



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000894
First-tier Tribunal Nos:
PA/51221/2023
LP/01988/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 July 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

EP
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. G. Lee, Counsel instructed by ASK Solicitors
For the Respondent: Mr. S. Walker, Senior Home Office Presenting Officer

Heard at Field House on 27 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and/or any member of her family, 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. In a decision dated 5 May 2024 I set aside the decision of the First-tier Tribunal. The appeal came before me to be remade in relation to the risk faced by the appellant on account of her sur place activities.

Anonymity

2. I continue the anonymity direction given that this is a protection claim.

The hearing

3. I attended remotely due to problems with trains. The appellant, Dr. Sockalingam Yogalingam, Mr. Lee and Mr. Walker were present at Field House. There was no objection to my attending remotely.
4. At the start of the day, Mr. Lee stated that an interpreter was needed. In my error of law decision I had directed that the appellant should inform the Upper Tribunal whether an interpreter was required “no less than seven days before the resumed hearing”. However, the request had not been made within that time. I asked Mr. Lee to pass on to those instructing him my dissatisfaction that the direction had not been complied with. I put the hearing back, and an interpreter was sourced who was able to attend remotely.
5. I heard oral evidence from the appellant, who was assisted by the interpreter, Ms. M. Sivasatkunanathan, who confirmed before proceeding that they both fully understood each other. The language used was Tamil. I also heard oral evidence from Dr. Yogalingam. Both representatives made oral submissions. I reserved my decision.
6. I have taken into account the documents contained in the appellant’s First-tier Tribunal bundle (11 pages, “AB1”), the appellant’s First-tier Tribunal supplementary bundle (54 pages, “AB2”), the appellant’s supplementary Upper Tribunal bundle (18 pages PDF, “AB3”), the letter from Dr. Yogalingam dated 5 May 2024 and the documents in the respondent’s First-tier Tribunal bundle (92 pages, “RB”). Additionally Mr. Lee provided a chronology of the sur place events in which the appellant had participated.
7. I do not propose to set out all of the evidence here as it is to be found in these papers and in the record of proceedings. I will refer to the evidence as and when necessary in coming to my decision.

What the appellant has to establish

8. The appellant fears that, were she to return to Sri Lanka, she would be at risk of persecution on account of her political opinion. This is a reason which engages the Refugee Convention.
9. The appellant is required to show that she is currently at “real risk” of persecution if returned to Sri Lanka as a person who falls within article 1(A) of the Refugee Convention, in which case she is to be accorded recognition as a refugee. If she does not qualify as a refugee she is required to show “substantial grounds” for believing that, if returned to Sri Lanka, she “would face a real risk of suffering serious harm”, in which case she is to be granted humanitarian protection. Alternatively, she is required to show that returning her to Sri Lanka would cause the United Kingdom to be in breach of its obligations under the ECHR, as she faces a near-certainty of death such as to place the United Kingdom

in breach of Article 2, or that she would be subject to a real risk of torture or inhuman or degrading treatment or punishment of sufficient severity to engage Article 3, or that the decision would otherwise constitute an unwarranted interference with qualified protected human rights.

10. The standard of proof is to a reasonable degree of likelihood. This standard applies to both past and current circumstances, and also to establishing the future risk in the country to which she will be returned.

Findings of credibility and fact

11. I have carefully considered the evidence of the appellant's sur place activities as set out in the chronology, together with the evidence of the appellant and Dr. Yogalingam. There was no challenge to the evidence of her attendance at these events. The challenge from the respondent relates to the extent of her involvement, and whether that will put her at risk from the Sri Lankan authorities, following the Country Guidance case of KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 00130 (IAC).
12. There was no challenge to the evidence of Dr. Yogalingam. He was an expert witness in the case of KK and RS. He has provided three letters in support for the appeal. His oral evidence was consistent with the evidence in his letters, and consistent with the appellant's evidence. I find that I can rely on the evidence of Dr. Yogalingam.
13. I find that the appellant is a member of the TGTE. I find that she joined the TGTE in September 2022 after arriving in the United Kingdom in August 2022. She was asked in cross-examination why she had joined so soon after her arrival. She said that she had had a passion for it. Mr. Yogalingam was asked what the appellant's reason was for joining the TGTE soon after her arrival in the United Kingdom. He said that people were questioned on their motives before joining the organisation, and whether they were motivated for a separate Tamil state. Despite the findings of the First-tier Tribunal in relation to events in Sri Lanka, the appellant is Tamil, and given her history and the history of her husband, it is plausible that she would want to be involved with an organisation fighting for a separate Tamil state. I accept that the appellant joined the TGTE for genuine political reasons.
14. I find that the appellant has attended events organised by the TGTE since November 2022 as set out in the chronology. I find that she has attended events regularly. I have considered whether she is more than an attendee at these events. The evidence of Mr. Yogalingam is that her activities go "far beyond mere attendance". In cross-examination he said that she was prominent at events, working at the front line to make sure that the events went well. He was asked whether she was an organiser "at" the events, or "of" the events. He said that it depended on the event. She helped to organise some of them, and she came to help at others. She spoke to people at events, although she did not make speeches.
15. The appellant's evidence as set out in her three witness statements is that she performed dances, spoke to people at events, raised the Tamil flag, distributed leaflets and helped to organise and coordinate events for the TGTE. She has provided photographs of her involvement including dancing, protesting, and leafleting, and her attendance at Mullivaikaal in 2023 and 2024.

16. I find that the events in which the appellant has participated are not solely for the TGTE membership. In particular, I find that during Mullivaikaal remembrance week 2023 the appellant distributed porridge to the public in Lewisham. She has distributed leaflets to the public. At the end of Mullivaikaal remembrance week, on 18 May 2023, she was interviewed by the media. She has attended protests outside the Sri Lankan High Commission and in Westminster.
17. I find that the appellant is not merely an attendee at TGTE events but that she has a more prominent role. I accept the evidence of the appellant and Mr. Yogalingam, corroborated by the documentary evidence, that she is involved in the organisation of events.

Risk on return

18. I have considered the Country Guidance as restated in the headnote to KK and RS. At (3) it states that there is “no tolerance of the expression of avowedly separatist or perceived separatist beliefs”. At (5) it states:

“Sur place activities on behalf of an organisation proscribed under the 2012 UN Regulations is a relatively significant risk factor in the assessment of an individual’s profile, although its existence or absence is not determinative of risk. Proscription will entail a higher degree of adverse interest in an organisation and, by extension, in individuals known or perceived to be associated with it.”

19. At (6) it states:

“The Transnational Government of Tamil Eelam (“TGTE”) is an avowedly separatist organisation which is currently proscribed. It is viewed by GoSL with a significant degree of hostility and is perceived as a “front” for the LTTE.”

20. I was referred to [386] and [387] by Mr. Lee which expand on headnote (6):

“It is self-evidently the case that the TGTE’s activities are: (a) supportive of a separatist agenda; (b) highly critical of the Sri Lankan authorities and (c) a public platform for the professed support of the LTTE through the display of its insignia at events.

For the reasons set out above, we conclude that GoSL regards the TGTE with a significant degree of hostility. It is reasonably likely that GoSL perceives that organisation as a “front” for the LTTE, although this categorisation is in our judgement simply reflective of the level of adverse interest rather than a criterion for the existence of such interest in the first place.”

21. At headnote (8) it confirms that the Sri Lankan government “continues to operate an extensive intelligence-gathering regime in the United Kingdom which utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. At the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. Information gathering has, so far as possible, kept pace with developments in communication technology.”
22. This is expanded on at [405] as referred to by Mr. Lee. It states:

"All three experts have stated that GoSL continues to operate an extensive intelligence-gathering regime which attempts to cover "all forms of communication" and utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. We find that at the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. That is congruent with what we have said about GoSL's attitude towards the diaspora in general and in particular the sub-set of those organisations and/or individuals involved in perceived separatist activities."

23. The case considered the returns process and the "pinch points" for anyone being returned to Sri Lanka. At (10) of the headnote it lists the factors on which the government is likely to have obtained information as follows:

"Prior to the return of an individual traveling on a TTD, GoSL is reasonably likely to have obtained information on the following matters:

- i. whether the individual is associated in any way with a particular diaspora organisation;*
- ii. whether they have attended meetings and/or demonstrations and if so, at least approximately how frequently this has occurred;*
- iii. the nature of involvement in these events, such as, for example, whether they played a prominent part or have been holding flags or banners displaying the LTTE emblem;*
- iv. any organisational and/or promotional roles (formal or otherwise) undertaken on behalf of a diaspora organisation;*
- v. attendance at commemorative events such as Heroes Day;*
- vi. meaningful fundraising on behalf of or the provision of such funding to an organisation;*
- vii. authorship of, or appearance in, articles, whether published in print or online;*
- viii. any presence on social media;*
- ix. any political lobbying on behalf of an organisation;*
- x. the signing of petitions perceived as being anti-government."*

24. I find that the appellant is a member of the TGTE. She has attended meetings and demonstrations frequently. She has been involved as an organiser at events, holding the Tamil flag and banners. She can be clearly seen at the front in the photographs provided. She has organised and promoted events. She has attended Heroes Day. She has been involved in leafleting and fundraising. She appears on social media in connection with these events. I find that the Sri Lankan government would have a significant amount of information about the appellant.

25. The headnote states at (19):

"Returnees who appear on the watch list will fall into one of two sub-categories: (i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and (ii) those who are of interest, not at a level sufficient to justify detention at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle."

26. At (21) of the headnote it sets out a list of non-exhaustive factors to be taken into account when assessing an individual's profile. Going through these in turn, the appellant is a member of, and active with, the TGTE which is a proscribed organisation. She is involved as an organiser of events, and has a prominent role. In relation to the extent of these activities under (iii), the evidence of Mr. Yogalingam is that the appellant is committed. She attends events frequently. She has been active since 2022. The findings of the First-tier Tribunal in relation to her own account of events in Sri Lanka stand, when her account was not accepted. In relation to any family connections, I accept the evidence in relation to her husband, and how he is currently having to report to the authorities in Sri Lanka.
27. Taking this into account, I find that the appellant is at risk of detention on return to Sri Lanka given her profile taking into account her involvement with the TGTE. At (27) of the headnote it states that there is a reasonable likelihood that those detained by the authorities will be subject to persecutory treatment and ill treatment contrary to Article 3.
28. Taking all of the above into account, and following the case of KK and RS, I find the appellant's claim to be a genuine refugee in need of international protection to be well founded. I find that there is a real risk that she will suffer persecution on return to Sri Lanka, and so his claim succeeds on asylum grounds. As I have allowed her appeal on asylum grounds, I do not need to consider her claim to humanitarian protection. I find that returning her to Sri Lanka would cause the United Kingdom to be in breach of its obligations under Articles 2 and 3 of the ECHR.

Notice of Decision

29. The appellant's appeal is allowed on asylum grounds.
30. The appellant's appeal is allowed on human rights grounds.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
14 July 2024