



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

Case No: UI-2022-006714

First-tier Tribunal No: PA/54074/2021  
IA/11940/2021

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On 9 September 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**ST**  
**(ANONYMITY ORDER MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Balroop, counsel, instructed by York, solicitors

For the Respondent: Mr E Terrill, Senior Home Office Presenting Officer

**Heard at Field House, on 22 August 2024**

**Order Regarding Anonymity**

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

**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.**

**DECISION AND REASONS**

1. I make an anonymity direction because this appeal arises from the appellant's protection claim.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Mann, promulgated on 06/07/2022, which dismissed the Appellant's appeal.

### Background

3. The Appellant is a Sri Lankan national, who was born on 24 February 1964. He left Sri Lanka in 1993 and went to Germany. There he applied unsuccessfully for asylum but was granted leave to remain in Germany. In 2004 he returned to Sri Lanka. In 2009 the appellant left Sri Lanka and entered the UK., where he claimed asylum.

4. The respondent refused the appellant's asylum on 8 July 2009. His High Court review was refused on 24 September 2009 and again on 15 March 2010. The Appellant applied for an EEA residence card in 2011, and his application was refused in January 2012

5. The appellant then made an EEA Zambrano application, which was refused on 19 July 2012. The Appellant was detained for deportation in January 2020. On 24 January 2020 he made a torture allegation and further submissions on the 24 July 2020.

6. The respondent refused the appellant's renewed claim for international protection on 5 August 2021.

### The Judge's Decision

7. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Mann ("the Judge") dismissed the appeal on all grounds.

8. The Appellant lodged grounds of appeal, and, on 7 September 2022, Tribunal Judge Mills granted permission to appeal. He said

1. The application is in time.

2. The appellant is a Sri Lankan national who sought asylum on the basis of his *sur place* political activities. His claim was refused by the respondent and his subsequent appeal was dismissed.

3. The grounds contend that the Judge erred in dismissing the appeal in a number of ways, including through reliance on credibility issues that were not put to the appellant or

his witnesses at the hearing; making adverse credibility findings on the unsound basis of 'implausibility'; through factual mistakes that are sufficient to amount to an error of law; and through a failure, without proper reason, to give due weight to the documentary evidence produced by the appellant.

4. I have concluded that the grounds do disclose arguable errors of law in the Judge's decision, for the reasons stated. Permission to appeal is Granted.

### The Hearing

9. Mr Balroop, for the appellant, moved the grounds of appeal. He took me to [38] of the decision and told me that in the first two sentences of that paragraph the Judge makes a mistake which goes to the root of finding that there is no interest in the appellant because of his sur place activities. He complained the what is contained there was not put to the appellant and was not challenged in evidence.

10. Moving the second ground of appeal, Mr Balroop took me to [39] of the decision and said that the Judge gives no explanation for the plausibility findings about a six-week delay between the appellant's brother-in-law's arrival in Sri Lanka (on a temporary visit) and the police coming to ask about the appellant. There was no evidence of police procedure in Sri Lanka, and the Judge's finding on plausibility is simply not explained.

11. Mr Balroop told me that the third grounds of appeal focuses on [45] the decision. He referred me to the appellant's witness statement, which (he said) gives a detailed account of the appellant's reasons for becoming involved in Tamil separatism. He said that the Judge simply does not engage with that evidence, and does not explain the adverse credibility findings.

12. Finally, Mr Balroop me to [40] to [42] of the decision where the Judge is critical of a supporting letter from an MP of the TGTE in the UK. Mr Balroop told me that cumulative errors amount to a material error of law. He asked me to set the decision aside and remit this case the First-tier Tribunal to be determined of new.

13. For the respondent, Mr Terrell resisted the appeal. He told me that the appellant has selected certain sentences from the decision and taken them out of context. He reminded me that there was no evidence of what was or was not challenged before the First-tier Tribunal and cautioned against making presumptions. He told me that if there is an error at [39] of the decision, it is not material. He told me that the grounds of appeal are merely a disagreement with findings of fact which were well within the range of reasonable findings available to the Judge.

14. Mr Terrell asked me to dismiss the appeal and allow the decision to stand.

## Analysis

15. The Judge's findings start at [29] of the decision, where the Judge correctly takes guidance from Devaseelan. At [36] the Judge starts to consider the evidence.

16. At [37] the Judge summarises the evidence from the appellant's brother-in-law, but at [38] complains that she has not been provided with "*confirmation*" that the appellant's brother-in-law visited Sri Lanka in 2019. The Judge does not properly explain why the appellant's brother-in-law's evidence is not enough.

17. At [38] and [39] the Judge does not adequately explain why she rejects the appellant's brother-in-law's evidence. At [39] the Judge says that a six-week delay between the appellant's brother-in-law arriving in Sri Lanka and the police coming to speak to him is implausible, and so she does not find the evidence of the appellant or his brother-in-law credible.

18. The Judge does not explain what is implausible about a six-week gap between the appellant's brother-in-law arriving in Sri Lanka and the police speaking to him. There was no evidence of police procedure in Sri Lanka. There is nothing to indicate that the Judges is familiar with Sri Lankan police procedure. The Judge's credibility finding is unsupported.

19. Between [42] and [43] the Judge rejects the evidence contained in a letter, the author of which says that he is a Tamil activist and a member of parliament of the Transnational Government of Tamil Eelam (TGTE) in the UK. The Judge rejects that evidence because the author of the letter did not attend the hearing and because there is an error in the date of the letter. The Judge does not analyse the contents of the letter.

20. From [46] to [49] the Judge rejects the appellant's asylum appeal. She goes on to reject the appellant's appeal on ECHR grounds. The problem is that the Judge's reasoning is inadequately explained.

21. The Judge's findings of fact are intermingled with reasons and conclusions. When each of those three elements are disentwined, it can be seen that the Judge reaches conclusions, but the findings of fact are lacking, and that makes the reasoning inadequate.

22. The Judge reaches conclusions without analysing the evidence which led her to those conclusion. The Judge does not explain how she reached the conclusions recorded at [46] to [49]. The Judge does not give adequate reasons for rejecting the documentary evidence about the appellant's claimed sur place political activities, which is an important strand of evidence. The Judge's

decision is undermined by a material error of law because there is an inadequacy of fact finding.

23. Because the decision is tainted by material errors of law it is set it aside. It is a matter of agreement that a fresh hearing is necessary before the First-tier Tribunal.

### Remittal to First-Tier Tribunal

24. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

25. I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

26. The appeal is remitted to the First-tier Tribunal sitting at Hatton Cross to be heard before any First-tier Judge other than Judge Mann. A Tamil interpreter will be required.

### **Decision**

**The decision of the First-tier Tribunal is tainted by a material error of law.**

**The Judge's decision promulgated on 6 July 2022 is set aside.**

**The appeal is remitted to the First-tier Tribunal to be determined of new.**

Signed **Paul Doyle**  
28 August 2024  
Deputy Upper Tribunal Judge Doyle

Date

