



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

Appeal Numbers:  
IA/00757/2020  
RP/50013/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 23 May 2022**

**Decision & Reasons  
Promulgated  
On 15 June 2022**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

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

Appellant

**and**

**R S**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mrs Amrika Nolan, a Senior Home Office Presenting Officer

For the Respondent: Mr Mohammed Mohzam, Solicitor, Alex James Law

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of the First-tier Tribunal allowing the claimant's appeal against the Secretary of State's decision on 16 July 2020 to revoke international protection pursuant to Article 1C(5) of the Refugee Convention and sub-paragraphs 339A(i) and (v) of the Immigration Rules HC 395 (as amended), on the basis that the claimant had reavailed himself of the protection of his

country of nationality and that the circumstances in which refugee status had been granted to him had ceased.

2. The claimant is a citizen of Sri Lanka.
3. **Anonymity order.** An anonymity order was made by the First-tier Tribunal. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I continue that order. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. **Failure to comply with this order could amount to a contempt of court.**
4. **Mode of hearing.** The hearing today took place face to face.

## **Background**

5. The claimant left Sri Lanka for the first time in 1996, travelling to Russia (where he spent a year) and then on via Italy to France, where he unsuccessfully claimed asylum. The claimant says he was detained in October 2000 on his return to Sri Lanka, for travelling on a forged passport. He was released on 15 January 2001, following help from an uncle.
6. The claimant left Sri Lanka again in January 2001, using a passport to which he was not entitled, and arrived in the UK the next day. He claimed asylum on arrival. The Secretary of State's Third Country Unit (TCU) considered his case but he was not returned to France for processing.
7. On 9 March 2001, the Secretary of State refused the claimant refugee status, humanitarian protection, or leave to remain in the UK on human rights grounds. The claimant exercised his in-country right of appeal. His appeal was dismissed and he was appeal rights exhausted thereon on 4 January 2002.
8. In 2003, the claimant made a further asylum claim as the dependant of his wife, who had joined him in the UK after experiencing problems in Sri Lanka related to the claimant's disappearance. She came to the UK on 18 February 2003 and made her asylum claim, with the claimant as her dependant, on 20 February 2003.
9. She had been arrested twice, and released on payment of a bribe on both occasions, with explicit reference to her husband's whereabouts and to LTTE sympathies. Although the claim was initially refused, at a hearing on 23 August 2006, an immigration judge recorded that the parties had agreed that the claimant's wife was in need of international protection as a refugee.
10. The claimant was granted leave in line and provided with refugee status documents and in due course, a Convention Travel Document, valid from 5 January 2007-3 November 2011, for all countries except Sri Lanka. On 8

March 2012, as his wife's dependant, the claimant was granted indefinite leave to remain. The marriage subsequently failed.

11. On 9 July 2013, the claimant applied for naturalisation in his own right, but was refused on good character grounds, having failed to declare a previous conviction arising out of the failure of his marriage.
12. In December 2013, the claimant visited Sri Lanka to see his mother. His mother bought the tickets for him in Sri Lanka and emailed them to him.
13. The claimant was encountered by an Immigration Officer at Heathrow Airport on 22 December 2013, returning from his visit to Sri Lanka. He had in his possession a valid Sri Lankan passport issued on 5 December 2013 at the Sri Lankan High Commission in London, which will expire on 5 December 2023.
14. When questioned, the claimant said he had been granted leave on the basis of an asylum claim from Sri Lanka; that he had no fear in Sri Lanka as the war he fled had ended; and that he was more than happy to travel to and from Sri Lanka, with no fear for his life. He wanted to spend more time with his mother in Sri Lanka; he admitted that the basis of his original leave was no longer valid.
15. The claimant was advised that action would be taken. On 24 October 2016, the Secretary of State issued a Notice of Intention letter informing him that the Secretary of State was considering ceasing his refugee status under paragraph 339A(i) and (v) of the Immigration Rules HC 395 (as amended), which mirrors Article 1C of the Refugee Convention (the cessation provisions). He responded, offering to come in and discuss the proposed cessation as his English was not adequate to write a letter of response. The Secretary of State responded saying that further representations in writing were possible but not a personal interview.
16. On 17 July 2018, the claimant was again issued with a Convention Travel Document valid until 15 July 2028, for all countries except Sri Lanka. He had been asked to submit his Sri Lankan passport with the 2018 Travel Document application, but said that he had lost it and provided a photocopy of a police report reporting its loss.
17. On 19 February 2019, the Secretary of State issued a further Notification of Intention letter. The claimant responded, referring to difficulties between him and his former wife, who was trying to prevent him seeing his children, his father's death in Sri Lanka, and his need to visit his mother there because she was old and widowed. UNHCR when consulted considered that the change in personal circumstances which led to the claimant being recognised as a refugee originally, taken with up to date country information, indicated durable change and that cessation might be appropriate on the facts.

18. The Secretary of State on 16 July 2020 wrote to the claimant, revoking his refugee protection and seeking the return of his original grant of refugee status, the immigration status document which accompanied it, and the Convention Travel Document. The claimant was advised that any future travel document would need to be issued by his country of nationality as he had reavailed himself of its protection and now had no subjective or objectively well-founded fear of return.
19. The claimant appealed to the First-tier Tribunal.

### **First-tier Tribunal decision**

20. First-tier Tribunal Judge Parkes allowed the appeal. The First-tier Tribunal's decision is remarkably short. At paragraph 4 the judge said this:

“4. The [claimant] was born on 4 November 1973, he is a citizen of Sri Lanka. The [claimant]'s full immigration history and the basis of his leave to remain in the UK is set out in full in the refusal letter. It is not necessary to repeat the detail here. The important details are that the [claimant]'s claim for asylum was rejected and his appeals dismissed. The [claimant]'s wife arrived in the UK after the [claimant] and was granted refugee status on the basis of her own application and the [claimant] was granted leave to remain in the UK as her dependant. ...

7. The [claimant] has not been recognised as a refugee in his own right and has status as the family member of his wife. In fact the [claimant]'s own claim was specifically rejected and his appeal dismissed. Applying *Devaseelan* the [claimant] would have to provide evidence to justify departing from that previous decision and *it is not suggested that there is evidence that would lead to such a course of action.*

8. Although this appeal has generated a volume of documentation the point made by Mr Mohzam has considerable force and the Home Office did not point to a contrary decision at any level of the courts system that suggests the opposite might be right. The [claimant]'s leave to remain in the UK is as the dependant of a refugee, not as one in danger of persecution in his own right. On the evidence and in the light of the decisions relied upon by the [claimant] I find that the [claimant] does not have refugee status and accordingly *there is no status to revoke.*”

[*Emphasis added*]

21. The Secretary of State appealed to the Upper Tribunal.

### **Permission to appeal**

22. Permission to appeal was granted on the basis that the First-tier Judge's reliance on *Secretary of State for the Home Department v Mosira* [2017] EWCA Civ 407 was legally erroneous, having regard to the later decision of the Court of Appeal in *Secretary of State for the Home Department v JS (Uganda)* [2019] EWCA Civ 1670, which distinguished *Mosira*.

## **Rule 24 Reply**

23. The claimant did not file a Rule 24 Reply.
24. That is the basis on which this appeal came before the Upper Tribunal.

## **Analysis**

25. The decision of First-tier Judge Parkes in this appeal is very brief, running to just eight operative paragraphs over 3 A4 pages, of which the reasoning is contained in just four paragraphs. It is not possible to be satisfied from those brief reasons that the judge engaged properly with the reasoning of Adjudicator Lodge in August 2003, which should have been the *Devaseelan* starting point for this appeal. *Devaseelan* is not limited to the determination of decisions relating to the claimant alone but also to family members.
26. At [6] in the Lodge decision, the adjudicator accepted that all the incidents affecting the wife and leading to her receiving refugee status were related to her husband, this claimant. At paragraph 5 of that decision it is recorded that the claimant's case is that this claimant, her husband, was arrested and detained on account of alleged support for the LTTE in October 2000 and in January 2001 he escaped. That coincided with the account previously given by the claimant and rejected in the claimant's own appeals.
27. The very brief reasons given by the First-tier Judge are not sufficient to demonstrate that *Devaseelan* was properly applied.
28. However, that does not avail this claimant on the facts. Whatever the basis on which the claimant was granted refugee status, in common with the appellant *JS* in *JS (Uganda)*, on the true construction of Article 1C(5) of the Refugee Convention, he has reavailed himself of the protection of his country of nationality, by obtaining a valid Sri Lankan passport and travelling to Sri Lanka thereon, and he has told the immigration officers that he has no present subjective fear. UNHCR considered that on the basis of current circumstances in Sri Lanka, a person such as this claimant could have no objectively well-founded fear of persecution.
29. The Secretary of State was unarguably entitled to revoke refugee status for the reasons given. I am satisfied that on the uncontested facts, he had re-availed himself of the protection of his country of origin and was therefore no longer entitled to refugee status.
30. The Secretary of State's appeal succeeds and the claimant's appeal must be dismissed.

## **DECISION**

31. For the foregoing reasons, my decision is as follows:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision. I re-make the decision in this appeal by dismissing it.

Signed: [Judith AJC Gleeson](#)  
Upper Tribunal Judge Gleeson

Date: 6 June 2022