



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

Appeal Number: UI-2021-001139
PA/02467/2020

THE IMMIGRATION ACTS

**Heard at Field House
On 24th June 2022**

**Decision & Reasons Promulgated
On 2nd September 2022**

Before

**UPPER TRIBUNAL JUDGE BLUNDELL
DEPUTY UPPER TRIBUNAL JUDGE WILDING**

Between

**ST (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Fazli, Counsel, instructed by Gerald UK Immigration & Legal Services Limited

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on the 30th May 1984. He made a protection claim on the 24th September 2019, this was refused by the respondent and the appellant appealed. His appeal was dismissed by FTTJ Eldridge in a decision promulgated on the 6th January 2021, it is against this that he appeals.

History

2. The appeal came before FTTJ Eldridge at Hatton Cross on the 23rd December 2020. The appellant was represented by Mr Fazli, the respondent by Ms David, a Presenting Officer. In his decision, Judge Eldridge found:

- (i) The appellant had a *“fairly lengthy history of mental health problems”* and along with a scarring report noted that *“it is possible for an expert's opinion to carry some considerable weight.”*
- (ii) The Appellant has suffered from depression and shown symptoms of PTSD for at least four years and probably longer, this was on the basis of his relative who gave evidence and medical records from 2016 onwards. In particular the Judge noted:

An assessment in 2016 from the South London and Maudsley NHS Trust where it is confirmed that, at that stage, they were identifying symptoms of both anxiety and depression and PTSD but that these could not be treated by therapy because of the Appellant's Immigration status. His GP, Dr Sivakumar, wrote a letter dated 04 September 2019, again referring to symptoms of PTSD and the need for therapy and making the same point about the difficulties given the Appellant's Immigration status. He then described the Appellant as being "very vulnerable with morbid thoughts". He provided an up-to date report in a letter written a week before the hearing before me in which he stated that he had no doubt that the Appellant suffered from PTSD and described his medication as a "high dose" and that he still needed therapy as well as medication and that he remained very vulnerable and there had been no remission in his symptoms during the four years or more that he had known the Appellant.

- (iii) The Judge noted in relation to the medication that the appellant was on *“I consider this must make him potentially more vulnerable on return, whether he can obtain treatment or not. I also consider that there are good grounds for believing this will have affected his memory, his ability to concentrate and to recall and I have taken that into account in assessing the general credibility of his claim.”*
- (iv) Relying on the scarring report from Dr Izquierdo-Martin, that the appellant had suffered the injuries to his legs as claimed. In particular he found that *“the Appellant was injured deliberately in 2001 in the manner he has described in all instances. Although it is possible, of course, that this could have nothing to do with the Sri Lankan authorities, in all the circumstances I find it more likely than not that these injuries were all inflicted by agents of the Sri Lankan government.”*
- (v) In relation to his sur place activities the appellant has been involved with the Transnational Government of Tamil Eelam (“TGTE”) since at least 2017. He has attended one or more demonstrations. The Judge rejected any suggestion that he had been significantly involved in the

organisation or running of the group. He was “*an ordinary, low-level, supporter. If he has been monitored and observed, it would be as an ordinary member of the crowd attending any event.*”

- (vi) The appellant had left Sri Lanka in 2006 and travelled to Europe, he did not experience any issues in leaving and did so on his own documentation. He was arrested in 2008 and was not subject to any significant adverse treatment and was able to obtain release by payment of money. He then left Sri Lanka without hindrance on his own documentation in 2010. The Judge found that he was of significant interest in 2001, but there had been no repetition since.
- (vii) The Judge did not accept that the appellant was without family in Sri Lanka and did not accept that his sister and father had disappeared.
- (viii) The appellant has been supported in the UK by his cousin, however the level of support offered in the UK is unlikely to be able to continue at the same level in Sri Lanka. The appellant however does not have a particularly close relationship with anyone other than Mr Jeyachandran, including Mr Jeyachandran’s wife and children, such that there is no question of section 55 issues arising.

3. Having made the above findings of fact, the Judge then considered the Report of the Home Office fact-finding mission published in January 2020 and the Country Policy and Information Note (“CPIN”) “Sri Lanka: Tamil Separatism” of May 2020. In particular he noted:

83. The later document makes clear at Section 7 that TGTE is one of seven or eight identified groups relating to Tamils in the United Kingdom. At 7.3 the Note suggests that it is only those members of this organisation with a “high-profile” that are at all likely to come to the attention of the authorities if they are in Sri Lanka. Section 8 of the same document (at 8.1.5) states that asylum seekers are not questioned at the airport on return and the only interest is in those recorded as having outstanding criminal offences. Again at 8.17 and 8.18 it is stated that only “high-profile L TIE cadre members” are likely to be questioned. For someone of the profile of this Appellant, they are not at all likely to be on a “stop” list (which basically lists those with outstanding proceedings and/or a warrant against them and he is highly unlikely to be on a “watch” list.

84. The CPIN borrows heavily from the fact-finding report from January 2020 and, in particular, Section 3.1, which deals with TGTE. The findings of the report are that this organisation is not covered in the Sri Lankan media and was generally of very little interest and the preponderance of the evidence taken suggests that there is little knowledge of it generally but that it is a proscribed group and action would be taken against someone who was active or funded such a group. There is no question of the Appellant having provided funding and I do not consider him to be active within the sense of this report.

4. Drawing the findings and background material together, the Judge then turned to the relevant Country Guidance decision at the time, GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). He found that the appellant would not be perceived as having a significant role in post conflict Tamil separatism and will not be on the stop list. He concluded that the appellant's profile is so low that even taking into account his ill treatment in 2001 he would not be of an adverse interest on return. He dismissed the protection appeal.
5. Turning to Article 8 the Judge injected his findings that the appellant was not at risk on return into his analysis of 278ADE(1)(vi) and found that there would not be very significant obstacles to the appellant's re-integration on return to Sri Lanka. The Judge considered the statutory requirements under section 117B. In all the circumstances the Judge considered that the appellant's removal proportionate.
6. The appellant appealed and was granted permission to appeal by Upper Tribunal Judge Kamara on 31 January 2022 on all grounds.

The hearing

7. We heard from Mr Fazli who adopted his grounds of appeal. He made two main arguments. Firstly, that the First Tier Judge materially erred in law by failing to allow the appeal on the basis of the positive findings of fact he had made. Secondly, the Article 8 analysis under the 276ADE(1)(vi) prism was inadequate as the Judge had failed to factor into the equation the appellant's ability to return and integrate given his mental health difficulties, including PTSD and depression.
8. Mr Fazli expanded on his grounds of appeal. He argued that the analysis undertaken by the Judge on the protection limb was perverse because the findings that he was a low-level member of the TGTE, with a history of previous persecution meant that he was at risk on return. Mr Fazli sought to place particular reliance on the new country guidance case of KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 130 (IAC), he did not however take us to any of the evidence that was before the FTTJ to show that similar arguments were advanced.
9. Mr Fazli submitted that on the findings made no reasonable judge could have dismissed the appeal and that it was irrational for the appeal to be dismissed in light of the positive findings that were made.
10. In relation to the second ground, he submitted that the FTT had failed to factor the appellant's mental health into the assessment as to whether there are very significant obstacles to integrating on return.
11. The Tribunal did not need to hear from Mr Melvin. We announced that we do not consider there to be errors of law in the FTTs decision. Our reasons for this conclusion are set out below.

Discussion

12. Mr Fazli was explicit in his submissions in relation to ground one, namely that given the positive findings of fact, the FTT irrationally dismissed the appeal. In other words, no reasonable judge, properly directing himself to the law and the facts, could have found as Judge Eldridge did. We have little hesitation in rejecting this argument.

13. The Judge's positive findings are summarised in paragraph 81:

81. These are my principal findings of fact. To summarise, the Appellant was the subject of adverse attention in 2001 and ill-treated in the manner he has given in his account to Dr Izquierdo-Martin. He was not ill-treated, although he was arrested in 2008, by the authorities at any time thereafter until he left Sri Lanka to come to the United Kingdom in 2010. He had been able to leave for Europe in 2006 as well as in 2010, using his own identity and document on both occasions) and without hindrance. He suffers from depression and PTSD. He is involved with the organisation TGTE but as a low-level supporter, who attends some events and demonstrations, as an ordinary member of the crowd.

14. There is little in the above that in and of itself supports Mr Fazli's submission. He sought to take us to the recent Country Guidance decision in KK & RS to support his proposition, however he accepted that whatever was set out in KK & RS could not have been before the FTT as the case was heard before KK & RS was reported. The difficulty with Mr Fazli's submission, as he was constrained to accept, is that a failure to take into account a Country Guidance decision not existing at the date of the FTT's decision could not be an error of law, since it is not a legal precedent to which the declaratory theory applies: Adam (rule 45: authoritative decisions) [2017] UKUT 370 (IAC); [2018] Imm AR 183, at [3]. The judge based his analysis of the risk to the appellant on the background material before him and reached a reasoned conclusion on that material; the fact that he might have arrived at a different result with the benefit of KK & RS is irrelevant to the question of whether his decision involved the making of an error on a point of law.

15. Mr Fazli was unable to take us to any background material which was before the judge which substantiated his submission that the judge's conclusion regarding the risk to the appellant was irrational. In our judgment, there would have been no proper basis for such a submission had it been made. As we have recorded above, the judge took careful account of the CPIN in concluding that the appellant's domestic and sur place profile was not such as to generate a real risk of ill-treatment on return.

16. The Judge was cognisant of the task he was confronted with. He had two previous determinations which were his starting point. These decisions had positive findings within them which he had to adopt. The Judge then turned his mind to paragraph 339K of the Immigration Rules, which reminds decision makers that past persecution will be regarded as a serious indication of the person's well-founded fear of persecution, unless there are good reasons to consider that such persecution or serious harm will not be repeated. The Judge was tasked with considering the evidence

before him and coming to a reasoned conclusion. In our judgment that is precisely what he did.

17. The judge made detailed findings of fact having taken into account all of the evidence that was before him. In a careful decision he outlined, clearly, why the risk factors identified in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) did not apply to him and why, despite his acceptance of what had happened to the appellant in the past, he did not consider there to be a real risk of such harm being repeated

18. We remind ourselves of the restraint which an appellate body must exercise when considering an appeal against the decision of a specialist judge at first instance. In UT (Sri Lanka) v The Secretary of State for the Home Department [2019] EWCA Civ 1095 the Court of Appeal reminded appellate courts:

"It is not the case that the UT is entitled to remake the decision of the FTT simply because it does not agree with it, or because it thinks it can produce a better one. Thus, the reasons given for considering there to be an error of law really matter. Baroness Hale put it in this way in AH (Sudan) v Secretary of State for the Home Department at [30]:

"Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently."

19. The Judge carefully considered the medical evidence, the oral evidence of the appellant and his cousin and the background material provided. We further note that there was no evidence before the FTT as to the risk to people such as the appellant beyond that which was considered in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC), it is therefore difficult to understand how the appellant's submission that no judge could have come to the decision could succeed. The judge's decision that the appellant would not be at risk despite his accepted history was clearly 'within the lawful parameters of legitimate evaluative judgment': Lowe v SSHD [2021] EWCA Civ 62; [2021] Imm AR 792, at [33]

20. We pause also to note that on the contention advanced by Mr Fazli that the risk factors identified in KK & RS are sufficiently broader to capture the appellant, that the appellant has other remedy to this by making a fresh claim. The task before us is to consider the case advanced before the FTT, on the evidence available to it at the time. Factual matters arising after that point in time (including the issuance of a Country Guidance decision) can always be raised with the Secretary of State through further submissions, which will be considered under paragraph 353 of the Immigration Rules.

21. Turning to ground two, the Judge was fully cognisant of the mental health of the appellant. He had several letters before him attesting to it. He summarised the contents of those letters and he demonstrably took their contents into account. The mental health aspects of the case were

considered in some detail by the Judge in his credibility assessment. The evidence relied on by the appellant however did not support the contention made in the grounds of appeal, that the appellant's mental health issues were a barrier to his integration on return.

22. At the hearing before us there was some discussion as to the nature and degree of the evidence of the appellant's mental health. The Judge does not expressly outline why the mental health of the appellant will not be a hindrance to his integration on return, if the evidence had shown such issues, it would be a surprise for it not to be considered. However, on further examination the documentation relied on by the appellant did not speak to that at all.
23. The evidence before the FTT identified the appellant having PTSD and being prescribed medication. A letter from The Vale Surgery from the 4th September 2019 identified that he would benefit from a Multidisciplinary Team ("MDT") approach with psychological therapies. No evidence of any therapies undertaken by the appellant was before the FTT.
24. There was also a letter from the South London and Maudsley NHS Foundation Trust which identified he has had thoughts of self-harm and suicide since 2010, and when they were at their strongest the thoughts were about 3 or 4 out of 10. That letter bears a date of 25 July 2019. Further letters from 2019 were provided which identify depression and PTSD symptoms which were attributed to being tortured in Sri Lanka. The latest such letter bore a date of 22 August 2019. There was a medico-legal report from Dr Izquierdo-Martin, however it was commissioned purely to look at the appellant's scarring.
25. Confronted with the above evidence at the hearing in December 2020, the medical evidence going to the appellant's mental health before the FTT was therefore somewhat dated. More importantly there was nothing within the medical letters which identified any mental health issues faced by the appellant were he to be returned to Sri Lanka. There is therefore an absence of any evidence capable of assisting in an analysis of the appellant's ability to integrate on return as per Secretary of State for the Home Department v Kamara [2016] EWCA Civ 813.
26. Indeed, the Judge in particular noted the previous decision of Judge Wilson from 2010 where it was found that the appellant's family remained in Sri Lanka and who were themselves described as affluent. The Judge considered all the material matters in his assessment and concluded that it would not be disproportionate for the appellant to be removed to Sri Lanka. The letters do not speak to any assessment as to the appellant's difficulty in returning to Sri Lanka or set out how his mental health will be an additional hurdle to his integration on return.
27. In light of this the appellant's second ground of appeal is not made out.

Notice of Decision

The appeal is dismissed. The decision of the First-tier Tribunal dismissing the appeal stands.

Direction Regarding Anonymity - rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

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. We make this direction in accordance with the Presidential Guidance on Anonymity Orders and in light of the fact that the appellant is an asylum seeker.

T.S. Wilding

Date 20th July 2022

Deputy Upper Tribunal Judge Wilding