



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**  
**Extempore**

Case No: UI-2022-003591

First-tier Tribunal No: IA/07548/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Promulgated**  
**On 20<sup>th</sup> March 2023**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**The Secretary of State for the Home Department**

Appellant

**and**

**A P**

**(ANONYMITY ORDER MADE)**

Respondent

**Representation:**

For the Appellant: Mr Mullen, Senior Home Office Presenting Officer  
For the Respondent: Mr Malik, instructed by Gerald UK Immigration

**Heard at Field House on 29 November 2022**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondent is granted anonymity.**

**No-one shall publish or reveal any information, including the name or address of the respondent, likely to lead members of the public to identify the respondent. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of First-tier Tribunal Judge Hussain promulgated on the 2 July 2022 following a hearing on the 31 March 2022.
2. The respondent is a citizen of Sri Lanka. The basis of his asylum claim is set out in detail in Judge Hussain's decision. The judge, in essence, believed the respondent but concluded that he was not at risk of persecution for the reasons set out in the decision at paragraphs 32 to 34. The judge did however note that the respondent is seriously ill and at paragraph 36 sets out his findings on that issue. There are in the respondent's bundle numerous medical notes and letters demonstrating that he suffers from cancer. I take only two of those letters. The first I refer to is a letter from NHS, Grampian dated 9 November 2021 which shows he was admitted some months ago and, in short, that he was diagnosed with cancer of the liver. That letter, as the judge recorded, states that the respondent is fully aware that there may be no treatment options and that he may be in a palliative setting, depending on further consultations and it is important that he attends the scheduled appointment.
3. The judge at [37] refers to a further letter for NHS Lothian dated 15 February 2022 states that the respondent has been diagnosed as suffering from a primary liver cancer. There is a plan for a major liver resection, but the liver volume however was inadequate and therefore intervention to increase the liver volume has been required. The last procedure was performed on 25 January. He requires and up-to-date CT scan at the end of the February. There will be a further assessment scan to look at the side of the liver and ensure that the cancer has not grown.
4. The judge concludes "it is abundantly clear that the respondent is a very seriously ill person although there is no medical evidence before me given the state he was the hearing looking tired and hangered and frequently losing concentration. I would think it unlikely that he would be fit to fly. I however do not say this is a judicial finding." The judge then, having directed himself, as to Kamara [2016] EWCA Civ 813, found that given the respondent's medical condition, it cannot be said that there is any meaningful way in which he would integrate himself in Sri Lanka at the present time and he allowed the appeal pursuant to paragraph 276ADE(1)(vi) stating it was open to the respondent to review the respondent's medical situation when he seeks to extend his leave to remain.
5. The Secretary of State sought permission to appeal on two grounds. First, a failure by the judge to give adequate reasons, as to how the threshold in paragraph 276ADE(1)(vi) of the immigration rules was met. It was not simply sufficient to say that the respondent's medical condition meant he could not integrate. It is submitted that the judge failed to engage with any of the other factors, the respondent's ability to reintegrate such as his ties to Sri Lanka, family in Sri Lanka and the fact he lived there for twenty years before coming to the United Kingdom. It is also noted that there is no medical report on the respondent's condition, just letters and that the judge refers to only two of them, thus failing to consider all of the medical evidence, which undermined his conclusion.
6. The second ground is the judge had failed to consider whether the medical facilities failed to in Sri Lanka, whether he could be treated and whether you could access those and it is averred that an assessment similar to that usually undertaken when considering Article 3 medical claims should have been carried

out as part of the 276ADE assessment and the judge had erred by not resolving matters in dispute.

7. In his submissions before me, Mr Mullen submitted, having looked at the papers, that respondent's argument is one of form over substance. It was clear that the judge had ample evidence, albeit not in a formal report, that the respondent was very ill and observed his condition although it was not a judicial finding and it was clear that the person's prospects were bleak.
8. Mr Malik in reply submitted that the decision was in itself sufficient, that there was a positive credibility finding, that there was sufficient evidence to show that he had cancer, was very ill and that this had not been challenged. He submitted that the judge had taken a holistic approach to paragraph 276ADE, having taken into account the medical circumstances as being significant obstacle and in light of the self-direction as to **Kumara**, reached findings open to him.
9. The issue before me is a relatively narrow one. There is no cross appeal in this case against the finding that the respondent is not at risk of persecution on return to Sri Lanka. In the light of Mr Mullen's submissions, I consider that the grounds are not made out. There was, in my view, (just) sufficient evidence to permit the judge, when looking at all of the evidence, to conclude that the respondent could not integrate or that there significant obstacles to his integration again into society in Sri Lanka, given his likely terminal liver cancer. Whilst that may well have been a generous finding it was one open to the judge and is properly and adequately reasoned. The grounds appear to misunderstand that the judge did look at all of the evidence and when he referred to just two letters he was simply identifying that part of the material which he found most persuasive and most relevant to the issue. Ground 2 is also lacking in merit.
10. Further, the grounds fail to identify that any of the points now raised were put to the judge when the matter was raised in front of him and the issue here was not so much the availability of medical facilities but the fact that the respondent's illness made it so difficult that he could not actually integrate. Accordingly, for these reasons, I consider that the decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it and that concludes my decision.

### **Note**

This decision was given orally but owing to administrative problems was not typed until last week.

### **Notice of Decision**

1. The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed

Date: 20 March 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal  
Immigration and Asylum Chamber