



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

Appeal Number: PA/00391/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 December 2019**

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

**Before**

**UPPER TRIBUNAL JUDGE KEITH**

**Between**

**‘KP’  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**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. Failure to comply with this direction could lead to contempt of court proceedings.*

**Representation:**

For the appellant: Ms K Jones, Counsel, instructed by Gurney Harden Solicitors

For the respondent: Mr S Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. These are the approved record of the decision and written reasons which were given orally at the end of the hearing on 5 December 2019.

### **Introduction**

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Abebrese (the 'FtT'), promulgated on 17 September 2019, by which he dismissed the appellant's appeal against the respondent's refusal of his protection and human rights claims on 13 December 2018. This decision had in turn refused the appellant's application for leave to remain based on his political loyalties to the 'LTTE', as constituting a claim of asylum or humanitarian protection; and the appellant's claim that such refusal would breach his rights under Articles 2 and 3 of the European Convention on Human Rights ('ECHR').
3. In essence, the appellant 's previous claim of asylum had been rejected by the respondent and also by a previous First-tier Tribunal in November 2016. The respondent did not accept further correspondence from a Sri Lankan attorney as accurate, as the correspondence had merely referred to allegations made by the appellant's mother, rather than within his personal knowledge. Even taking the lawyer's assertions at their highest that there was an outstanding arrest warrant, the respondent's view was that this did not mean that he had been charged with any offence or that he would be detained on questioning. He had previously referred to being arrested with other young males of a similar age to him, following an explosion in the village and it begged the question of why he would still be of interest. His claim to have been involved with the LTTE, taken at its highest, was as a low-level member and whilst the Sri Lankan lawyer had referred to an arrest warrant being outstanding in the absence of any '*sur place*' activities if detained he would be released shortly without charge.

### **The FtT's decision**

4. The FtT dealt with a renewed application for an adjournment, which had previously been made at the end of January 2019, and to which I will make further comment later in this decision. This was renewed on the day before the FtT's hearing and at the hearing itself. The FtT referred to the earlier applications which were apparently made on the basis of the need to adduce new evidence and had been refused as the appellant had entered the UK on 23 March 2015 and had had ample opportunity to obtain any evidence since 2015. The FtT did not accept the qualifications of the Sri Lankan attorney, noting that only photocopies of his qualifications had been provided; and the lawyer's assertion about the existence of an arrest warrant was undermined by the absence of such an arrest warrant. Overall, the FtT did not accept that the appellant would be at risk of persecution by the Sri Lankan authorities, including by reference to the well-known case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)

### **The grounds of appeal and grant of permission**

5. The appellant lodged grounds of appeal which are essentially that the FtT had arguably applied the incorrect test in deciding whether to adjourn the hearing and had also failed to engage with the evidence of the Sri Lankan lawyer. The grounds also asserted that the FtT had failed to consider the risk of detention on return as amounting to a breach of the appellant's rights under article 3, even if he were released; and the FtT had failed to consider whether he fell within one of the risk categories identified in GJ.
6. First-tier Tribunal Judge Grant-Hutchison granted permission on 28 October 2019, regarding it is arguable that the FtT had failed to apply the correct test on the issue of adjournment; and in considering the evidence of the Sri Lankan attorney. The grant of permission was not limited in its terms.

### **The hearing before me**

7. In terms of the hearing before me, Ms Jones reiterated that the primary, although not sole focus of the error of law, had been in the FtT's Judge's refusal to adjourn the hearing. Whilst Ms Jones was not aware of the circumstances of the earlier January application, what was clear was that the FtT had failed to consider not only the reasons for any delay in obtaining the arrest warrant but in particular the importance of that arrest warrant to the decision in question which was potentially determinative of the appeal. If the arrest warrant had been issued, as claimed, then the appellant would surely fall within one of the risk categories in GJ.
8. Mr Walker on behalf of the respondent expressly conceded that there had been a material error of law by the FtT in not adjourning the hearing, noting the well-known authority of SH (Afghanistan) v SSHD [2011] EWCA Civ 1284 and also the well-known authority of Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC). Even if, as may well be the case, there had been a substantial delay by the appellant's representatives in seeking to obtain the arrest warrant, nevertheless because of the importance of the arrest warrant to the proceedings and the appellant's claim, the appellant had been denied a fair hearing.
9. In light of the respondent's concession, I conclude that the FtT did err in law in not adjourning the hearing. I regarded it as appropriate to set aside the Tribunal determination without any preservation of findings, as the existence of the arrest warrant was critical to the FtT's conclusions about the appellant's credibility and the risk to him on his return.
10. By way of assistance to the parties, I set out the precise circumstances of the previous adjournment application, as Ms Jones was not aware of these in full. The adjournment application had been previously made as part of a 'reply notice' on 29 January 2019. This had included a reply notice itself, which referred to the appellant not being ready to proceed with the then-listed hearing on 14 February 2019. While the reply notice did not explain why, the covering email from the appellant's solicitors did appear to attach separate written submissions, which may well not have been before the judge who was considering the pre-hearing review process in the First-tier Tribunal. In light of the written submissions not being before the judge,

the adjournment application was refused by the First-tier Tribunal because of the absence of any reasons and this application was then renewed shortly afterwards in the grounds which were made on 5 February 2019. These reattached the written submissions, the gist of which was that the decision which had been served on the appellant between 3 January 2019 and the notice of hearing, served on 17 January 2019, allowed insufficient time to prepare for the hearing and this was important in two respects. First there was a need to obtain further evidence from the Sri Lankan attorney; and second, an independent psychiatric report. In light of the correspondence of 5 February 2019, the Tribunal then adjourned the hearing in a decision on 13 February 2019. By 6 July 2019, the appellant's solicitors applied for an adjournment of the relisted hearing on 16 July 2019, which referred to the appellant's solicitor being in dialogue with the Sri Lankan attorney, and an inability to obtain the arrest warrant, in part because of an absence of a response from the Sri Lankan courts and also because of strike action in the local area. There is no explanation by Ms Jones for the delay between the grant of the adjournment on 13 February 2019 and the renewed adjournment application on 6 July 2019, as to the steps which were taken to obtain the arrest warrant. Ms Jones confirmed that for reasons of cost, while the decision on the appeal to this Tribunal was awaited, work on obtaining the arrest warrant had ceased and had still not been obtained. As the arrest warrant is said to be of central importance in the case, that will be a matter for the appellant's representatives to address without further delay.

11. On the basis of the respondent's concession, I conclude that the FtT did err in law in failing to adjourn the hearing, in order for the appellant to be able to obtain the arrest warrant, said to be central to his case. I set aside the FtT's decision without any findings of fact, but noting that there is a previous First-tier Tribunal decision unaffected by this error-of-law decision.
12. As an assessment of the appellant's credibility has been undermined, and will need to be reassessed in the context of all of wider, substantial evidence, the representatives urged me, and I agreed, to remit the matter back to the First-tier Tribunal for remaking the decision.

### **Notice of Decision**

**The decision of the First-tier Tribunal contains material errors of law and I set it aside.**

**I remit this appeal to the First-tier Tribunal for a complete rehearing.**

### **Directions to the First-tier Tribunal**

**This appeal is remitted to the First-tier Tribunal for a complete rehearing with no preserved findings of fact.**

**The remitted appeal shall not be heard by First-tier Tribunal Judge Abebrese.**

**The anonymity directions continue to apply.**

Signed J. Keith

Date: 16 December 2019

Upper Tribunal Judge Keith