE and that he was detained although he found that “it is possible that he has exaggerated his involvement” [47]. However, the judge considered that there was no evidence to suggest that the Appellant was a major figure within the LTTE or that he would be considered a threat to the current Sri Lankan authorities on that basis. The judge found that there is insufficient evidence that the Appellant’s past history would make him a person of interest now [47]. The judge rejected the court documents submitted by the Appellant [49]. The judge found that the Appellant is not likely to be on a stop list and that the Appellant’s evidence in this regard was speculative and had no evidential basis [50]. The judge found that the Appellant is currently involved with TGTE in the UK which remains a proscribed organisation and that this potentially brings him within the scope of people of threat to the Sri Lankan authorities as a promoter of Tamil separatism. However, he found that the Appellant “does not take a sufficiently significant role such that he is likely to be perceived to be a threat to the integrity of Sri Lanka as a separate state” [51].
4. The renewed grounds to the Upper Tribunal contend that the First-tier Tribunal Judge misapplied the law, failed to consider material evidence and failed to refer to or consider a relevant fact material to the issue of risk on return. It is contended that the judge failed to consider that the Appellant was on a reporting condition when he fled Sri Lanka and that the authorities continued to make enquiries about him as a person who has breached his reporting conditions it is contended that he would be at risk if returned to Sri Lanka now. It is contended in the second ground that the judge failed to consider whether membership per se of a proscribed organisation such as the TGTE places the Appellant at risk particularly in light of his accepted past support for the LTTE, reliance is placed on the case of **UB (Sri Lanka) [2017] EWCA Civ 85**. Reliance is also placed on the Country Policy and Information Note – Sri Lanka: Tamil Separatism of June 2017 which states that membership or affiliation of de-proscribed groups is no longer regarded by the Sri Lankan government as terrorism or terrorist activity. It is contended that the judge failed to consider a recent Home Office fact-finding mission report on Sri Lanka from 2016 and the Country Policy and Information Note of June 2017 which says the arrest and

detention of persons perceived to be associated with the LTTE continues. The fourth ground contends that the judge erred at paragraph 52 in concluding that the Appellant did not fall within the scope of Article 3 because he had failed to discharge the burden of showing what his treatment needs are and that these are not available in Sri Lanka. It is contended that the judge failed to consider the report of Dr Chiedu Obuaya and the report of Dr Harihan in relation to the Appellant's diagnosis of PTSD and severe depression.

5. At the hearing these grounds were further developed. Ms Stuart-King sought to distinguish the facts of this case from those in the case of **UB (Sri Lanka)**. She pointed out that the Appellant here had produced a TGTE membership card and the judge accepted found that he was involved with the TGTE whereas there was no explicit finding that the Appellant in the case of **UB (Sri Lanka)** had been a member of the TGTE. Later in the hearing Ms Stuart-King acknowledged that in fact that no TGTE membership card had been before the judge submitting that at that point the Appellant was awaiting a membership card.
6. Ms Stuart-King further pointed out that this Appellant had previously been of interest to the authorities in Sri Lanka whereas the Appellant in **UB (Sri Lanka)** had not. She referred to the grant of permission to the Court of Appeal by Lord Justice Flaux in the case of **KK (Sri Lanka) v Secretary of State for the Home Department [2017] EWCA Civ 2412** where Flaux LJ considered that it was arguable that membership of the TGTE could place the Appellants in that case at risk. She submitted that the judge erred in requiring that the Appellant to show that he had a significant role in the TGTE to demonstrate that he is at risk.
7. Ms Stuart-King referred to paragraph 351 of **GJ** where the Tribunal said:
 

“351. Our overall conclusion regarding diaspora activities is that the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state. Attendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.”
8. In Ms Stuart-King's submission this takes a more nuanced approach in relation to diaspora activities which is a question of fact in each case. Ms Stuart-King referred to the evidence before the First-tier Tribunal Judge and submitted that the tenor of the background evidence is that the risk of being detained and questioned is still a live one and it is not sufficient to dismiss the risk to someone on the basis that they have been involved with an organisation at a low level. In her submission the judge had to undertake a full assessment of the history and the background evidence before concluding whether the Appellant was at risk. She has contended that at paragraph 51 the judge did not carry out this sort of assessment in sufficient detail.
9. In the case of **UB (Sri Lanka)** Irwin LJ said at paragraph 24

“In truth, consideration of the risk to the Appellant turns not merely on him showing that he was actually a member of the TGTE, but relies on his membership being detected on arrival in Sri Lanka. There is no suggestion that this Appellant is on any list of individuals of interest to the authorities in Sri Lanka. The objective findings by the FTT are clear that any activity by the Appellant in this country, even if observed or recorded, was low level and not likely to carry risks. That activity itself would not demonstrate membership of the TGTE”.

10. In this case the judge set out the Appellant’s claim and set out his evidence in relation to his membership of the TGTE at paragraph 10. The judge set out the representatives’ submissions in relation to this issue at paragraph 38. In his witness statement the Appellant said at paragraph 2 that he had been involved with the TGTE since 2014 as a volunteer assisting in the organisation of public events and fund raising including selling tickets. The Appellant also submitted a letter framed in general terms from the TGTE confirming his involvement with the organisation. There is nothing in the evidence to show that the Appellant's involvement with the TGTE has been anything other than low level. Accordingly it was open to the judge, on the basis of the evidence before her, to find at paragraph 51 that the Appellant does not take a sufficiently significant role in the TGTE such that he is likely to be perceived to be a threat to the integrity of Sri Lanka as a separate state.
11. At the hearing Ms Stuart-King contended that the judge erred in her approach to the court documents at paragraph 49. The court documents are in the Home Office bundle at Section C, the judge dealt with the documents as follows:
 

“I find that the Appellant has not shown that the Sri Lanka court documents indicate that he is at risk on return as it not clear what these documents are, how they were obtained and who translated them. There is no supporting evidence from the Sri Lankan lawyer to explain the process.” [49]
12. Ms Stuart-King submitted that the judge dealt with these documents in a perfunctory manner. She submitted that, on the one hand the judge accepted the Appellant’s own evidence, but on the other rejected the court documents. She submitted that it seems that the Appellant’s evidence is accepted as a whole and there was therefore a conflict in the reasoning in relation to the documentary evidence.
13. In my view this ground has not been made out. The translated documents are at pages C17 to C25. As pointed out by the judge there is no evidence as to how these documents were obtained and there are no certified translations. Therefore, it is open to the judge to conclude at paragraph 49 that she did not consider the documents reliable.
14. Ms Stuart-King contended that the judge erred at paragraph 50 where she found that the Appellant is not likely to be on a stop list. She said “the Appellant’s own evidence on this was speculative and had no evidential basis.” Ms Stuart-King contended that on the judge’s approach to this matter, is not clear how anyone would know if they are on a stop list until they have actually been stopped. She contended that the judge had not said what evidence she would expect to see to be satisfied that

someone is likely to be on a stop list. She contended therefore that this discloses a want of proper reasoning and a failure to refer to the background evidence.

15. However, it is clear to me that this finding follows from paragraph 49 where the judge found that the court documents were not reliable and made reference to the absence of a supporting letter from a Sri Lankan lawyer to explain the process. In light of the concerns expressed about the court documents, the judge went on to conclude that the Appellant was not likely to be on a stop list. In my view this finding was clearly open to the judge on the basis of the evidence before her.
16. In essence the grounds take issue with the judge's findings and credibility and reasoning. I accept that the judges' reasoning is brief. However, in my view it is adequate the judge dealt with the Appellant's claim to have been involved with the LTTE and Sri Lanka. At paragraph 47 the judge accepted that the Appellant had some involvement but it is possible that he has exaggerated his involvement. The judge gave sufficient reasons in relation to this finding at paragraph 47. It is clear throughout the reasoning that the judge had in mind the risk factors identified in the case of GJ. At paragraph 48 the judge recognised that past persecution could indicate future risk. The judge considered the court documents at paragraph 49 and gave sufficient reasons for this finding. The finding at paragraph 50 flows from the finding in paragraph 49.
17. The grounds contend that the judge failed to make sufficient findings as to the Appellant's claim that he was subject to reporting conditions. In my view this is sufficiently covered by the findings at paragraph 49 when read with paragraph 47. The judge has not accepted the Appellant's claim in relation to the court documents and found that the Appellant had exaggerated his involvement at paragraph 47. In my view it is clear, reading these together, that the judge rejected the Appellant's claim to have been subject to any further interest to the Sri Lankan authorities.
18. Reading the decision as a whole it is clear, in my view, that the judge undertook a fact-sensitive assessment of the risk to the Appellant in light of his sur place activities.
19. In terms of Article 3 Ms Stuart-King submitted that paragraph 454 and 455 of GJ says that treatment by a psychiatrist is not available in Sri Lanka. She referred to paragraphs 43 and 44 of the medical report which referred to treatment recommended. Ms Stuart-King contended that the judge erred at paragraph 52 in her approach to the Appellant's medical condition under Article 3. She submitted that the judge failed to consider the medical evidence which states that the Appellant is suffering from PTSD and depression and is receiving treatment in this country. There was no evidence identified or put to the judge that supported the contention that no treatment would be available to him in Sri Lanka. There is no reference to evidence about the availability of psychiatric care in Sri Lanka in the psychiatric report. That report states at paragraph 53 that at present the Appellant has a low risk of further deliberate self-harm in the short and intermediate term. It states at paragraph 55 that the Appellant's risk of suicidal behaviour or serious self-inflicted

harm may increase to a moderate level upon hearing that he would definitely be returning to Sri Lanka during transit there and once he was back. However, there is no evidence that any medical treatment he would be able to access in Sri Lanka would be such that there would be a breach of Article 3 in returning him there. This ground has not been made out.

20. At the hearing Ms Stuart-King submitted that the Tribunal erred in failing to look at the issue of the Appellant's return in light of his medical evidence under paragraph 276ADE of the Immigration Rules and in terms of the potential for him to integrate upon return to Sri Lanka. However, this matter was not raised in the grounds of appeal to the First-tier Tribunal or to the Upper Tribunal. Although she submitted that this issue was **Robinson** obvious I do not accept that this was the case in particular in light of the judge's findings at paragraph 52 in relation to the Appellant's medical condition.
21. Having considered all of the grounds and submissions I find that there is no material error of law in the First-tier Tribunal Judge's decision.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain a material error of law.  
The decision of the First-tier Tribunal shall stand.  
An anonymity direction is made.

### **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 their 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: 24 May 2018

Deputy Upper Tribunal Judge Grimes

### **TO THE RESPONDENT** **FEE AWARD**

The appeal is dismissed and there can be no fee award.

Signed

Date: 24 May 2018

Deputy Upper Tribunal Judge Grimes