



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: RP/00052/2019**

**THE IMMIGRATION ACTS**

**Heard at Bradford (via Microsoft teams)      Decision & Reasons promulgated  
On 5 November 2021      On 18 November 2021**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

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

Appellant

**and**

**RS**

(Anonymity direction made)

Respondent

**Representation:**

For the Appellant: Mr Kotas, a Senior Home Office Presenting Officer

For the Respondent: Mr Georget instructed by David Benson Solicitors

**ERROR OF LAW FINDING AND REASONS**

**1.** The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Monson ('the Judge') promulgated on 6 July 2021 in which the Judge allowed the appellant's appeal against the decision of the Secretary of State to remove his refugee status and to refuse a protection and human rights claim.

## **Background**

2. The appellant is a citizen of Sri Lanka, born on 16 June 1990, who following a successful appeal against the Secretary of State's refusal of his claim for international protection as a refugee was granted leave to remain in the United Kingdom as a refugee on 1 April 2014. A notification letter of 8 April 2014 informed the appellant that it was his responsibility to make the appropriate application for further leave before his current leave as a refugee lapsed on 31 March 2019.
3. On 2 July 2018 RS was convicted at Isleworth Crown Court on three counts of making indecent photographs or pseudo-photographs of child and eight counts of distributing indecent photographs or pseudo-photographs of a child for which he was sentenced to 3 years imprisonment.
4. By a notice dated 25<sup>th</sup> July 2018 RS was notified of his liability to automatic deportation as a foreign criminal, that pursuant to section 72 Nationality, Immigration and Asylum Act 2002 he was considered to constitute a danger to the community of the United Kingdom, and that the United Kingdom was no longer obliged to provide him with international protection under the terms of the Refugee Convention.
5. By notice dated 30 October 2018 RS was notified that the Secretary of State was considering revocation of his refugee status under Article 1(C)(5) of the Refugee Convention on the grounds that he could no longer, because the circumstances in connection with which he had been recognised as a refugee has ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality.
6. Following a detailed analysis of the relevant factors the Judge records his key findings between [82 - 92] in the following terms:
  82. Judge Saunders did not make a specific finding as to the **GJ** risk category into which the Appellant fell. But it is implicit in his reasons for finding that the Appellant was at persecutor at risk on return that, if he was not on the stop list, the Appellant fell into the category of those who, because of their existing profile, were deemed to be of sufficiently strong adverse interest to warrant the attention once he had travelled back to his home area or some other place of resettlement, corresponding to risk category (9) in **GJ** and risk category (19) (i) in **KK**. It is implicit in Judge Saunders' findings that the Appellant was perceived to be a threat to the integrity of Sri Lanka as a single state as otherwise there would not have been an ongoing adverse interest in him in his home area.
  83. As the risk categories in **KK** are broadly the same as those which were formulated in **GJ**, it cannot be said that there has been a fundamental and durable change in circumstances such that the culture conditions which led to the Appellant having a well-founded fear of persecution on return to Sri Lanka in 2014 have been permanently eradicated and no longer exist.
  84. For the above reasons, the Respondent has not discharged the burden of proving that Article 1(C)(5) is engaged. Accordingly, the revocation of the Appellant's refugee status on this ground is unlawful.

### DISPOSAL

85. Mr Georget submits that the consequence of Article 1(C)(5) not being engaged is that the Appellant is not a removable refugee, and the Tribunal should so determine.

86. However, in **Dang [2013] UKUT 43 (IAC)**, the Upper Tribunal held that the Refugee Convention is forward-looking, and the fact that an individual has been granted refugee status in the past does not engender a legal or evidential presumption that his prospective removal now would breach the Refugee Convention or give rise in the alternative to a valid humanitarian protection claim, or indeed that his removal would breach Article 3 ECHR.
  87. Thus, in theory, following **Dang**, it is possible for the Appellant to succeed, as he has done, on the Article 1(C)(5) issue, but nonetheless to fail to establish that his removal would breach the Refugee Convention. This is because the potential scope of enquiry is much wider, embracing any relevant change in the Appellants personal conduct or circumstances since he was recognised as a refugee.
  88. However, applying **Devaseelan**, I consider that there are substantial grounds for believing on return to Sri Lanka for the reasons given by Judge Saunders, notwithstanding the passage of time and the absence of independent evidence of the Appellant continuing to take part in diaspora activities since 2014.
  89. In addition, by way of explanation for being initially willing to return to Sri Lanka, and then changing his mind in light of information received from his mother, the supplementary bundle (SB) contains correspondence from the Appellant's mother and sister in the period 2018 through to 2020, and also a letter which the Appellant's mother sent to the Human Rights Commission of Sri Lanka on 21 November 2018.
  90. In the letter of complaint to the Human Rights Commission of Sri Lanka, the Appellant's mother said that "*they*" were constantly coming to her house in search of [RS]. In a letter dated 20 February 2020, addressed to the Appellant's solicitors, she said that she told [RS] to come home in 2018, because the authorities were not looking for him. But afterwards, they increase their investigation and she felt it was not possible for [RS] to come back home. Even though they moved to a different place to live, the authorities had come there and asked her to send her son back home. In a letter dated 25 January 2020, addressed to the Appellant's solicitors, the Appellant's sister confirmed that the CID were looking for [RS], and she said that her mother was required to report at the police station once a month.
  91. Ms Afework was understandably sceptical about the reliability of this evidence, as the alleged resurgence of adverse interest in the Appellant towards the end of 2018 is not explained. On the other hand, Judge Saunders found the Appellant's mother to be a witness of truth, and I must take this favourable assessment into account, applying **Devaseelan**.
  92. In conclusion, the evidence from the Appellant's mother fortifies the finding I make at [87]. The Appellant is thus discharge the burden of proving to the lower standard of proof that he continues to qualify for recognition as a political refugee. There are substantial grounds for believing that on return to Sri Lanka he would face a real risk of persecution or serious harm. Contrary to Article 3 ECHR at the hands of agents of the state.
- 7.** The Secretary of State sought permission to appeal, alleging the Judge had failed to give adequate reasons for findings on material matters. Permission to appeal was granted by another judge of the First-tier Tribunal, the operative part of the grant being in the following terms:
2. The grounds of appeal stated that the Judge failed to give adequate reasons for finding that the Appellant's mother's evidence was truthful, relying on the finding by the FTT that her evidence at that point was truthful, rather than making his own assessment of her credibility particularly in view of the fact that the Appellant was now facing deportation as a foreign criminal. It is also submitted that the Judge erred in failing to give adequate reasons for finding

that the country conditions which led to the Appellant to flee Sri Lanka if he had a well-founded fear of persecution. It is argued that his errors in relation to the asylum claim infected his findings with respect of Article 3 upon which he allowed the appeal.

3. It is arguable that the Judge erred in failing to give adequate reasons for accepting the Appellants mothers written evidence on the basis that she had been found to be truthful by the FTT in 2014 given that he now face deportation and that he was willing to return in 2018.

### **Error of law**

8. Appellate judges have been cautioned when considering whether a court or tribunal below erred in law from making their own evaluative judgment as to whether the requisite high threshold was met – see McCombe LJ at [28] to [33] of *Lowe v The Secretary of State for the Home Department* [2021] EWCA Civ 62 (25 January 2021), a similar point which has been made by the Court of Appeal in other cases including *KB (Jamaica) v Secretary of State for the Home Department* [2020] EWCA Civ 1385 (28 October 2020).
9. The jurisdiction of the appellate court or tribunal is governed by sections 12 and 14 of the Tribunals, Courts and Enforcement Act 2007, which depends on the lower tribunal having made an error of law before its decision can be disturbed on appeal.
10. Mr Georget, who represented RS before the First-tier Tribunal pointed out that the same submissions which form the basis of the grounds of appeal were made by the Presenting Officer before the Judge and rejected in the determination.
11. This is a carefully considered and structured determination in which the Judge clearly considered the evidence with the required degree of anxious scrutiny, applies correct legal principles, sets out clear findings allowing a reader to understand why the Judge arrived at the conclusion he did, which is supported by adequate reasons. The Judge dealt with the issue of why he gave the weight he did to the appellant’s mother’s evidence, and the findings in relation to country conditions.
12. Disagreeing with the Judge’s findings or desiring a more favourable outcome does not establish arguable legal error.
13. The Secretary of State fails to establish that the decision is infected by inadequate reasons sufficient to warrant a grant of permission to appeal.
14. The Secretary of State fails to establish the findings made are outside the range of those reasonably available to the Judge on the evidence.
15. The Secretary of State fails to establish that the weight the Judge gave to the various elements of the evidence is outside the range of that reasonably available to the Judge or is in any way unfair or irrational.
16. It does not matter whether another judge would have made the same decision or not. It is what this Judge did which is a relevant issue.
17. In light of the above, I find the appeal must be dismissed.

### **Decision**

**18. There is no material error of law in the Immigration Judge's decision. The determination shall stand.**

Anonymity.

**19.** The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....  
Upper Tribunal Judge Hanson

Dated 8 November 2021