



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/02307/2020**

THE IMMIGRATION ACTS

Heard at George House, Edinburgh

Decision & Reasons

On 28 April 2022

Promulgated

On 11 May 2022

Before

UT JUDGE MACLEMAN

Between

S S

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms K Wass, instructed by David Benson, Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. By a decision dated 25 March 2021, FtT Judge O’Keefe allowed the appellant’s appeal on human rights, article 3, health grounds, but dismissed it on asylum grounds.
2. Permission to appeal was refused by the FtT, but granted by UT Judge C Lane on 10 August 2021, on the view that while the FtT could not be expected to foresee country guidance, the material before it was substantially similar to that which informed *KK and RS (sur place activities: risk) Sri Lanka CG* [2021] UKUT 130 (“KK”).

3. By a decision promulgated on 21 February 2022, which is to be read herewith, UT Judge Owens at [39] set aside the decision on the asylum claim. At [40 i- iv] she preserved some findings; at [41], set aside others; and at [42], retained the decision to be remade in the UT, on the view that there was “no need for further extensive fact finding”. Directions were set for a remaking hearing, limited to the risk on return from the appellant’s *sur place* activities in the UK.
4. A transfer order has been made to enable the decision to be completed by another Judge.
5. The SSHD provides an updated position statement, dated 20 April 2022:

While it is acknowledged that there are significant preserved findings of fact ... it is clear from the case law that each case requires a careful assessment of the evidence and is highly fact specific. The UT at (21) of the headnote in *KK* makes this clear. The SSHD is not satisfied, on the basis of the preserved findings, that the applicant would ... come to attention of the authorities ... as having played a significant role in Tamil separatism.
6. The appellant in a skeleton argument, filed on 25 April 2002, specifies matters by which he says his appeal should be allowed, under reference to *KK*.
7. The appellant produced a further witness statement, and corroborating evidence of participation in further events:

5 March 2022, a Zoom meeting involving members of the TGTE and of Tamil solidarity, and a politician from south India;

20 March 2022, a Zoom discussion of the current situation in Sri Lanka and among the diaspora; and

6 April 2022, a protest against the Sri Lankan President outside the Sri Lankan High Commission in London, by the TGTE and Tamil Solidarity.
8. Mr Tufan, having seen the evidence, was prepared to accept it at face value, and did not seek to cross-examine.
9. The principal factors in the appellant’s favour are set out at [10] of his skeleton argument. The SSHD is vague in her assertion that these are not such as to attract the attention of the authorities as having played a significant role in Tamil separatism.
10. The appellant lists among relevant factors his alleged history of detention in Sri Lanka, although acknowledging this has not previously been accepted. There is no reason to revisit that point in his favour.
11. The appellant’s argument, again candidly, notes at [13] that the respondent has his passport. This suggests that he is likely to be questioned at the airport only if on the “stop list” or “watch list”. His position is not at all likely to place him on the “stop list”. He is not subject to a warrant or court order. While he says that he does not accept that his

passport is valid, there is no reason to think it is not. It is also correct, however, as submitted for him, that if there is no need for him to be interviewed at the High Commission regarding his return, that does not exclude information obtained by other methods – which is the substance of his case.

12. The headnote in *KK* is followed by a reminder to consider the genuineness of a belief in Tamil separatism, under reference to the principles of *Hj (Iran)*. I note that at [25] UT Judge Owens recorded that the FtT made no finding that the appellant had manufactured his activities to bolster his asylum claim. Mr Tufan did not ask for a finding that the appellant's activities in the UK have been conducted in bad faith.
13. The appellant has failed to establish his claims about events in Sri Lanka in previous proceedings, and his activities here may have mixed motives; but I see no reason to think that his sympathies are not genuinely on the side of Tamil separatism.
14. At [36] UT Judge Owens found that the only rational view was that the Sri Lankan government would monitor such YouTube clips and posts as involved in this case, and at [37], given the lower standard of proof, that it was irrational to conclude that the appellant had not come to adverse attention of the authorities.
15. The issue is finally one of degree. The appellant is not likely to be high on any list kept by the Sri Lankan government of its separatist enemies. Some matters derived from *KK* suggest risk, others, not so much. On the preserved findings and analysis of UT Judge Owens, however, and the further uncontested evidence of low-level, but ongoing, involvement in separatist activities, there is a real likelihood that he might be of sufficient interest to be on a watch list, to be monitored, and even to be detained and ill-treated.
16. The decision of the FtT, to the extent that it allowed the appellant's appeal on human rights, article 3, health grounds, stands. On asylum grounds, the decision of the FtT has been set aside, and the UT substitutes a decision, allowing the appeal.
17. An anonymity direction remains in place.

H Macleman

28 April 2022

UT Judge Macleman

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The

appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent" is that appearing on the covering letter or covering email.