



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

Appeal Number: PA/02491/2020

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29 November 2021**

**Decision & Reason  
Promulgated  
On 1 December 2021**

**Before**

**UPPER TRIBUNAL JUDGE GLEESON**

**Between**

**K R (SRI LANKA)  
[NO ANONYMITY ORDER]**

Appellant

**and**

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

Respondent

Representation:

For the appellant: Mr Nisham Paramjorthy of Counsel, instructed by Wimbledon Solicitors

For the respondent: Ms Alexandra Everett, a Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Anonymity order**

*Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) The Tribunal has ORDERED that no one shall publish or reveal the name or address of K R who is the subject of these proceedings or publish or reveal any*

*information which would be likely to lead to the identification of him or of any member of his family in connection with these proceedings.*

**Any failure to comply with this direction could give rise to contempt of court proceedings.**

1. The appellant appeals with permission from the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision on 17 January 2020 to refuse him refugee status under the 1951 Convention, humanitarian protection, or leave to remain in the United Kingdom on human rights grounds. The appellant is a citizen of Sri Lanka and is Tamil.
2. **Vulnerable appellant.** The appellant is a vulnerable person by reason of his mental health problems and is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance. No adjustments have been specified for the remaking hearing.
3. **Mode of hearing.** The hearing today took place remotely by Microsoft Teams. There were no technical difficulties. I am satisfied that all parties were in a quiet and private place and that the hearing was completed fairly, with the cooperation of both representatives.

## **Background**

4. The appellant was born in Sri Lanka in 1984 and is now 37 years old. He came to the United Kingdom on 16 August 2010, flying in directly, with a student visa valid until 10 August 2011.
5. When his student visa expired, the appellant waited just over 4 months to claim asylum. His international protection claim made in December 2011 was refused and he was appeal rights exhausted thereon on 10 December 2012. The appellant did not return to Sri Lanka. There followed four sets of further submissions leading to adverse decisions.
6. In July 2014, the appellant joined the Trans National Government of Tamil Eelam (TGTE), which is a proscribed organisation in Sri Lanka. He remained in the United Kingdom without leave.
7. The further submission with which we are here concerned was made on 15 August 2019 and refused on 17 January 2020. The appellant advanced an adverse political profile, with sur place involvement with LTTE and TGTE activity. The appellant says he was involved in campaigns here against the Sri Lankan government.
8. The appellant also contended that his removal would breach Article 3 ECHR on medical grounds, as he had serious mental health issues for which there was no treatment in Sri Lanka. The Secretary of State rejected the further submissions and the appellant appealed to the First-tier Tribunal.

## **First-tier Tribunal decision**

9. In a decision sent to the parties on 17 December 2020, the First-tier Tribunal dismissed the appellant's appeal. First-tier Judge Athwal accepted that the appellant may have attended meetings held by the TGTE, although he was not a high profile member. The poster in photographs of him demanded rights for Tamils in Sri Lanka, not a separate state or a resumption of the civil war which ended in May 2013.
10. The First-tier Judge purported to apply the guidance in *GJ (Sri Lanka)* and in *Paposhvili*. He dismissed the appeal.
11. The appellant appealed to the Upper Tribunal.

### **Permission to appeal**

12. On 11 March 2021, Upper Tribunal Judge Keith granted permission to appeal on three of the four grounds advanced by the appellant. I asked Mr Paramjorthy whether he had attempted to agree a note of what was submitted at the hearing in relation to the gaps in evidence, or provided a witness statement, but he had not done either.
13. When granting permission, Judge Keith considered that arguably the judge had erred:
  - (a) in his approach to evidence in the appellant's bundle concerning the seriousness with which the Watford and Three Rivers Refugee Partnership (WTRPP) charity had treated a telephone call made to it from Sri Lanka, and in relation to a threatening telephone call made to the appellant's family in Sri Lanka, in which the caller mentioned WTRPP and asked if the appellant was still living in Watford;
  - (b) in relying on an absence of evidence about his fundraising and event organisation for TGTE, without the appellant having been asked for an explanation or evidence; and
  - (c) in his reading of the medical evidence, in which he had failed to notice that the appellant had been prescribed Zopiclone, a central nervous system depressant used to treat insomnia.

### **Rule 24 Reply**

14. There was no Rule 24 Reply from the respondent. That is the basis on which this appeal came before the Upper Tribunal.

### **Upper Tribunal hearing**

15. At the hearing today, it was common ground that the judge's decision showed a lack of anxious scrutiny of the material before him and that the decision would have to be remade, with further evidence from the appellant.

16. The decision in this appeal will be set aside and remitted to the First-tier Tribunal for remaking afresh, with no findings of fact or credibility maintained.

## **DECISION**

17. For the foregoing reasons, my decision is as follows:

The making of the previous decision involved the making of an error on a point of law.

I set aside the previous decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed [Judith AJC Gleeson](#)  
2021

Date: 29 November

Upper Tribunal Judge Gleeson