



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2024-001575
First-tier Tribunal No:
PA/01049/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 27 June 2024

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

P S
(anonymity order made)

Appellant

and

S S H D

Respondent

For the Appellant: Mr G Lee, counsel instructed by Aask Solicitors Ltd
For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer

Heard at Field House on 18 June 2024

DECISION AND REASONS

1. FtT Judge Richardson dismissed the appellant's appeal by a decision promulgated on 6 March 2024. He found no reason to depart from adverse credibility findings reached in an appeal in 2017, and that the appellant's *sur place* activities since then did not place him at risk on return to Sri Lanka.
2. The appellant applied to the FtT for permission to appeal to the UT.
3. The appellant's ground 1, at [15] of his application, alleges a series of errors of fact, amounting to error of law:
 - (i) attendance at 17 events over 4 years relating to the TGTE or Tamil community in the UK, "not on any view ... a small number";

(ii) misunderstanding that unclear from photos when events took place, as dates and names of events are clearly marked;

(iii) wrong to say no engagement in fundraising, when there was evidence of fundraising for an event on 27 November 2019;

(iv) wrong to leave photographic evidence out of account because date and nature of event handwritten on photo; if appellant's evidence of attendance disbelieved, reasons had to be given.

4. The errors are said at [16] to be material because they bear on assessment of risk factors set out in *KK and RS (sur place activities: risk)* Sri Lanka CG [2021] UKUT 00130 (IAC).
5. Ground 2 is that the Judge's conclusions cannot be squared with that guidance, and that the appellant could be at risk as a supporter although not a member of the TGTE.
6. FtT Judge Pickering granted permission on 4 April 2024, on the view that the Judge arguably did not have "full regard" to the guidance, and the grounds were inter-related.
7. On ground 1 (i), Mr Lee contended that the number could not be described as small; it demonstrated a significant commitment to the TGTE cause; by describing it as he did, the Judge meant that it was not such as to create a risk; and that view was irreconcilable with the guidance.
8. Ms Nwachuku accepted that the appellant's evidence was of attending 14 events over 4 years, but she said it was clear from the decision as a whole that the Judge knew what the evidence was; he approached the claim on the basis that attendance was established; and he did not err by describing that at [17] as "a small number of events".
9. On ground 1 (ii) and (iv), Mr Lee referred to photographs which have handwritten dates and names of events, and said that Judge, in saying that dates and the appellant's role were not clear, misunderstood that evidence. Alternatively, the Judge failed to make a clear credibility finding, or if the evidence was rejected, failed to say why.
10. Ms Nwachuku referred to [9, 15 & 16] of the decision, where the Judge observes the handwritten notes, but says there was no other support for dates, and declines to accept that the appellant attended any events prior to the outcome of a previous appeal in 2017. The adverse credibility findings in which were the Judge's starting point, and the evidence had been partly designed to show that he was committed prior to 2017. She submitted that the Judge made no mistake about what the evidence was; he was entitled not to take it at face value; and he explained why.
11. On ground 1 (iii), Mr Lee identified in course of submissions the appellant's statement at [6 (f)], "*Maaveer Naal on 27 November 2019 - I sold tickets and garlands and was involved in fundraising for the TGTE*".

He submitted that this evidence was material, on reference to *KK and RS* (Sur place activities: risk) Sri Lanka CG [2021] UKUT 00130 (IAC) headnote (10)(vi), and oversight of it was an error which, even on its own, rendered the decision unsafe.

12. Ms Nwachuku submitted that there was no slip, or no slip of any significance, because the Judge's finding was that there was no "meaningful fundraising", in the terms used in *KK and RS*.
13. Mr Lee countered that the oversight was clear and could not be explained away by "reasoning backwards".
14. More generally, Mr Lee argued that there were errors as particularised above, a failure to make clear credibility findings, a failure to look at the position from the standpoint of the authorities in return of the appellant, and a failure to ask the correct questions in terms of the guidance; which required a remit to the FtT.
15. Apart from her position on the particular alleged errors of fact, noted above, Ms Nwachuku submitted that the grounds overlooked the Judge's starting point, correctly applying *Devaseelan* principles; the Judge was concerned to resolve the claim that the appellant was active before the previous decision; from that point, there was no misunderstanding of the photographic evidence; the Judge did accept and did not misunderstand the appellant's activities since 2019; several of the photographs showed detached attendance rather than central involvement in events; in any event, the Judge decided the case on the basis that the appellant did what he claimed; his involvement was found to be minimal; guidance was cited and applied; and there was no error, other than perhaps on evidence of fund-raising, but that was at an immaterial level and made no difference.
16. In reply, Mr Lee said that the Judge overlooked [488 - 489] of *KK and RS*; the decision is muddled; the photographs included some of the appellant holding placards, one of the matters on which information is likely to have been obtained by the government of Sri Lanka; the appellant ticked "a big chunk" of the matters listed at headnote (10), with which the Judge failed to engage; and the decision was clearly unsafe.
17. I reserved my decision.
18. The headnote of *KK and RS* is to be read and applied as a whole, but I set out (10): ...

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.*

19. I also set out the passages from the body of the decision to which Mr Lee referred, which are part of the underpinning for the headnote: ...

[488] The number of demonstrations attended can bear relevance in another way. Whilst the overall assessment of an individual's profile is not simply a quantitative exercise, a significant number of attendances may, depending on all the circumstances, go to inform a qualitative evaluation. It is, after all, the perception of GoSL which is important: if the authorities are aware that an individual has taken part in numerous demonstrations over the course of time, it may indicate a genuine commitment to the Tamil separatist cause. In our judgment, having regard to everything we know of relevant developments over the last six years or so and GoSL's attitude, it would be inappropriate to rule out the potential significance of an individual's attendance history.

[489] Our position on the question of an individual's history of attendance at demonstrations leads us back to what the Tribunal said in GJ. What we have said in relation paragraph 351 of GJ, above, holds good at this point too: even multiple attendances will not "of itself" prove a genuine commitment to Tamil separatism, although a track record will be relevant to that issue.

20. The submissions for the respondent on whether the appellant proved attendance at events prior to 2017 clarify why the decision is framed as it is. The appellant was concerned to show that he had been continuously active and is genuinely committed. The Judge rejected that, as he was entitled to do. This also fed into Mr Lee's submissions on absence of clear credibility findings. The debate in the UT followed on from the debate in the FtT. So did the submissions on whether the appellant is noticeably a participant in all the photographs. All of this, however, is beside the point in the FtT's final resolution of the case. That resolution is based on accepting at [17] the proposition of Mr Lee (who appeared also in the FtT) that the issue is the perception of the Sri Lankan authorities – that is to say, in the end it matters not whether the appellant has acted in good or in bad faith. The decision then takes what he says at face value, apart from the dates of the earlier events, which is ultimately irrelevant.

21. Thereafter, the Judge cited the parts of the guidance to which Mr Lee referred him; summarised the claim as attendance at “a number of events”; provision of security as one event as the high point; minimal involvement “such as holding a placard or poster”; no high profile role, publication of articles, social media activity or political lobbying; at [23], “a very minimal or peripheral role”, and applying the guidance, no risk.
22. To attend 4 events a year is obviously neither the highest nor the lowest level of commitment. The Judge knew how many events were attended. To categorise the number as small is not an error on a point of law.
23. Grounds 1 (i) (ii) and (iv) show no error; and even if the dates written on the photographs were to be accepted, it would make no difference.
24. Ground 1 (iii) shows an oversight of the evidence. I do not agree with the respondent that the finding can be read as one of “no meaningful fundraising”.
25. The assertion in the witness statement is terse and limited, not realistically more than a token claim. This is not an error which undermines the decision, read as a whole.
26. The possibility of the Sri Lanka government perceiving the appellant as a dangerous separatist was a question of fact and degree for the Judge. On the most optimistic view, his case was at the lowest level. The Judge took the claim at face value and found that it failed to scrape over the line. The appellant disagrees, and his case has been pressed in detail as far as it might go, both in the FtT and in the UT; but the Judge’s analysis is not shown to err on any significant issue of fact, or to be wrong in terms of the guidance.
27. The appeal to the UT is dismissed. The decision of the FtT stands.
28. I thank both representatives for their assistance.
29. The FtT made an anonymity order. At this stage, pending any further order by a tribunal or a court, anonymity is preserved.
30. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, 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.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
20 June 2024

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