



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

Appeal Number: HU/10995/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
(remotely via Skype for Business)  
On 9 February 2021**

**Decision & Reasons  
Promulgated  
On 25 February 2021**

**Before**

**UPPER TRIBUNAL JUDGE LANE**

**Between**

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

Appellant

**and**

**SUGANTHAN SIVARAJAH  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr Yeo

**DECISION AND REASONS**

1. I shall refer to the appellant as the 'respondent' and the respondent as the 'appellant', as they appeared respectively before the First-tier Tribunal. The appellant was born in 1984 and is a citizen of Sri Lanka. He appealed to the First-tier Tribunal on international protection and human rights grounds against a decision of the Secretary of State. The Secretary of State's refusal of the appellant's international protection and human rights claims followed the making of a deportation order against the appellant who, on 15 August 2016, had been convicted of sexual assault on a female and sentenced to 27 months imprisonment. The First-tier Tribunal, in a

decision promulgated on 4 September 2020, allowed the appeal on human rights grounds. The appellant's asylum appeal was dismissed; at [42] the judge found that the appellant was not at real risk on return to Sri Lanka from either state or non-state actors, a finding which has not been challenged by the appellant.

2. There are several challenges to the decision all of which concern the judge's finding that there would be very significant obstacles to the appellant's integration in Sri Lanka. First, the respondent submits that the judge overlooked or gave insufficient weight to the availability of treatment in Sri Lanka for the appellant's mental health problems. Such treatment is referred to in the Secretary of State's decision letter and to which the judge refers at [3] and [6]. I agree with Mr Yeo, who appeared for the appellant at the Upper Tribunal initial hearing, that the availability of treatment is raised in that letter in connection with Article 3 ECHR, not Article 8. In my opinion, the judge was well aware that some treatment may be available (at a cost) but he did not fall into legal error by emphasising, as he does at [54], that medical evidence specific to the appellant indicated unequivocally that the appellant's mental health problems, which are already significant, would worsen on return to Sri Lanka. It may have been helpful if the judge had expressly considered the availability of treatment in the course of his analysis but I am satisfied that he was entitled on the evidence to find that a deterioration of the appellant's mental health, which it is clear from the doctor's report would be likely to occur notwithstanding the availability of treatment, would constitute a very significant obstacle to his integration. As the judge notes at [55], should the appellant return now to Sri Lanka he would be returning to a country which he not only left as a child but from which he was trafficked, a trauma which the medical evidence shows has played a significant part in his mental health difficulties as an adult.
3. Secondly, the respondent submits that the judge has failed to reconcile his finding that the appellant's mental health would 'relapse' with his finding at [63] that the appellant had successfully addressed his drug and alcohol addiction. The respondent asserts that this inconsistency, together with his failure to consider the availability of treatment in Sri Lanka, led the judge into error. I disagree. I find that there is no contradiction or inconsistency. The judge has made a cogent finding based firmly on the evidence that, whilst here in the United Kingdom, the appellant has been able to address his addictions. There is nothing whatever inconsistent with the judge also finding that for the appellant to return now to Sri Lanka, a country in which the appellant has not resided since the age of 12 and from where he was trafficked to the United Kingdom in distressing circumstances, would cause a significant deterioration in his mental health.
4. Thirdly, the respondent submits that the judge failed to identify the positive factors in favour of the appellant's integration in Sri Lanka. This ground also has no merit. As Mr Yeo submitted, the test imposed by section 177C(4) of the 2002 Act concerns obstacles to, not positive factors

in favour of, integration. The judge was well aware that the appellant speaks Tamil and that short term financial assistance might be available from third parties in the United Kingdom but, on the evidence, it was manifestly open to him to conclude that the appellant would nonetheless encounter very significant obstacles on return. The judge had regard to all relevant evidence in reaching that conclusion and the challenge of the Secretary of State is nothing more than a disagreement with the legitimate findings of the judge.

5. At the initial hearing in the Upper Tribunal, Mr Melvin, who appeared for the Secretary of State, sought to 'enlarge' upon (and should the Tribunal consider it appropriate, amend) the grounds of appeal. He asked me to consider the First-tier Tribunal judge's record of proceedings; his own Presenting Officer colleague's record of the First-tier Tribunal hearing indicated that the appellant and his partner, under cross examination, had stated that the appellant had maintained contact with his parents and 'one or two brothers' in Sri Lanka. Mr Melvin submitted that the judge had failed to take account of this fact when assessing whether the appellant would face very significant obstacles to his integration in Sri Lanka. He submitted that this was an 'obvious' error and that the Upper Tribunal should give permission to amend accordingly. Mr Yeo opposed the application.
6. I do not consider that it is necessary in the interests of justice to give permission to amend the grounds. The respondent has had ample opportunity to make an application but has chosen not to do so. The appellant would be potentially put at a disadvantage by having to respond at the initial hearing itself and with no proper opportunity to respond to the amendment. I also note from the judge's typed record of proceedings (which I read out at the hearing and which neither party sought to challenge) that the appellant had said in evidence that he had no contact with anyone in Sri Lanka 'at the moment' whilst the witness LG said that she believed the appellant had 'very sporadic contact but [I] can't comment how often.' Even if I were to grant permission to amend, I should still dismiss the Secretary of State's appeal. Even assuming that the appellant has 'very sporadic' contact with family members in Sri Lanka, the medical evidence does not come close to suggesting that such limited assistance as family members (whose concern with the appellant's welfare is not obvious) might be able to offer the appellant would be enough to prevent his relapse into addiction and very serious mental illness which would thwart his integration into Sri Lankan society.
7. For the reasons I have given above, the Secretary of State's appeal is dismissed.

### **Notice of Decision**

The Secretary of State's appeal is dismissed.

Signed

Date 9 February 2021

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.