



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

Appeal Number: AA/07091/2011

THE IMMIGRATION ACTS

**Heard at Field House
On 30 April 2015**

**Decision & Reasons Promulgated
On 6 May 2015**

Before

**THE HONOURABLE MRS JUSTICE MCGOWAN
UPPER TRIBUNAL JUDGE ALLEN**

Between

RAMESH RATHNASINGAM

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah of Counsel

For the Respondent: Mr C Walker Home Office Presenting Officer

DECISION AND REASONS

1. Appeal refused.

BACKGROUND

2. The appellant is a Sri Lankan national. He was born on 15 October 1980. He married his wife in Sri Lanka on 20 January 2011. She is also a Sri Lankan national. She obtained entry clearance as a student in November 2010 and returned to Sri Lanka on 15 January 2011 for the marriage. She returned to the UK to continue her studies. The appellant came to the UK

as her dependant and was granted entry clearance from 10 March 2011 to 25 March 2012. He arrived in the UK on 19 March 2011. On 3 May 2011 he claimed asylum and was interviewed for screening purposes that day. On 9 May 2011 he was served with notice of liability to removal as he was considered to have used deception to gain entry to the UK. He was further interviewed on the substance of his claim on 18 May 2011.

3. The decision of the Secretary of State to refuse the claim was given in a letter of 2 June 2011. It is a lengthy explanation of her reasoning and refusal considering, in particular, all that had been said by the appellant in his interviews.
4. The appellant appealed against that refusal on the basis that the decision was contrary to Articles 2 and 3 of the ECHR and that he had a well-founded fear of persecution for a Convention right. It was said that the decision was **Wednesbury** unreasonable.
5. His appeal was dismissed by the First-tier Tribunal on 2 August 2011 after a hearing on 14 July 2011 in a detailed determination. He sought permission to appeal against that determination on 8 August 2011. Permission was refused on 15 August 2011. A further application for permission was made dated 5 September 2011. That was also refused on 15 September 2011.
6. On 15 December 2011 the appellant made an application for Judicial Review. On 23 March 2012 permission to bring a claim for Judicial Review was refused by Timothy Dutton QC on the papers. That was renewed on an oral hearing before Geraldine Andrews QC and granted on 21 November 2012 on the basis that there had been errors in treating the country guidance as set out in **TK (Sri Lanka)** as having been superseded and failing to have regard to the harassment of the appellant's family after he had left Sri Lanka. By a consent order dated 23 January 2013 the parties agreed that the application for permission to appeal be reconsidered by the Upper Tribunal. On 19 January 2015 permission to appeal was granted by the Vice-President of the Upper Tribunal.

THE HEARING

7. The appellant had set out his case in two witness statements, dated 10 July 2011 and 14 July 2011. He had given answers in two interviews and gave evidence at the hearing before the First-tier Tribunal. We are very grateful to the Judge of the First-tier Tribunal for his clear recitation of the history, which does not need to be repeated in full here.
8. The important facts are that the appellant had come to the attention of the authorities for the first time in 2000 when he was a student. He had been arrested on suspicion of assisting the LTTE because of his association with another young man. A not uncommon experience in 2000. He gave an account of being tortured during his detention. He was released on bail

in October 2000 but was required to sign on at an army camp, which he continued to do until 2004.

9. Following a ceasefire in 2004 he was again threatened and so gave up his tutorial centre in Jaffna and moved to Vanni. The local rule was that every household in Vanni had to provide one member of the household as a member of the LTTE. The appellant joined the LTTE on 10 December 2004 to prevent his sister being required to join. He was trained for about a month and was required to continue in his chosen career as a teacher. He was posted to the camp of the leader of the intelligence wing of the LTTE, a man called Pottu Amman and taught his children. In addition he taught illiterate fighters to read in batches of five or six at a time. He was also required to do some administrative work for the LTTE. In 2008 he was sent to Iranaimadu to provide administrative support to the Forest Mobile Team. He became separated from the group and having encountered a police camp he felt he had no choice but to surrender as a member of the LTTE. He was bound and beaten and eventually taken before a court. From there he was sent to a rehabilitation centre where he stayed until his release on 19 April 2010. He returned home and was visited by police on a "routine visit" to confirm his identity and address.
10. He was called back to the camp and questioned a number of times. Eventually he moved to Colombo to avoid this level of harassment. He was married that month and then came to the UK. He had had to bribe an official to be able to leave.
11. The Secretary of State did not accept the appellant's account in many of its details. Her response was that even taking everything at its highest the appellant was not at risk on return to Sri Lanka.
12. The Judge found, *"the appellant's account to have been extremely detailed, completely consistent and entirely credible."* He went on to consider the risk factors, outlined in **TK (Tamils) Sri Lanka CG [2009] UKAIT 49** which might apply to the appellant if he was returned to Sri Lanka.
13. The Judge listed his findings as follows in detail. He found that the appellant had been released from the rehabilitation centre by the authorities because he was not perceived as a threat to the peace of Sri Lanka, nor had he ever been seen as one. He would be able to show that he had been through the process of rehabilitation in the centre. Importantly the Judge found no real risk of re-detention or further ill-treatment.
14. In reaching his conclusion the Judge specifically considered the authority of **LP (LTTE) Sri Lanka CG [2007] UKAIT 76** in addition to **TK**.
15. He found that even the risk factors from those listed which applied to this appellant did not, in his personal circumstances and in the light of the changed situation in Sri Lanka create any degree of real risk at all. The

appellant's successful completion of the required period of rehabilitation was an important feature of the decision that the appellant would not be at any real risk of ill-treatment from the authorities. Therefore the Judge found that the appeal could not succeed either under the 1951 Convention Relating to the Status of Refugees or Articles 2 and 3 of the ECHR.

16. He found, on the facts, that the removal would not be disproportionate and that the appellant would have a family and private life in Sri Lanka.
17. He also found that the Secretary of State was unreasonable in finding that the appellant had been deceptive on his entry to the UK and therefore his application to enter and remain as his wife's dependant should be reinstated.

THE APPEAL

18. The appeal, in summary, is that given the findings of credibility and consistency made about the appellant's account, the Judge erred in his application of the situation in Sri Lanka as described in the country guidance in **TK** in 2009. Additionally it was submitted that he failed to consider the evidence that the appellant's family had been visited by the authorities since his departure.
19. The Tribunal is obliged to follow "extant, relevant country guidance" and apply it to the facts of a case, as the Tribunal finds them to be. In this case the Judge did consider the relevant country guidance and further applied it directly to the particular facts as he found them to be. He found that the authorities in Sri Lanka, however they might treat others, would not treat this appellant in the manner he genuinely feared because his limited role during the fighting and his successful completion of the rehabilitation process, which the authorities themselves had instituted, would mean that he was not at any real risk.
20. The court in **TK** expressed the function of the Tribunal Judges as those who undertake the primary role of fact finding and guidance on country conditions. It set that out in terms, at paragraph 4,

"In country guidance cases the Tribunal has a dual function. As in every case, it must decide the appeal before it, but it also seeks to identify relevant risks that arise in relation to classes or groups of persons. It does this in two main ways: (i) by identifying one or more 'risk categories' (usually when the evidence is sufficiently clear-cut to justify a finding that the generality of persons in a particular category are at risk); (ii) by delineating 'risk factors', i.e. factors of particular significance when assessing risk, a mode usually chosen when the evidence is less clear-cut."
21. The task of the Tribunal as identified in **TK** is precisely the one performed in this case. The Judge made an assessment of the evidence of the appellant's individual circumstances. He then applied the risk factors in LTTE cases as laid down in **TK**. By properly applying one to the other he found that this particular appellant would not be at risk if returned.

22. The Judge did not pay insufficient regard to the country guidance. He rightly considered all the relevant material before him, on the conditions in Sri Lanka at the date of the decision. The court in **TK** went on to observe at paragraph 6,

“The Court also fully recognised that country guidance is not inflexible; it must be applied by reference to new evidence as it emerges; otherwise it would fall foul of the principle of ex nunc assessment of risk. Our country guidance system can only expect to have authority domestically and command respect abroad, therefore, if it maintains these standards.”

23. The evidence of the police harassment of his family came from the appellant himself in his interview of 18 May 2011 at questions 124-125. He said that they had gone to his mother’s house and asked for his telephone number, when his mother said she did not remember it, they left their number and asked him to get in touch. Such an event, against all the other findings in this case would not have altered the outcome.
24. There were no errors of law in the reasoning and the determination of the First-tier Tribunal Judge and accordingly this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Signed

Date **30 April 2015**

Mrs Justice McGowan