



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

Appeal Number: PA/03442/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 October 2021**

**Decision & Reasons Promulgated  
On 15 December 2021**

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**T K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. 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 appellant or members of his family. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.**

**Representation:**

For the appellant: Ms C Bayati, Counsel, instructed by Amirthan and Suresh Solicitors

For the respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

## **Introduction**

- 1.** This is the re-making of the decision in the appellant's appeal against the respondent's refusal of his protection and human rights claims. This follows my earlier decision First-tier Tribunal had my erred in law when dismissing his appeal and that its decision should be set aside. The error of law decision is appended to this re-making decision and the two should be read together.
- 2.** The appellant is a citizen of Sri Lanka. In essence, he claims to be at risk from the Sri Lankan authorities because of political activities undertaken in the United Kingdom. He asserts that these have become known to the authorities. He would be of sufficient adverse interest to result in detention and then persecution and ill-treatment contrary to Article 3. He relies on the country guidance set out in KK and RS (Sur place activities -risk) Sri Lanka CG [2021] UKUT 130 (IAC).
- 3.** Certain findings of fact made by the First-tier Tribunal were preserved by the error of law decision: the appellant did not have a pre-existing adverse history in Sri Lanka itself, as he had claimed; the appellant had in fact undertaken a number of activities in the United Kingdom, as evidenced by video clips, and that he had spoken at two of the events in question.

## **The evidence**

- 4.** In re-making the decision in this case I have had regard to the following:
  - (a) the respondent's original appeal bundle;
  - (b) the appellant's consolidated bundle, indexed and paginated A01-A398;
  - (c) the appellant's oral evidence.
- 5.** The oral evidence was lengthy and I do not propose to set out in any detail here. A full note is contained within my record of proceedings and both representatives no doubt took a note of their own.
- 6.** In very brief summary, the appellant was questioned about his activities in the United Kingdom, including their nature, duration, and any roles he played in particular events. He was also asked about his mental health and his family in Sri Lanka. He provided further details about his political activities on behalf of an organisation called Freedom Hunters For Tamils ("FHFT"), the Transitional Government of Tamil Eelam ("TGTE"), and the British Tamils Forum ("BTF"). He told me that he had been suffering from depression but was currently feeling somewhat better because a medication. He claims that his family in Sri Lanka have been approached by the authorities because of his activities in the United Kingdom.

## **The parties' submissions**

- 7.** Ms Isherwood asked me to find that the appellant's evidence in respect of the claimed harassment of the family in Sri Lanka was not credible. There was no evidence from his parents and evidence from his mother had been deemed unreliable in a previous appeal. She submitted that the medical evidence was thin and should be given only limited weight. As regards the *sur place* activities, there were gaps and it was notable that many of the activities had taken place recently. There were no supporting witnesses for the appellant. There was no evidence to show that the Sri Lankan authorities had taken any interest in online materials or anything else the appellant had done. There was no evidence to show if they had seen any of the photographs or new that the appellant had been present at demonstrations. The appellant had not shown a sufficiently high profile. In relation to recent events, Ms Isherwood suggested that these been undertaken in order to bolster the chances of his appeal succeeding.
- 8.** Ms Isherwood acknowledged that the TGTE and BTF were proscribed organisations in Sri Lanka, but the FHFT was not and there would not be the same level of hostility towards that organisation.
- 9.** Overall, Ms Isherwood submitted that the appellant was not a genuine political activist, that he would not be on a stop list or a watch list. If he was stopped and questioned, his profile would not attract the adverse attention of the authorities.
- 10.** Ms Bayati relied on a detailed skeleton argument and a schedule of activities undertaken by the appellant, attached thereto. She accepted that the medical evidence did not add very much to the appellant's case. She emphasised the fact that the reasons for refusal letter had in fact accepted that the appellant was active in the United Kingdom on behalf of the TGTE and BTF: this was significant. She also relied on the preserved findings from the First-tier Tribunal's decision. The evidence of *sur place* activities was extensive. It showed that the appellant was committed to the Tamil cause and was highly critical of the authorities. The FHFT had been described in the Sri Lankan press as a "front" for the LTTE.
- 11.** Applying the facts to KK and RS, Ms Bayati submitted that a number of relevant factors were engaged, indicating that the appellant would be at risk on return, specifically that he would be detained after having passed through the airport. In addition or alternatively, she submitted that the appellant was genuine in his political beliefs and would wish to continue these within Sri Lanka. The only reason why he would not do so would be to avoid detention and persecution.

## **Findings of fact**

- 12.** In assessing the evidence and credibility, I have considered matters in the round and have specific regard to factors such as consistency (internal and external), plausibility, the importance of hearing oral evidence, the

absence of other supporting witnesses, and the proposition that an individual may be untruthful about certain issues, but not others. All of this has been examined through the prism of the lower standard of proof.

- 13.** The Devaseelan principles apply in so far as the 2012 First-tier Tribunal decision is relevant to the appellant's case as it now stands. The relevance is limited. The appellant's case is now firmly predicated on *sur place* activities and he has not sought to re-argue the claimed problems whilst he was in Sri Lanka. When assessing the appellant's credibility now I do, however, take into account the fact that he was found not to be "a witness of truth" in the 2012 appeal.
- 14.** I re-affirm the preserved findings of fact carried over from the First-tier Tribunal's decision. There is no new evidence before me to demonstrate that the appellant has come to the adverse attention of the Sri Lankan authorities whilst he was in that country. In respect of the preserved findings on *sur place* activities, the specific events set out at [60]-[66] of the First-tier Tribunal's decision show that the appellant attended particular events in 2015, 2017, and 2019. It is clear that he spoke at two of these events, expressing what are plainly anti-government views: for example, he describes the Sri Lankan authorities as a "genocidal government" and a "Sinhalese chauvinist government".
- 15.** Taking the evidence as a whole, I conclude that the appellant has been active in the Tamil diaspora since 2015 at the latest. I acknowledge his assertion that his activities began in 2010, but the 2012 First-tier Tribunal decision rejected his evidence about participation in a demonstration at Heathrow airport in that year and, in all the circumstances, I do not accept that he undertook any meaningful activities until midway through that decade.
- 16.** Ms Isherwood was correct to point out that there were some gaps in respect of the evidence relating to activities during the period in question. However, this of itself does not lead me to find that the appellant in fact ceased any relevant activities during these periods. All-told, there is a good deal of documentary evidence relating to activities in this country and I would not require specific corroborative evidence in respect of each and every activity undertaken month by month, year by year.
- 17.** I therefore find that the appellant has been regularly active during the period 2015 to date.
- 18.** The schedule of activities produced by Ms Bayati and appended to her skeleton argument helpfully provides references to the consolidated bundle. I do not propose to set them all out here as the parties will be well-aware of the relevant evidence relied on. It includes photographs; online news articles; social media posts (specifically, on Facebook); and publicity posters.

- 19.** The evidence relating to the *sur place* activities is detailed and emanates from a variety of sources. The appellant himself has provided detailed witness statements (in particular, the most recent), setting out both his involvement with the three relevant organisations (TGTE, BTF, and FHFT), together with specific activities undertaken.
- 20.** Starting with the first of these organisations, The factual position of the TGTE has been explored in detail in KK and RS and I do not need to say anything more here. I have taken account of the two TGTE letters by Mr Yogalingam. It is true that he did not attend the hearing and this has a bearing on weight. Having said that, the letters are relatively detailed and, in respect of the activities said to have been undertaken by the appellant, they are consistent with what he has said and, to an extent, what the photographic and other evidence indicates. In isolation, the TGTE-issued membership card adds little, for reasons explained in KK and RS. Having said that, the rest of the evidence relating to this organisation does, I find, demonstrate regular participation in events and assistance with the organisation of demonstrations and community events.
- 21.** The FHFT is an organisation not dealt with in KK and RS. I do not have any letter from the organisation, nor did anyone attend as a witness, a fact which I have taken account of and one which potentially raises a concern. There is a good deal of documentary evidence contained in the consolidated bundle, however. It appears to be an organisation set up in 2020. The membership card includes the following: “I will be truly faithful to the missions of our revolutionary organisation which has a prime objective of winning the rights of the Tamils until the last breath of my life and I agree to obey the laws of the land and the guidance of the freedom hunters for Tamils.”
- 22.** Importantly, the organisation has been the subject of adverse coverage in the online media. An article on Sinhala.net, dated 20 February 2021 includes the following:

“A LTTE Tamil terrorist front organisation called “Freedom Hunters for Tamils” are using the image of Lord Buddha in a disgraced manner in their logo.

... The founders of this pro-Tamil terrorist group have used a disgraced image of Lord Buddha as their official logo.

While seeking for lasting peace and security for the Tamils in Sri Lanka, the Freedom Hunters for Tamils are glorifying the LTTE Tamil terrorism and separatism in Sri Lanka.

[Various photographic images taken from the FHFT’s Facebook page are then reproduced]

Unconfirmed sources informed that many of the members of the “Freedom Hunters for Tamils” are former LTTE terrorists who are living illegally in the UK and working full-time for various LTTE Tamil terrorist front organisations and for Tamil criminal gangs.”

- 23.** This particular item of evidence has not been challenged by the respondent.
- 24.** Despite the absence of witnesses from the organisation at the hearing or a specific letter of support, I find that the FHFT is a genuine organisation which is avowedly anti-government. I have not been directed to any express statements attached to it promoting Tamil Eelam, but there is evidence of some organisational links with the TGTE (at least in respect of holding demonstrations) and this, combined with the SinhalaNet article satisfies me that the organisation is known about beyond the Tamil diaspora and is regarded by pro-government sources in certain sections of the media at least as something akin to a “front” organisation for the LTTE. It is at least reasonably likely that the Sri Lankan authorities themselves are either already aware of this organisation, or would become aware of it if the appellant’s *sur place* activities were investigated. It is also at least reasonably likely that the authorities would regard the FHFT with hostility, albeit perhaps not to the same level as in respect of the TGTE.
- 25.** The evidence as a whole satisfies me that the appellant is a member of the organisation: his name appears in the list of such individuals in numerous Facebook posts. There is undisputed evidence of the FHFT Facebook page and the number of postings relating specifically to the appellant (and showing his picture). The postings include text condemning the Sri Lankan government, demanding justice for the victims of what is described as “war crimes” by the government and/or military personnel. Some of the posts make specific links with the TGTE. Photographs contained within posts show the appellant in high visibility vests, with a microphone, putting up posters, holding banners, and in at least one, holding a banner emblazoned with the LTTE emblem. In terms of the readership of the posts, there was no evidence before me to indicate that the Facebook page was on a private setting. Indeed, that would have defeated much of the purpose of the posts themselves in terms of seeking to gain publicity for the organisations because. Further, figures for “views” for many of the posts in question range from 250-570. The sharing figures seem to be more limited. There is of course no direct evidence that the Sri Lankan authorities have actually viewed the posts yet. This fact is of no significance one way or the other: it would be highly unusual to have such evidence. Knowledge of his activities will be a matter of inference drawn from primary facts and what is known about the Sri Lankan authorities through KK and RS.
- 26.** There is also evidence from the Metropolitan Police which shows that the appellant had been communicating with them in respect of planned demonstrations in London in 2021. In other words, he has acted as a liaison channel. The emails indicate that some of the protests were being organised by FHFT, whilst others were jointly-organised with the TGTE. In relation to the photographs, some show the appellant at indoor meetings, whilst others show him in a high visibility vest at protests. Several posters for demonstrations name the appellant as an “event organiser”. This

evidence has not been specifically challenged by the respondent. In any event, it all clearly links the appellant to the activities in question.

- 27.** Viewing this evidence as a whole, I find that the appellant has been significantly involved with the FHFT since its inception in 2020. I find that this involvement has been of a more significant nature than in respect of his activities for the TGTE.
- 28.** There is little supporting evidence in respect of the claimed activities for the BTF. I remind myself that the reasons for refusal letter expressly accepted that the appellant was a member of this organisation. There is no sound reason for me to disbelieve what he says in his witness statement about his involvement, namely that he participated in several events between July 2015 and October 2016. I find that his active involvement ceased after that.
- 29.** Having regard to this body of evidence and the fact that the respondent accepted that the appellant was involved with the TGTE and BTF and had been active in “various Tamil events and demonstrations”, I find that the appellant has undertaken the wide variety of activities claimed. It also proves that the nature of his involvement in a relatively significant number of these activities has been demonstrably above that of a simple attendee and has included speaking and/or organisational roles.
- 30.** Ms Isherwood submitted that the appellant had not engaged in the *sur place* activities out of a genuine commitment to the Tamil cause. Rather, she submitted, he had sought to bolster his protection claim. It is of course possible that everything done over the years has been part of a concerted dishonest effort to create a risk. The appellant has had a previous appeal rejected and has been disbelieved about claimed events in Sri Lanka. It is also the case that a good deal of his activities have been undertaken relatively recently and following the dismissal of his second appeal by the First-tier Tribunal.
- 31.** On my assessment of the evidence, though, I find that he has not acted out of bad faith and that he is in fact a genuine exponent of the causes for which he has campaigned whilst in the United Kingdom. In so finding I have taken into account the points described in the preceding paragraph, together with countervailing factors including: the period of his activities (2015 to date); the nature of the activities; their variety; the expressions of commitment in the written evidence; and, importantly, the clear manner in which he provided his oral evidence. Having conducted a holistic assessment of the evidence, I find that the appellant is genuinely committed to the aims of both the TGTE and the FHFT. I accept that the following passage in the appellant’s most recent witness statement represents a credible expression of the appellant’s beliefs:

“... I could not stop [my activities] because I felt that it was my duty to bring the atrocities of the Sri Lankan government to international attention. I sincerely feel that I should do my utmost to bring justice to the thousands of innocent Tamils murdered in the final war and to bring a

permanent solution to the Sri Lankan Tamils by constantly agitating for international pressure to earn a separate Tamil Eelam state. I strongly feel the only solution to save my family and others from Sri Lankan authority is to achieve a separate state for Tamils.”

- 32.** I find that the appellant’s commitment and the statement quoted above demonstrate that he would wish to continue to manifest his political beliefs in Sri Lanka. Whilst the specific question of whether he would in fact do this on return was not put, it is in my view a perfectly reasonable inference to draw that he would refrain from doing so because of the risk of detention and persecution. He is plainly aware of the Sri Lankan authorities’ human rights record and what he believes they would do to individuals like himself.
- 33.** The appellant has asserted that members of the Sri Lankan authorities had visited his family within the country and informed them that they (the authorities) are aware of his activities in the United Kingdom. It is said that this incident occurred in May 2021. I have assessed this aspect of the appellant evidence with circumspection. There is no written evidence from either of his parents and I remind myself that his mother’s evidence was given no weight by the First-tier Tribunal. It is also the case that individuals may, not uncommonly, embellish a genuine account by adding in extra elements which they believe might help their case.
- 34.** Notwithstanding a degree of hesitation, I am prepared to accept, in the particular circumstances of this case, that the appellant has told the truth about this aspect of his claim. My reasons for this are as follows. Firstly, I have found the appellant to be generally credible in respect of his activities in the United Kingdom and his genuine belief in them. Secondly, the nature and duration of his *sur place* activities are such that it is plausible and consistent with the country guidance that the Sri Lankan authorities have in fact become aware of them. Thirdly, given what is known about the use of intelligence gathered from the diaspora, it is plausible that it would have been passed back to Sri Lanka from the United Kingdom. Fourthly, it is plausible that the authorities would, in the circumstances of this case, have acted by visiting family and intimidating them, as claimed. Fifthly, the appellant provided in oral evidence what I consider to be a plausible explanation for the absence of evidence from his parents, namely a fear on their part, given a very recent experience of intimidation by the authorities. Sixthly, the decision of the First-tier Tribunal has been set aside, including any findings in relation to the appellant’s mother. Seventhly, the 2012 First-tier Tribunal decision did not include any adverse findings in respect of the appellant’s mother. Eighthly, and whilst not a significant matter, it is in truth very likely that if statements had been provided by one or other of the parents, the respondent would have simply deemed them to be “self-serving”. Whilst acknowledging that some corroborative evidence is better than none, the absence of statements from the parents is not of particular significance.



**35.** Finally, I find that the appellant would need to be re-documented before any return to Sri Lanka and I am willing to accept that the appellant might have suffered from depressive symptoms at some stage, but I find that he does not currently suffer from any significant mental health problems.

## **Conclusions**

**36.** I now turn to place the findings of fact in the context of the guidance set out in KK and RS.

**37.** I have found that the Sri Lankan authorities are, on the facts of this case, aware of the appellant's *sur place* activities, as demonstrated by the visit to the family home in May 2021. It is impossible to know precisely what they are aware of, but at a minimum it is reasonably likely to consist of the appellant's attendance at demonstrations on behalf of the TGTE and/or the FHFT. It is reasonably likely that they will, as a result of information acquired, have taken the view that his activities have been beyond that of a mere attendee; otherwise it is unlikely that they would have taken any action in Sri Lanka.

**38.** The appellant will be interviewed at the Sri Lankan High Commission in London prior to any return as he will need to be re-documented. It is plainly the case that he will be questioned about *sur place* activities. He will of course have to respond truthfully to such questions.

**39.** The profile which will emerge (including that of which the Sri Lankan authorities are already aware) will be as follows:

- (a) he was involved with a proscribed organisation (the BTF) for a short period of time;
- (b) he has been involved in another proscribed organisation (the TGTE) for a fairly significant period of time;
- (c) he has attended numerous demonstrations and community events organised by the TGTE, has played an organisational role in a number of these, and has held banners displaying the LTTE emblem;
- (d) he has been active to a significant extent with the FHFT since its inception. In addition to attending demonstrations, his involvement has been organisational and has included a relatively significant social media profile by virtue of Facebook postings on the organisation's page;
- (e) the *sur place* activities have been undertaken out of a genuine belief in the causes promoted by these organisations. This includes establishment of Tamil Eelam.

- 40.** In connection to the above, it is reasonably likely that once obtaining further information from the appellant in person, the authorities would conduct simple searches online, the results of which would just back up what they already knew or suspected.
- 41.** The appellant will not be on a stop list. It has never been argued that he has a warrant or court order against him.
- 42.** It is reasonably likely that he would be questioned on arrival at the airport, although by that point it is reasonably likely that the Sri Lankan authorities would know all they needed to.
- 43.** It is reasonably likely that the appellant will be on the watch list. I conclude that he will fall within the second sub-category of individuals on that list (as identified in paragraph 19 of the headnote in KK and RS), namely a person deemed to be of sufficiently strong adverse interest to warrant detention once they have travelled back to their home area or some other place of resettlement. In saying this, I have concluded that the appellant will be perceived as having a “significant role” in Tamil separatism based on the following considerations. Firstly, the nature of the three organisations with which he has been involved in the United Kingdom, in particular the TGTE and the FHFT. In respect of the latter, whilst it is not a proscribed organisation, it is clear enough that it will be viewed with hostility and will go to reinforce the perception of the appellant is a committed member of the Tamil diaspora seeking to pursue separatism and an anti-government agenda. Secondly, his activities have been prolonged. Thirdly, the activities have extended beyond simple attendance. He has played an organisational role with the TGTE and FHFT. Fourthly, his social media profile is reasonably likely to be perceived as extremely hostile to the authorities, as will the video clips.
- 44.** The genuineness of the appellant’s beliefs, which will have either been expressly disclosed at the interview in the United Kingdom or at least inferred by the authorities’ perception of his activities, will only go to compound the adverse interest in him.
- 45.** On the facts, he has no past adverse history within Sri Lanka, given the rejection of his original asylum claim in 2012. Nor is there any relevant adverse familial profile.
- 46.** Even if I were to have found that the authorities had not visited his family in May 2021 (on the basis that this aspect of his claim was an embellishment), his profile and the perception thereof would nonetheless be reasonably likely to result in him being labelled as an individual who was playing a “significant role” in the separatist agenda pursued by certain elements of the Tamil diaspora.
- 47.** It follows from the above that the appellant is at risk of being detained in his home area or elsewhere and subjected to persecution and ill-treatment

contrary to Article 3, both consequences being directly connected to his political opinions.

- 48.** The appellant therefore succeeds under the Refugee Convention and Article 3.
- 49.** For the sake of completeness, if the appellant were not included in the first sub-category within paragraph 19 of the headnote in KK and RS, he would in any event succeed under the HJ (Iran) principle. On my findings of fact, he holds genuine political beliefs, the manifestation of which would, if he were in Sri Lanka, be reasonably likely to come to the attention of the authorities and would in turn be reasonably likely to lead to his detention and ill-treatment. Any concealing of those political beliefs would be directly caused by the threat of detention and ill-treatment.
- 50.** The appellant is also a refugee on this basis.
- 51.** As the appellant is a refugee he is not also entitled to humanitarian protection.

### **Anonymity**

- 52.** An anonymity direction has been in place throughout these proceedings and it is appropriate to maintain it at this stage given that the appellant is entitled to international protection.

### **Notice of Decision**

- 53. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.**
- 54. I re-make the decision by allowing the appeal on Refugee Convention and Article 3 ECHR grounds.**

Signed: H Norton-Taylor

Date: 2 December 2021

Upper Tribunal Judge Norton-Taylor

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

No fee is paid or payable and therefore there can be no fee award.

Signed: H Norton-Taylor

Date: 2 December 2021

Upper Tribunal Judge Norton-Taylor

**APPENDIX: ERROR OF LAW DECISION**

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

Appeal Number: PA/03442/2019  
(V)

**THE IMMIGRATION ACTS**

**Heard remotely from Field House**

**Decision & Reasons  
Promulgated**

**On 26 March 2021**

.....

**Before**

**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**T K  
(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 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.**

**Representation:**

For the Appellant: Ms C Bayati, Counsel, instructed by Amirthan & Suresh Solicitors

For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

## **DECISION AND REASONS**

### **Introduction**

1. The Appellant appeals with a permission against the decision of First-tier Tribunal Judge E B Grant (“the judge”), promulgated on 13 February 2020, by which she dismissed his appeal against the Respondent’s refusal of his protection and human rights claims. The Appellant had had a previous appeal in the United Kingdom in respect of protection matters, which was dismissed in 2012.
2. The essence of his case as it stood before the judge at the hearing on 28 January 2020 related to *sur place* activities. It was asserted that he had been active on behalf of the TGTE and more generally. He had attended demonstrations, commemorative events, and had appeared in videos and on online media criticising the Sri Lankan authorities. The cumulative effect of these activities, it was said, would be to place him at risk on return.

### **The decision of the First-tier Tribunal**

3. The judge set out in some detail the evidence before her, including the transcripts of five video clips showing the Appellant speaking at events.
4. In brief summary, the judge made the following findings in respect of the *sur place* activities. She accepted that the Appellant had in fact taken part in events which had been videoed (paragraphs 60-66). It was accepted that the Appellant was linked to the TGTE and had engaged in activities on its behalf over the course of time. The judge accepted that the TGTE was a proscribed organisation under Sri Lankan law “due to their links with the LTTE and because they are seen as pursuing an independent Tamil homeland.” The judge found that the Appellant had not himself ever stated publicly that he was a member of the TGTE and she found that the Sri Lankan government were not aware of his membership (it should perhaps be noted that membership of that organisation is very limited in scope and that a more accurate term would be a supporter, although this makes no material difference in the present case).
5. The judge found that members of the Tamil diaspora including those associated with the Global Tamil Forum (erroneously named as the Greater Tamil at certain points in the decision. Referred to hereafter as “GTF”) were able to re-enter Sri Lanka without problems. The GTF was described by the judge as a proscribed group.
6. The judge found that the Appellant would not return to Sri Lanka with the intention to “take up arms” against the government and that he would be a “peaceful” returnee.
7. In light of all the circumstances the judge concluded that the Appellant would not be at risk. She then dealt with an Article 3 issue relating to the Appellant’s mental health but declined to place material weight on the

report of the psychiatrist, Dr Dhumad, and concluded in any event that the Appellant could not meet the high threshold applicable to medical claims. In respect of Article 8 the judge took a number of matters into account and concluded that the Appellant could not succeed on that basis.

**8.** The appeal was therefore dismissed on all grounds.

### **The Appellant's challenge**

**9.** The grounds of appeal are not entirely easy to follow and could, with due respect, have been drafted in a more digestible form.

**10.** In essence, they assert that the judge erred in concluding that the Sri Lankan authorities would not become aware of the Appellant's activities in the United Kingdom and that those linked with the TGTE had been permitted to return to Sri Lanka without difficulties. In addition she failed to consider the risk to the Appellant if he were to continue his political activities and erred in respect of certain subjective aspects of the evidence before her. A brief reference is made to the Articles 3 and 8 issues.

**11.** Permission was granted on all grounds.

**12.** Subsequently Ms Bayati provided detailed written submissions which, as she described it, "built upon" the grounds of appeal.

### **The hearing**

**13.** I received submissions from both representatives, all of which I have taken into account. Ms Bayati expanded upon her written submissions and submitted that the errors committed by the judge were, at least on a cumulative basis, material to the outcome.

**14.** Mr Kotas submitted that the judge had been entitled to find as she did, particularly in respect of what the Appellant had not expressed during his *sur place* activities and in relation to the lack of information that would be held by the authorities on return.

### **Discussion and conclusions**

**15.** I conclude that the judge has erred in law. My reasons for this are as follows.

**16.** First, in my judgment the judge has erred in finding that the Sri Lankan authorities would not be aware of the Appellant's activities in the United Kingdom. Absent cogent reasons for departing from GJ, the judge was obliged to apply what was the extant country guidance. Her multiple references to the fact-finding mission conducted in September and October 2019 were not of themselves sufficient to justify a departure from GJ (for the avoidance of any doubt, it was not the Respondent's case that any departure from GJ should have occurred in any event). GJ makes it clear that the Sri Lankan authorities operate a sophisticated intelligence-

gathering system within the diaspora. In addition to the use of informants and a monitoring of events such as demonstrations, GJ also concludes that those individuals requiring to be returned on an emergency travel document (now called a TDD) would be interviewed at the Sri Lankan High Commission in London prior to return. Further, involuntary returnees would be questioned on arrival at the airport in Sri Lanka and that was not confined to only those included on the stop list (such individuals would be detained at that stage, which is different from being questioned). The judge failed to have any regard to this important stage in the risk assessment. She failed to acknowledge that the Sri Lankan authorities would, in the words of GJ, “know all they need to” about the appellant either prior to return or, at the latest, following questioning on return. An individual cannot be expected to lie to questions put, and in the absence of cogent reasons to the contrary the judge should have proceeded on the basis that the authorities would be aware of the Appellant’s activities in the United Kingdom.

- 17.** These activities were, on the seemingly undisputed evidence before the judge, not confined to what was included on the video clips, but included attendance at events and demonstrations over the course of a not insignificant period of time. Thus the judge failed to proceed from a correct premise, namely that the authorities would know, at least at the point of arrival, about the Appellant’s *sur place* activities.
- 18.** In my view this error is of itself sufficient to undermine the judge’s decision as a whole. If the premise of the risk assessment is flawed then it is difficult to see that an adequate overall risk assessment could have been undertaken.
- 19.** Second, the judge placed reliance on the fact, as she deemed it to be, that members of the Global Tamil Forum had been able to return to Sri Lanka without problems. The judge was of the view that this organisation was proscribed. In fact, the GTF was de-proscribed by the Sri Lankan authorities in 2015 and have not been re-proscribed since. In this way the judge proceeded from a misunderstanding of the true situation. As a consequence, the judge failed to consider whether any individuals connected with the TGTE, which was a proscribed organisation, had been exposed to risk or potentially would be. This second error is interlinked with the first to the extent that the judge was not assessing risk on a correct basis, both in respect of the nature of the organisation with which the Appellant was associated and the knowledge of the authorities as to this association.
- 20.** Third, and whilst acknowledging that this is not expressly referred to in the grounds of appeal, I have a very real concern about the judge’s reliance on two considerations. In paragraph 84 she concluded that the Appellant was not at risk on return on account of attendance at demonstrations in this country “because this is not an offence in Sri Lanka.” Whether or not demonstrations on behalf of the TGTE or indeed any other organisation (or on behalf of no organisation at all) are a criminal offence in Sri Lanka is, it



seems to me, irrelevant to the issue of how the Sri Lankan authorities would perceive an individual. Indeed, no reference is made in GJ to any distinction in this regard.

- 21.** The second consideration relates to the judge's repeated reference to the Appellant not intending to "take up arms" against the Sri Lankan government on return (see paragraphs 86, 90 and 94). Again, I cannot see how this is relevant to the assessment of risk in light of GJ. It is difficult to conceive of a situation in which a returnee would on return state in terms to the authorities that they did intend to take up arms against the state. The point made in GJ, and in particular as regards the risk category in paragraph 356(7)(a) of the Tribunal's decision, is not about whether the individual themselves would engage in violent acts, but whether or not their commitment to the separatist cause and activities in support thereof would be seen as sufficiently significant to be of real assistance to the possible resurgence of a separatist movement within the country and a potential resurgence of the LTTE itself (or indeed some other violent organisation).
- 22.** In respect of both these considerations, it rather seems to me as though the judge has placed great reliance on what is said in the fact-finding mission without referring back to the country guidance in GJ at material points in the risk assessment.
- 23.** Although unnecessary for the purposes of my overall conclusion, the judge has erred in these respects too.
- 24.** Fourth, the judge was apparently right to find that the Appellant had not expressly called for the establishment of a separate Tamil homeland during the video clips or within any other source of documentary evidence. However, this overlooks the Appellant's links with the TGTE which is itself an avowedly separatist state with the aim of establishing Tamil Eelam on the island of Sri Lanka. The organisation, as has been mentioned earlier, is currently proscribed by virtue of its perceived links with the LTTE and its support for terrorism. Whilst not every returnee linked to this organisation would be at risk, as is made clear by GJ, such ties are relevant to the assessment of risk and once again the judge has failed to approach the overall assessment adequately. This last point can properly be linked to what is said in paragraph 8 of the grounds of appeal.
- 25.** Finally I address the issue of materiality or, to put it more accurately, whether the errors I have identified in the judge's decision should go to drive me to exercise my discretion under section 12(2)(a) of the Tribunal s, Courts and Enforcement Act 2007 and set her decision aside.
- 26.** It is not the case that the Appellant's activities were bound to have led to him succeeding in his appeal. On the other hand, the errors taken in isolation or cumulatively, could have made a difference to the risk assessment undertaken by the judge. Therefore I do exercise my discretion and I set the judge's decision aside.

- 27.** By way of disposal, the parties agreed that the matter should be retained in the Upper Tribunal for a resumed hearing in due course. I agree. As I informed the parties at the hearing, the new country guidance case on *sur place* activities is due to be published in the relatively near future. The appeal will not be re-listed until that decision has come out and a decision can then be made as to whether a resumed hearing is required or whether the matter can be dealt with by way of written submissions only.
- 28.** In respect of factual matters at the resumed hearing, the following findings are preserved:
- a) has no adverse history in Sri Lanka in respect of any claimed problems occurring within that country;
  - b) the appellant's *sur place* activities, as stated in paragraph 60-66 of the judge's decision.

### **Anonymity**

- 29.** An anonymity direction remains appropriate.

### **Notice of Decision**

- 30. The decision of the First-tier Tribunal involved the making of errors of law.**
- 31. I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set that decision aside.**
- 32. The decision in this appeal will be re-made by the Upper Tribunal following a resumed hearing in due course.**

### **Directions to the parties**

- 1) A case management review hearing will be listed for this appeal in due course prior to any further directions being issued.

Signed H Norton-Taylor

Date: 31 March 2021

Upper Tribunal Judge Norton-Taylor