



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

Appeal Number: PA/04775/2016

THE IMMIGRATION ACTS

**Heard at North Shields
On 31 May 2019**

**Decision & Reasons Promulgated
On 18 June 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MR SANJAYAN NAGARATNAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None

For the Respondent: Ms R Pettersen, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Sri Lanka, came to the UK as a student on a Tier 4 Student visa circa 2010 and was extended in that capacity until 30 November 2015. Five days beforehand he claimed asylum on the basis that he had been recruited by the LTTE as an informer and had been detained and ill-treated by the Sri Lankan authorities. In April 2016 the respondent refused his asylum claim, finding him not credible. He appealed, maintaining his claim to have been a member of the LTTE and relying on his sur place activities said to have begun in 2014. In a decision sent on 5 January 2017 Judge Hands of the First-tier Tribunal dismissed his

appeal. The judge did not find his account credible and considered that his activities in the UK attending demonstrations protesting against the Sri Lankan government would not bring him to the attention of the authorities in Sri Lanka.

2. The appellant was granted permission to appeal against the decision of Judge Hands, and on 8 August 2017 Deputy Upper Tribunal Judge Doyle set aside Judge Hands' decision for error of law as set out at paragraphs 21-26 of the latter's decision, although very expressly preserving her findings of fact. On remittal the case came before Judge Holmes of the FtT. He treated Judge Hands' preserved findings of fact as his starting point and concluded that he would confirm them. At paragraph 80 he concluded:

"80. Drawing these findings together, I am not satisfied that the Appellant has yet come to the adverse attention of the Sri Lankan authorities, or that there is a real risk that he is currently perceived to be a member or activist or officer of the TGTE. It follows that I am not satisfied that the Appellant's name appears upon a 'stop list', or that he faces the prospect of detention at the airport upon return. He does not fall within the category of persons listed in paragraphs 7 or 9 to the summary guidance in GJ (post civil war returnees) Sri Lanka CG [2013] UKUT".

3. Before me there was no appearance by or on behalf of the appellant and no communication had been sent to the Tribunal to explain the non-attendance. In the circumstances I decided to proceed with the hearing in the absence of one of the parties and heard brief submissions from Ms Pettersen who relied on the Rule 24 notice.
4. The appellant's written grounds aver that the judge made two material errors of law:
 - (1) in failing demonstrably to engage with the June 2017 Home Office Tamil Separatist report/guidance that demonstrates that the Sri Lankan authorities have a presence at pro-LTTE sur place activity in the UK. It was submitted that whether or not the appellant was involved with TGTE, the judge was required, but failed, to engage adequately with whether the Sri Lanka authorities would perceive the appellant to be involved in post-war separatism in a specific manner;
 - (2) in failing demonstrably to engage with the appellant's evidence that the websites on which it was said his photograph had appeared are not exclusive to any particular group and could be accessed by anyone.
5. Dealing with ground 1 first, I consider it is not made out. Whilst the judge did not refer to the June 2017 Home Office Tamil Separatist report/guidance, he clearly took account of its contents. It was clearly the position of the judge that in order to be able to show his sur place activities would place him at risk, the appellant would first of all have to establish their nature and extent. On the findings of the judge the various

items of evidence produced by the appellant had significant shortcomings. The grounds wholly fail to make any comment on Judge Holmes' identification of such shortcomings. On Judge Holmes' findings there was no satisfactory evidence to show that the appellant had any involvement or connection with Tamil separatist politics until May 2016 and, even if the appellant was accepted as having attended the 18 May 2016 event, that was an event attended by 20,000 persons and there was nothing to suggest that the appellant was an organiser or did anything whilst present at it that would draw attention to himself. As regards the appellant's claimed attendance at events in August and November 2017 the judge considered that the chronology indicated firstly that the appellant had attended them purely to bolster his case at the appeal hearing; secondly that the appellant had not shown that photos and images of them would be publicly available on web pages (rather than hidden behind security walls or password protected); thirdly they did not identify him by name; and fourthly

"I am not satisfied that the activity recorded in the photos of his holding a photograph at a demonstration, or of sitting in the frontrow at a conference would of themselves be sufficient to place him at risk of being perceived as an activist for the TGTE or one committed to the break up of the unity of the Sri Lankan state or the resumption of the civil war" (paragraph 77).

There then follows at paragraph 78:

"78. If the Sri Lankan authorities are able to undertake within the diaspora in the UK sophisticated intelligence gathering, and monitoring of opposition activists, as claimed, then they would in my judgement be well aware that the Appellant's mere presence in these photographs was not indicative of a larger role. In short they would see him for what he is, someone who is simply seeking to create a sur place claim, without any genuine interest in the activities of the TGTE or Tamil separatism generally".


6. In my judgment paragraph 78 constitutes a plain refutation of the contention in ground 1 that the judge overlooked evidence of surveillance of such events in the UK. The judge's assessment that the appellant's sur place activities, if spied on by Sri Lankan agents, would not be seen by the latter to indicate a significant or larger role, was entirely consistent with Tribunal country guidance and other background evidence noting the sophistication of Sri Lankan intelligence activities.
7. So far as ground 2 is concerned, it is no help for the author of the grounds to state that he has checked to see if the websites identified by the appellant were publicly accessible. The judge was obliged to consider the evidence such as it was before him and it did not specify that they were publicly accessible. In any event, the judge went on to assess the appellant's claims on the basis that even if his photos and images were on publicly accessible websites, they did not suffice to show that he had any significant profile or role.

8. The appellant's grounds come down to the assertion that the Sri Lankan authorities would target and treat adversely every Sri Lankan national who attended such events, irrespective of whether they played a significant role. That assertion is not supported by background country evidence.
9. For the above reasons I conclude that Judge Holmes did not materially err in law and his decision to dismiss the appellant's appeal must stand.

No anonymity direction is made.

Signed

Date:14 June 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a loop at the end of the last name.

Dr H H Storey
Judge of the Upper Tribunal