



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

Appeal Number: PA/11824/2018

THE IMMIGRATION ACTS

Heard at Field House

On 5 November 2019

**Decision & Reasons
Promulgated**

On 7 November 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

**AKWF
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Not present or represented

For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant was born in 1974 and is a male citizen of Sri Lanka. He appealed to the First-tier Tribunal against a decision of the respondent dated 27 September 2018 refusing to grant him international protection. The First-tier Tribunal, in a decision promulgated on 30 April 2019, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.
2. At the initial hearing at Field House on 5 November 2019, the appellant did not attend. I had a letter from Nag Law dated 4 November 2019 which

stated that attempts made by the solicitors to contact the appellant had been unsuccessful and, as a consequence, they had withdrawn the brief issued to Counsel. There was nothing on the Upper Tribunal file to indicate that the notice of hearing sent to the appellant's last known address had failed to reach him. That notice of hearing had been posted by first class post to the appellant on 3 October 2019. In the circumstances, I proceeded with the initial hearing in the absence of the appellant.

3. Mr Avery, who appeared for the Secretary of State, did not concede the appeal but he told me that he considered the decision of the First-tier Tribunal to be problematic. I agree. Indeed, I find each of the grounds of appeal to have substantial merit.
4. First, the judge accepted that the appellant had been detained in 2002 and 2017 in Sri Lanka on account of assistance which he had given to the LTTE yet at [42] she found that there was 'nothing in this appellant's personal circumstances which gives me any reason to believe his claim.' In the light of her apparently positive findings as regards parts of the appellant's account, that conclusion is puzzling. The judge may have intended to say that there was nothing in the appellant's personal circumstances which led to believe that he would be at risk and return to Sri Lanka but that is not what she has actually said. The statement is troubling for the additional reason, referenced in the grounds [15], that the judge has not carried out any adequate examination of risk on return in the light of her findings that the appellant had been arrested on two occasions in the past for LTTE activities. Moreover, the judge at [34] unhelpfully states that, 'based on the appellant's wife's statement, it *may* be that the Sri Lanka police are looking for the appellant but I find that would be because he is wanted for prosecution of a criminal offence and not because of his past involvement with the LTTE...[my emphasis]' At [38], however, the judge finds 'that the authorities have [not] been visiting [the appellant's] home looking for him.' The fact-finding is far from clear. The use of the word '*may*' leaves doubt as to what the judge actually did find as a fact. In any event, assuming that the judge found that the police were looking for the appellant in connection with a criminal offence, that finding is completely inconsistent with the subsequent finding that the authorities had not been looking for him. The appellant is entitled to know why he lost this appeal and the judge's confused analysis fails to tell him.
5. For the reasons I have indicated above, I find that the analysis of the judge has been vitiated by legal error. I set aside the decision. There will need to be a hearing *de novo* in the First-tier Tribunal. The next Tribunal should be aware of the difficulties which the appellant's previous solicitors have had in contacting him and of his failure to attend the initial hearing in the Upper Tribunal. However, it is up to the appellant to keep the Tribunal and the respondent notified of his current address; if the appellant fails to attend the next First-tier Tribunal hearing, then it is very likely that the Tribunal will decide to proceed in his absence.

Notice of Decision

The decision of the First-tier Tribunal is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal for the Tribunal to remake the decision at or following a hearing *de novo*.

Signed

Date 5 November 2019

Upper Tribunal Judge Lane

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.