



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/11220/2019 (V)**

**THE IMMIGRATION ACTS**

**Heard by *Skype for Business*  
Heard On 30<sup>th</sup> September 2020**

**Decision & Reasons Promulgated  
On 12<sup>th</sup> October 2020**

Before

**UT JUDGE MACLEMAN**

Between

**[S T R]**

and

Appellant

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

Respondent

*For the Appellant: Mr E MacKay, of McGlashan MacKay, Solicitors  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. The appellant has permission to appeal against the decision of FtT Judge Green, promulgated on 24 March 2020. His grounds are set out in his application dated 1 April 2020.
2. The hearing on 30 September 2020 was conducted from George House, Edinburgh. Representatives attended remotely. No members of the public attended, either in person or remotely. The technology functioned without difficulty.

3. The first and main point in the grounds arises from the evidence of Mr [KK], dealt with at [32] of the decision. The witness said that he visited the appellant's family at their home in Sri Lanka in 2018. The police came to the home and questioned the family because they thought that the witness was the appellant; questioned the witness and checked his identity and UK passport; and said they were aware of the appellant and that "he worked against the Sri Lankan government". The judge said that he gave this evidence "very limited weight because it relates to claimed events ... 18 months ago and even if it supports the notion that the appellant may have been of interest to the Sri Lankan authorities it is not evidence that they continue to be interested in the appellant".
4. Mr MacKay submitted firstly that the judge accepted the attendance of the security forces with an interest in the appellant, and, against the background of their commitment against Tamil separatists abroad, there was no reason to consider that their interest would have disappeared over the period of 18 months; and so the decision should be reversed.
5. There is force in the argument that a positive finding of adverse interest from the security forces, 18 months before the hearing, taken with country guidance and background evidence, would be sufficient to establish a real current risk.
6. Ms Cunha submitted firstly that the judge made no such positive finding. She said that the judge gave the evidence of the witness very limited weight, and gave good reasons - he was a failed asylum seeker, so his own account had not been given credit; his leave was obtained on the basis of marriage, not risk; in spite of his claim, he had no fear of returning to Sri Lanka; he claimed that the security forces were aware he worked against the government, but he was not arrested, and so was obviously of no interest; the appellant would have been in no worse a position; the weight to be given to his evidence was up to the judge; and there was no error in finding that this evidence did not advance the case.
7. In my view, the judge's finding lies somewhere between the positions of the parties.
8. I do not think that [32] is a record of evidence from the witness by which he and the appellant would have been equally of interest to the authorities. The witness said he was questioned about the purpose of his trip, but the allegation of working against the government concerns the appellant, not the witness.
9. The other credibility points mentioned by Ms Cunha might be valid, but they are not made by the judge, or at least not expressly. Reasons on such points need to be explicit.
10. The judge's finding is not positively to the effect that the security forces did show interest in the appellant. The evidence is said to relate to "claimed events", i.e. not necessarily actual events. The conclusion is

expressed “even if” the evidence supports the notion of interest, which again suggests the point is left unresolved.

11. Ms Cunha argued that the rest of the decision contained numerous good reasons, in several of which no error was suggested, for concluding that the appellant’s activities did not reach a level to place him at risk. That is correct, but those reasons are not so overwhelming that the decision must have been the same, even if it was accepted that the security forces showed interest in the appellant.
12. I prefer the submission from Mr MacKay that if the finding on the evidence of the witness was not positive, but unclear, it was a matter which might have made the difference, and required a rehearing. As indicated at [5] above, the lapse of 18 months is not enough to hold that the security forces would have given up their interest in the appellant, and the judge, although he qualifies his finding, provides no other reason.
13. I was not asked to preserve any findings, and it would be artificial to do so. The decision of the FtT is set aside, and stands only as a record of what was said at the hearing.
14. The nature of the case is such that it is appropriate under section 12 of the 2007 Act, and under Practice Statement 7.2, to remit to the FtT for a fresh hearing, not before Judge Green.
15. No anonymity direction has been requested or made.



6 October 2020  
UT Judge Macleman

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#### 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.