



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

Appeal Number: PA/00116/2020

**THE IMMIGRATION ACTS**

**At: Field House (remote hearing)  
On: 21<sup>st</sup> December 2021**

**Decision & Reasons Promulgated  
On: 11<sup>th</sup> January 2022**

**Before**

**UPPER TRIBUNAL JUDGE BRUCE**

**Between**

**PK  
(anonymity direction made)**

Appellant

**And**

**Secretary of State for the Home Department**

Respondent

**For the Appellant: Ms S. Jegarajah, Counsel instructed by Greater  
London Solicitors Limited**

**For the Respondent: Mr A. Tan, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

1. The Appellant is a national of Sri Lanka born in 1986. He appeals with permission against the decision of the First-tier Tribunal (Judge FE Robinson) to dismiss his protection and human rights appeal.
2. Insofar as the protection claim was concerned one matter in issue before the First-tier Tribunal was whether the Appellant's *sur place* political activities in the UK were such that he faced a real risk of persecution should he be returned to Sri Lanka. In determining that

issue the Judge was bound to treat as his starting point the findings of two earlier Tribunals.

3. In 2013 Deputy Upper Tribunal Judge Lewis accepted that the Appellant is from a family with longstanding connections to the LTTE. Family members had been “disappeared”. Between 2006 and 2010 he was arrested and ill-treated on three occasions. On the last occasion he had been tortured and accused of terrorism. He had been fingerprinted and released on reporting conditions. After his arrival here the Appellant had continued his involvement with Tamil politics, which the “Sri Lankan authorities may well know about”. Judge Lewis found, these positive findings notwithstanding, that the Appellant was no longer at risk of persecution in Sri Lanka: it had been three years since the war ended, and it was not accepted that there had been any further interest in him. Applying the guidance in GJ & Ors (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) it was not accepted that the Appellant would be identified as someone working to destabilise the unitary state of Sri Lanka. Nor was there any risk arising from his family connections, since the Appellant’s family members who were of adverse interest to the authorities had already been “eliminated”. Judge Lewis did however accept that the Appellant would be monitored on return.
4. In 2018 First-tier Tribunal Judge Mace further accepted that the Appellant had had, since 2015, a “low level” involvement with the Transitional Government of Tamil Eelam (TGTE) in the UK. It was accepted for instance that he was at the demonstration outside the High Commission where a Brigadier in the Sri Lankan army had infamously made a “throat slitting” gesture at the protesters; he helped organise events and to fundraise. Judge Mace was not however persuaded that the Appellant was a member of the TGTE or that he had a significant, or “leading” role in the organisation. It had not been established that the Sri Lankan authorities would know anything about the work he had undertaken here. The appeal was dismissed, again with reference to GJ & Ors.
5. Proceeding from that starting point Judge Robinson considered the new evidence before him. As to the Appellant’s *sur place* activities the Tribunal was referred to the decision in UB (Sri Lanka) v Secretary of State [2017] EWCA Civ 85, the significance of which was that the Court of Appeal recognised that the TGTE had, subsequent to GJ & Ors, been proscribed by the Sri Lankan government and that this was plainly relevant to any assessment of risk on return. The Tribunal was also however referred to the May 2020 CPIN *Sri Lanka: Tamil Separatism*, which suggested that involvement with the TGTE would not necessarily lead to persecution.
6. Against that factual background the Tribunal assessed the evidence before it. This included a letter from the TGTE in London. It was signed by Mr Sockalingam, a TGTE MP. Mr Sockalingam wrote that the

Appellant is a volunteer who has helped organise several events in London: “despite his own traumatising history, he not only attends the meetings but also takes an active role in organising events and public demonstrations....he is an ardent supporter of our mission and he desires independence for the Tamils in Sri Lanka”. Mr Sockalingam went on to say that the Appellant has been given roles of responsibility including organising events and fundraising: he identifies 13 public events that the Appellant played a “key role” in organising. He speaks out publicly and has been pictured in the media on that basis. To emphasise the point, Mr Sockalingam attended the Appellant’s appeal hearing and gave oral evidence. He told Judge Robinson that the Appellant wasn’t “a lower level man - otherwise I wouldn’t have come to court”.

7. Judge Robinson found no reason to doubt Mr Sockalingam’s reliability, and expressly found that the Appellant had taken part in organising TGTE events in London. He did not however accept that this put him at risk. Applying the reasoning in GJ & Ors he did not accept that the Appellant had a “significant role” in relation to Tamil separatist activity, or that he would be perceived as such by the Sri Lankan authorities. There was no evidence that he had an official role. The videos of protests on Youtube which featured the Appellant did not show him to be taking a prominent role: “there is no evidence in these videos and photos which identifies him as a leader or organiser of these demonstrations or activities”. The appeal was dismissed on the 18<sup>th</sup> March 2021.
8. On the 27<sup>th</sup> May 2021 the Upper Tribunal handed down the new country guidance in KK & RS (sur place activities: risk) Sri Lanka CG [2021] UKUT 00130 (IAC). Citing this authority, permission to appeal to this Tribunal was granted by Upper Tribunal Judge Canavan on the 23<sup>rd</sup> June 2021.
9. Before me Mr Tan submitted that the Judge had not been bound to accept everything that Mr Sockalingam had said. He had found much of his evidence to be lacking in detail and so had declined to place much weight upon it. He had identified an inconsistency in the evidence between what the Appellant had said and what his witness had said about whether minutes are taken at meetings. There was, in Mr Tan’s submission, no obvious error arising from the subsequently issued country guidance, since KK & RS itself acknowledges that not all pro-Tamil activity will lead you to the adverse attention of the authorities. In response to my questions about whether the Tribunal had applied the principles in HJ (Iran)(FC) v Secretary of State for the Home Department [2010] UKSC 31 - a point arising in the grounds - Mr Tan said that it was not apparent that this point had been argued before Judge Robinson.

### **Error of Law**

10. I am satisfied that the decision of Judge Robinson contains clear errors in approach and cannot stand.
11. The first error in approach relates to the evidence of Mr Sockalingam. This was a witness who had written a letter in support where he listed 13 events that the Appellant had played a “key role” in organising. He had made it clear that from *his* perspective – as someone with a prominent leadership role in the TGTE – the Appellant was not “low level”. Judge Robinson says at his paragraph 63 that he has “no reason to doubt Mr Sockalingam’s reliability” but then apparently goes on to do just that, stating that the “lack of detail and evidence” means that he is unable to place a great deal of weight on his testimony. I do not, with respect, understand that reasoning. The evidence of Mr Sockalingam was detailed. He had specifically named the events that the Appellant took part in. His evidence about those events was supported by a number photographs and screenshots of videos showing the Appellant participating in said events. It was therefore not correct to say that there was neither detail nor other evidence. Furthermore the witness actually came to court: if anybody had wanted more detail about the Appellant’s “key role”, presumably he could have been asked. Mr Tan is of course correct to say that Judge Robinson was under no obligation to accept Mr Sockalingam’s subjective opinion about whether the Appellant played a key role, but given Mr Sockalingam’s own position it is difficult to understand the reasons given for declining to attach weight to his evidence. The Tribunal’s conclusions at 64 are squarely contrary to his evidence, which was in paragraph 63 described as reliable.
12. The second error is that the risk assessment is incomplete. At the conclusion of paragraph 64 the Tribunal states that it has had regard to HJ (Iran) in reaching its findings. It is difficult to see, from the body of the decision, where that assessment has taken place. This is a man who has been accepted, by three successive Tribunals, to have a long standing history of involvement in Tamil separatism. He was brutally tortured as a result. Members of his family with the same political beliefs have been disappeared, presumably by the Sri Lankan security forces. Judge Robinson accepts that since 2015 he has been involved with Tamil politics in the UK, and that he has, as Mr Sockalingam describes, helped to organise numerous events and fundraise for the TGTE cause. The obvious question to ask, given that history, was whether this was political belief that was genuinely held. If it was, the next question to ask was whether people who hold such views face persecution in Sri Lanka. It seems to me that the answer to both of these questions was quite obviously yes. No judge has doubted the Appellant’s commitment to the cause of Tamil separatism. His appeals have been dismissed not on the basis that he is faking it, but on the basis that post-war, the government is not interested in pursuing every Tamil who once supported the LTTE: GJ & Ors applied. By the time of the appeal before Judge Robinson there had been a marked change in circumstance, since the TGTE had been proscribed by the

Sri Lankan government and designated a terrorist organisation: this development answers the second of the HJ questions.

13. I therefore set the decision of Judge Robinson, insofar as it relates to the protection claim, aside. I remake the decision before me with reference to the new country guidance in KK & RS.

14. The relevant parts of the guidance reads:

*In broad terms, GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) still accurately reflects the situation facing returnees to Sri Lanka. However, in material respects, it is appropriate to clarify and supplement the existing guidance, with particular reference to sur place activities.*

*The country guidance is restated as follows:*

*(1) The current Government of Sri Lanka (“GoSL”) is an authoritarian regime whose core focus is to prevent any potential resurgence of a separatist movement within Sri Lanka which has as its ultimate goal the establishment of Tamil Eelam.*

*(2) GoSL draws no material distinction between, on the one hand, the avowedly violent means of the LTTE in furtherance of Tamil Eelam, and non-violent political advocacy for that result on the other. It is the underlying aim which is crucial to GoSL’s perception. To this extent, GoSL’s interpretation of separatism is not limited to the pursuance thereof by violent means alone; it encompasses the political sphere as well.*

*(3) Whilst there is limited space for pro-Tamil political organisations to operate within Sri Lanka, there is no tolerance of the expression of avowedly separatist or perceived separatist beliefs.*

*(4) GoSL views the Tamil diaspora with a generally adverse mindset, but does not regard the entire cohort as either holding separatist views or being politically active in any meaningful way.*

*(5) Sur place activities on behalf of an organisation proscribed under the 2012 UN Regulations is a relatively significant risk factor in the assessment of an individual’s profile, although its existence or absence is not determinative of risk. Proscription will entail a higher degree of adverse interest in an organisation and, by extension, in individuals known or perceived to be associated with it. In respect of organisations which have never been proscribed and the organisation that remains de-proscribed, it is reasonably likely that there will, depending on whether the organisation in question has, or is perceived to have, a separatist agenda, be an adverse interest on the part of GoSL, albeit not at the level applicable to proscribed groups.*

*(6) The Transnational Government of Tamil Eelam (“TGTE”) is an avowedly separatist organisation which is currently proscribed. It is viewed by GoSL with a significant degree of hostility and is perceived as a “front” for the LTTE. Global Tamil Forum (“GTF”) and British Tamil Forum (“BTF”) are also currently proscribed and*

*whilst only the former is perceived as a “front” for the LTTE, GoSL now views both with a significant degree of hostility.*

...

*(8) GoSL continues to operate an extensive intelligence-gathering regime in the United Kingdom which utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. At the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. Information gathering has, so far as possible, kept pace with developments in communication technology.*

*(9) Interviews at the Sri Lankan High Commission in London (“SLHC”) continue to take place for those requiring a Temporary Travel Document (“TTD”).*

*(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.*

....

*(12) Whichever form of documentation is in place, it will be for the judge in any given case to determine what activities the individual has actually undertaken and make clear findings on what the authorities are reasonably likely to have become aware of prior to return.*

*(13) GoSL operates a general electronic database which stores all relevant information held on an individual, whether this has been obtained from the United Kingdom or from within Sri Lanka itself.*

*This database is accessible at the SLHC, BIA and anywhere else within Sri Lanka. Its contents will in general determine the immediate or short-term consequences for a returnee.*

*(14) A stop list and watch list are still in use. These are derived from the general electronic database.*

*(15) Those being returned on a TTD will be questioned on arrival at BIA. Additional questioning over and above the confirmation of identity is only reasonably likely to occur where the individual is already on either the stop list or the watch list.*

*(16) Those in possession of a valid passport will only be questioned on arrival if they appear on either the stop list or the watch list.*

*(17) Returnees who have no entry on the general database, or whose entry is not such as to have placed them on either the stop list or the watch list, will in general be able to pass through the airport unhindered and return to the home area without being subject to any further action by the authorities (subject to an application of the HJ (Iran) principle).*

*(18) Only those against whom there is an extant arrest warrant and/or a court order will appear on the stop list. Returnees falling within this category will be detained at the airport.*

*(19) Returnees who appear on the watch list will fall into one of two sub-categories:*

*(i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and*

*(ii) those who are of interest, not at a level sufficient to justify detention at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle.*

*(20) In respect of those falling within sub-category (i), the question of whether an individual has, or is perceived to have, undertaken a "significant role" in Tamil separatism remains the appropriate touchstone. In making this evaluative judgment, GoSL will seek to identify those whom it perceives as constituting a threat to the integrity of the Sri Lankan state by reason of their committed activism in furtherance of the establishment of Tamil Eelam.*

*(21) The term "significant role" does not require an individual to show that they have held a formal position in an organisation, are a member of such, or that their activities have been "high profile" or "prominent". The assessment of their profile will always be fact-specific, but will be informed by an indicator-based approach, taking into account the following non-exhaustive factors, none of which will in general be determinative:*

*i. the nature of any diaspora organisation on behalf of which an individual has been active. That an organisation has been proscribed under the 2012 UN Regulations will be relatively*

*significant in terms of the level of adverse interest reasonably likely to be attributed to an individual associated with it;*

*ii. the type of activities undertaken;*

*iii. the extent of any activities;*

*iv. the duration of any activities;*

*v. any relevant history in Sri Lanka;*

*vi. any relevant familial connections.*

*(22) The monitoring undertaken by the authorities in respect of returnees in sub-category (ii) in (19), above, will not, in general, amount to persecution or ill-treatment contrary to Article 3 ECHR.*

*(23) It is not reasonably likely that a returnee subject to monitoring will be sent for “rehabilitation”.*

*(24) In general, it is not reasonably likely that a returnee subject to monitoring will be recruited as an informant or prosecuted for a refusal to undertake such a role.*

*(25) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or are associated with publications critical of the government, face a reasonable likelihood of being detained after return, whether or not they continue with their activities.*

*(26) Individuals who have given evidence to the LLRC implicating the Sri Lankan security forces, armed forces, or the Sri Lankan authorities in alleged war crimes, also face a reasonable likelihood of being detained after their return. It is for the individual concerned to establish that GoSL will be aware of the provision of such evidence.*

*(27) There is a reasonable likelihood that those detained by the Sri Lankan authorities will be subjected to persecutory treatment within the meaning of the Refugee Convention and ill-treatment contrary to Article 3 ECHR.*

*(28) Internal relocation is not an option within Sri Lanka for a person at risk from the authorities.*

...

### **APPLICATION OF THE PRINCIPLE IN HJ (IRAN)**

*It is essential, where appropriate, that a tribunal does not end its considerations with an application of the facts to the country guidance, but proceeds to engage with the principle established by HJ (Iran) [2010] UKSC 31; [2010] 1 AC 596, albeit that such an analysis will involve interaction with that guidance.*

*When applying the step-by step approach set out in paragraph 82 of HJ (Iran), careful findings of fact must be made on the genuineness of a belief in Tamil separatism; the future conduct of an individual on return in relation to the expression of genuinely held separatist beliefs; the consequences of such expression; and, if the beliefs would be concealed, why this is the case.*



15. I apply the facts of this case, as found successively by Judges Lewis, Mace and Robinson, to that guidance, and find as follows.
16. The current Government of Sri Lanka (“GoSL”) is an authoritarian regime whose core focus is to prevent any potential resurgence of a separatist movement within Sri Lanka which has as its ultimate goal the establishment of Tamil Eelam. The GoSL draws no material distinction between, on the one hand, the avowedly violent means of the LTTE in furtherance of Tamil Eelam, and non-violent political advocacy for that result on the other. It is the underlying aim which is crucial to GoSL’s perception. To this extent, GoSL’s interpretation of separatism is not limited to the pursuance thereof by violent means alone; it encompasses the political sphere as well. Whilst there is limited space for pro-Tamil political organisations to operate within Sri Lanka, there is no tolerance of the expression of avowedly separatist or perceived separatist beliefs.
17. The TGTE is in Sri Lanka a proscribed terrorist organisation. It is viewed by the GoSL with a significant degree of hostility and is regarded as a front for the LTTE. In the Appellant’s case, this perception would be supported by his personal and family history of association with the LTTE. *Sur place* activities on behalf of such a group is a relatively significant risk factor in the assessment of an individual’s profile. Proscription entails a higher degree of adverse interest in an organisation and, by extension, in individuals known or perceived to be associated with it.
18. The GoSL continues to operate an extensive intelligence-gathering regime in the United Kingdom which utilises information acquired through the infiltration of diaspora organisations, the photographing and videoing of demonstrations, and the monitoring of the Internet and unencrypted social media. At the initial stage of monitoring and information gathering, it is reasonably likely that the Sri Lankan authorities will wish to gather more rather than less information on organisations in which there is an adverse interest and individuals connected thereto. Information gathering has, so far as possible, kept pace with developments in communication technology. The accepted evidence in this appeal is that the Appellant has taken part in numerous public protests against the GoSL. His image has appeared on websites including Youtube as a participant in such events. He has attended, and helped to organise meetings. He has sufficient proximity to the leadership of the organisation that Mr Sockalingam was prepared to attend court on his behalf. Having regard to the findings in KK & RS I am satisfied that there is a real risk that the Appellant’s involvement with the TGTE over the past six years will be known to the GoSL.
19. The Appellant does not have a valid passport. In order to be returned to Sri Lanka he would need to be issued with Temporary Travel Document (“TTD”). These are obtained following an interview

conducted at the Sri Lankan High Commission in London. Prior to the return of an individual traveling on a TTD, GoSL is reasonably likely to have obtained information on the following matters: whether the individual is associated in any way with a particular diaspora organisation; whether they have attended meetings and/or demonstrations and if so, at least approximately how frequently this has occurred; 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; any organisational and/or promotional roles (formal or otherwise) undertaken on behalf of a diaspora organisation; attendance at commemorative events such as Heroes Day; meaningful fundraising on behalf of or the provision of such funding to an organisation; any presence on social media; any political lobbying on behalf of an organisation; the signing of petitions perceived as being anti-government. In this case that would entail the GoSL being aware, upon the Appellant's arrival, that he has been working with the TGTE in London on a regular basis for at least six years. This is, as I note above, a group regarded with a significant degree of hostility.

20. The GoSL operates a general electronic database which stores all relevant information held on an individual, whether this has been obtained from the United Kingdom or from within Sri Lanka itself. This database is accessible at the SLHC, BIA and anywhere else within Sri Lanka. Its contents will in general determine the immediate or short-term consequences for a returnee. A stop list and watch list are still in use. These are derived from the general electronic database. Those being returned on a TTD will be questioned on arrival at BIA. Additional questioning over and above the confirmation of identity is only reasonably likely to occur where the individual is already on either the stop list or the watch list.
21. Returnees who appear on the watch list will fall into one of two sub-categories: (i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and (ii) those who are of interest, not at a level sufficient to justify detention at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle.
22. In respect of those falling within sub-category (i), the question of whether an individual has, or is perceived to have, undertaken a "significant role" in Tamil separatism remains the appropriate touchstone. In making this evaluative judgment, GoSL will seek to identify those whom it perceives as constituting a threat to the integrity of the Sri Lankan state by reason of their committed activism in furtherance of the establishment of Tamil Eelam. Importantly the term "significant role" does not require an individual to show that they have held a formal position in an organisation, are a member of

such, or that their activities have been “high profile” or “prominent”: these were of course the very criteria applied by Judge Robinson, and indeed the judges before him.

23. The assessment of profile will always be fact-specific, but will be informed by an indicator-based approach. I have taken the following factors into account. The fact that the TGTE is proscribed is relatively significant. The fact that the Appellant has been active over a relatively long period, and that the events he has participated in have a relatively high profile (such as the ‘Brigadier protest’ and giving evidence against the Sri Lankan government) make it more likely that he will be of adverse interest. His family and personal history in Sri Lanka mean that the authorities will set his UK based activity with the TGTE in the context of a far longer history adjacent to the LTTE: they are likely to be aware that he was detained in 2010 and escaped Sri Lanka after skipping bail. I am satisfied that all of these matters, taken cumulatively, mean that the Appellant will face a real risk of being detained for questioning on arrival. There is a real risk of serious harm during such a detention.
24. If I am wrong about the risk of detention on arrival, or soon after arrival, I am quite satisfied that the Appellant succeeds pursuant to HJ (Iran) principles. There has never been a finding, and there is nothing to suggest, that his longstanding political involvement is motivated by anything other than a genuinely held political belief. It is a political belief that is viewed with extreme hostility by the Sri Lankan government. He is not a supporter of one of the Tamil groups who are tolerated within Sri Lanka. He is an active supporter of the main group considered by the GoSL to be acting in furtherance of Tamil separatism. Mr Tan in his submissions queried whether the Appellant had ever provided any information capable of answering the final ‘HJ questions’ - ie how would he behave if returned to Sri Lanka. I do not think he needs to, because the inference that can be drawn from the evidence is quite clear. If he did desist from engaging in separatist political activities on return it could only be for fear of persecution. There is no suggestion, and never has been, that he would be ‘discreet’ about his beliefs for any social or private reason.
25. It follows that I need not consider any of the remaining grounds of challenge, which were principally concerned with the Tribunal’s approach to an arrest warrant and the findings on human rights.

### **Anonymity**

26. The Appellant is a refugee. As such I am satisfied, having had regard to the guidance in the *Presidential Guidance Note No 1 of 2013: Anonymity Orders*, that I must make an order in accordance

with Rule 14 of the *Tribunal Procedure (Upper Tribunal) Rules 2008* in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him, any of his witnesses or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

### **Decisions and Directions**

27. The decision of the First-tier Tribunal is set aside.
28. The decision in the appeal is re-made as follows: the appeal is allowed on protection grounds.
29. There is an order for anonymity.

A handwritten signature in black ink, appearing to read 'CBE', is positioned to the left of the typed name and date.

Upper Tribunal Judge Bruce  
21<sup>st</sup> December 2021