



**IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER**

Case No: UI-2023-005076

**First-tier Tribunal No:
PA/56044/2022
IA/00383/2023**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 10th June 2024**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S Y

Appellant

and

Secretary of State for the Home Department

Respondent

**For the Appellant: Mr A Heeps, of McGlashan MacKay, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting
Officer**

Heard at Edinburgh on 30 May 2024

DECISION AND REASONS

1. The appellant is a national of Sri Lanka, born in 1984. His asylum claims were exhausted in appeals in 2012 and in 2022. The respondent rejected his further submissions on 16 December 2022. He appealed again to the FtT.
2. FtT Judge D H Clapham dismissed the appeal by a decision promulgated on 12 October 2023. The decision records at [12] that the issue was whether the appellant would be at risk for his *sur place* activities, and at

[14] that the case was to be considered along the lines of *Devaseelan*. Findings are made on the new evidence at [68 – 75].

3. The appellant sought permission to appeal to the UT, setting out 6 grounds in detail. FtT Judge Dainty granted permission on 20 November 2023: ...

2. The grounds assert that the judge made an error at [68] in relation to the Appellant's mother's letter especially as regards the reason given that there was no explanation of what prompted her to send it because the reason for sending it was stated in the letter itself. Secondly it is said that the judge failed to give adequate and comprehensible reasons for attaching little weight to the MP letter. It is further averred that the judge failed to have regard to "all relevant considerations." Having found Mr P to be a credible witness the judge did not take into account all that was said in his two statements especially Mr P's statement that the Appellant was "an active and prominent member of the TGTE" and the fact of the harassment suffered by Mr P's family (as result of Mr P's activities that were similar to the Appellant's.) The finding at [70] about the remaining documents adding little is also challenged for lack of reasons in particular the statement of Mr T at p.509 of the bundle. It was further an error to find that the Appellant had failed to mention Zoom meetings at an earlier juncture because zoom meetings were in fact mentioned in the earlier decision of Judge McLaren. Finally it is averred that in applying country guidance of *KK and RS* the judge failed to take into account material facts and if the judge had taken those into account she would have been bound to reach a different conclusion as to whether the Appellant had played a significant role.

3. Although the assessment of the evidence in the round and the weight to ascribe to it is a matter for the first instance judge, it is arguable that Judge Clapham adopted a too narrow approach to *Devaseelan* which led to a too cursory dismissal of the new evidence as adding little to the existing findings (rather than looking at each new item of evidence on its face and freshly). That is particularly so in relation to the two witness statements of a 3rd party witness who had been accepted as credible and who apparently stated that the Appellant was a prominent member. That is an arguable error of law that is material to the credibility assessment.

4. The first ground of appeal, in full, is as follows:

The FTTJ erred in law at [68] of her decision, in that she failed to have regard to all relevant considerations et separatim failed to give adequate and comprehensible reasons for concluding that the letter from the Appellant's mother was simply an attempt to bolster his claim. At [68], the Judge said this:

... the appellant says that the letter was sent by his mother directly to his solicitor's office and it was only then that he was aware of the contents. He does not explain who requested the letter and why his mother sought to send it in the first place. Why was she prompted to send such a letter? It seems to me that the letter is simply an attempt to bolster his claim...

However, the Appellant's mother explained why she had sent the letter. Thus, she said this:

... I am writing few very important things that could not be talked over the phone. On 27-12-2022 at around 10.30 a.m., some strange looking people whom I had never seen before entered our house...

It follows that no one requested the letter, and that the Appellant's mother was prompted to send the letter by the incident that had occurred on 27 December

2022. She wrote because she did not feel able to discuss the matter over the telephone.

The implication is that the FTTJ failed to have regard to the contents of the letter.

Separatim the informed reader is left in real and substantial doubt as to why the FTTJ's doubts as to the who had requested the letter, and what had prompted her to send it, should have led her to conclude that the letter was simply an attempt to bolster the Appellant's claim.

5. Developing his submission on this ground, Mr Heeps referred to the letter (p 252/911 of the bundle before the UT) and said that the Judge posed rhetorical questions, implying that they had no answer, when the letter itself offered an answer; and that while it was for the Judge to accept or reject that explanation, she had to deal with it.
6. Mr Mullen acknowledged that the Judge failed to engage sufficiently with the letter. He further accepted that the rest of the grounds have substance, and that he was unable to submit that the decision could stand as a satisfactory resolution of the case.
7. That concession was fairly and sensibly made. The outcome was agreed.
8. The decision of the FtT is set aside.
9. The case is remitted to be heard again at Glasgow, with a Tamil interpreter, by a Judge who has not previously been involved.

Hugh Macleman

Judge of the Upper Tribunal
Immigration and Asylum Chamber
31 May 2024

