



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

Case No: UI-2024-004920

First-tier Tribunal No:
PA/50502/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 16 January 2025**

Before

**UPPER TRIBUNAL JUDGE SMITH
DEPUTY UPPER TRIBUNAL JUDGE STAMP**

Between

**SM
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel instructed by ABN Solicitors
For the Respondent: Ms C Newton, Senior Home Office Presenting Officer

Heard at Field House via CVP on Wednesday 8 January 2025

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

BACKGROUND

1. The Appellant appeals against the decision of First-tier Tribunal Judge Juss dated 15 July 2024 (“the Decision”) dismissing the Appellant’s appeal against the Respondent’s decision dated 11 January 2023 refusing the Appellant’s protection and human rights claims. This is his second appeal, his first against a decision refusing him asylum having been dismissed in 2015.
2. The Appellant is a national of Sri Lanka. He claims to be at risk from the Sri Lankan authorities because of his involuntary assistance given to the LTTE in 2004 and his support for the LTTE since being in the UK (in other words his sur place activities). The Appellant is a member and supporter of the TGTE which is a proscribed organisation in Sri Lanka.
3. The Judge rejected the Appellant’s claim to be at risk on return. In particular, he relied on the Appellant’s ability to leave the UK on his own passport via the airport, and that he was a low-level supporter in the UK and would not be of any interest to the Sri Lankan authorities even if demonstrations were monitored by those authorities in the UK. The Judge had regard to the most recent country guidance regarding Sri Lanka, being KK and RS (Sur place activities, risk) Sri Lanka CG [2021] UKUT 130 (“KK and RS”) which also restated the guidance given in GJ (Sri Lanka) [2013] UKUT 319 (“GJ”). However, he did not consider that the guidance supported the Appellant’s case.
4. The Appellant appeals the Decision on two grounds as follows:

Ground 1: the Judge failed to take into account what is said in GJ regarding the ability to pass through the airport in Sri Lanka on exit by the payment of bribes due to corruption there and/or with the assistance of an agent. The Judge therefore materially erred by failing to engage with the country guidance.

Ground 2: the Judge failed to take into account that the TGTE is a proscribed organisation, and it is the authorities’ perception of the Appellant’s involvement which is of importance and not whether he has a significant role. The Appellant provided evidence that he is a member and supporter of the TGTE.

5. Permission to appeal was refused by First-tier Tribunal Judge Hollings-Tennant on 9 October 2024 in the following terms so far as relevant:

“..2. The grounds assert that the Judge erred in law by failing to properly consider relevant country guidance in assessing the Appellant’s ability to leave Sri Lanka undetected. It is also argued the Judge failed to consider the authorities’ perception of the Appellant’s membership of the TGTE. However, it is sufficiently clear that the Judge considered the evidence presented, including relevant country guidance set out in KK and RS which

supersedes GJ, before reaching findings plainly open to him that the Appellant does not face any real risk due to his low-level *sur place* activities. The Judge gave adequate reasons for reaching that conclusion.

3. The grounds amount to little more than disagreement with the Judge's findings and do not identify any material error of law. Permission is therefore refused."

6. On renewal of the application to this Tribunal permission was granted by Upper Tribunal Judge Bulpitt on 30 October 2024 in the following terms:

"2. The assertion at [6] of the renewed grounds that the Judge's finding at [18] is 'troubling' falls short of identifying an arguable error of law. Later however at [7] of the grounds it is asserted that the Judge failed to follow Country Guidance when reaching his conclusions at [18] about the way in which the appellant left Sri Lanka. That assertion is arguable. It is additionally unclear what Report of a Fact Finding Mission to Sri Lanka is being referred to in this paragraph or whether the issue was canvassed at the hearing.

3. The complaint in the grounds about the Judge's assessment at [19] of the appellant's activities in the United Kingdom, and in particular his assessment of the significance of the appellant's membership of the TGTE is also arguable in the absence of any apparent consideration of the basis on which the appellant will be returned to Sri Lanka (will he be documented or not?) or what enquiries might be made by the Sri Lankan authorities."

7. The appeal comes before us in order to decide whether there is an error of law. If we determine that the Decision does contain an error of law, we then need to decide whether to set aside the Decision in consequence. If we set the Decision aside, we must then either re-make the decision or remit the appeal to the First-tier Tribunal to do so.
8. We had before us a bundle running to 125 pages containing the documents relevant to the appeal before us, and the Appellant's and Respondent's bundles before the First-tier Tribunal. Although Ms Newton indicated that she had not received this, we were nevertheless able to proceed as Ms Newton had been able to prepare based on the documents which were on the First-tier Tribunal's database. As a result, however, there has been no Rule 24 Reply from the Respondent. The Appellant's solicitors are reminded that the uploading of the bundle onto CE file is not sufficient service on the Respondent and that this needs to be served directly on the Home Office.
9. Following Mr Paramjorthy's submissions, Ms Newton indicated that she was persuaded by those submissions that the Decision contained an error of law. Having heard from her in relation to the substance of that concession (see below), we accepted that it was appropriately made. We heard briefly from both parties as to disposal. We then indicated that we found an error of law in the Decision which we would therefore set aside. We also accepted that the Decision must be set aside in its entirety with no findings preserved. For that reason, we accepted the

parties' submissions that it was appropriate to remit this appeal having regard to the Tribunal's practice direction. This is because there will need to be a full de novo hearing of the appeal including findings of fact on all issues.

10. We also indicated that we would provide more detailed reasons for our conclusion in writing which we now turn to do.

DISCUSSION

11. The focus of the Appellant's grounds are paragraphs [18], [19] and [21] of the Decision. Having begun, as was appropriate, with the findings made in the Appellant's first appeal, and noted what was new evidence (relating to the Appellant's sur place activities) the Judge continued as follows:

"18. Second, however, the Report of a Home Office Fact-Finding Mission Sri Lanka: treatment of Tamils and people who have a real or perceived association with the former Liberation Tigers of Tamil Ealam (LTTE) states that: *'The airport is the most notorious place to be detained and taken away from'* (13.1.21). Yet, the appellant met with no such eventuality. Further to this, the Canada: Immigration and Refugee Board of Canada, Sri Lanka: Security controls at the international airport and ports, 28 January 2010, states that: *'The UK Home Office report also contains information on the verification of passengers' prior criminal offenses and indicates that the Department of Immigration and Emigration (DIE) has access to an alert list (ibid., 7). This list is said to contain 'information relating to court orders, warrants of arrest, jumping bail, escaping from detention as well as information from Interpol and the SIS computer system'*. This suggests individuals released on bail would in fact be flagged at the airport. And yet, the appellant went through the airport with no difficulty whatsoever. This external information undermined the plausibility that the appellant was able to leave using his own documentation via an airport while of adverse state interest as he had been claiming all along.

19. Third, I have considered the fact that the Upper Tribunal has promulgated new country guidance for Sri Lanka, namely, KK and RS (Sur place activities, risk) Sri Lanka (CG) [2021] UKUT 130 (IAC) (27 May 2021) and that this now supersedes the country guidance case of GJ (Sri Lanka) [2013] UKUT 319. In KK and RS the UT had reached a number of hybrid conclusions and have incorporated GJ so that it has been re-stated. In essence those who are involved with Tamil separatist activity in a committed manner, particularly with a proscribed organisation such as the TGTE, are at risk. Prior to the return of a person travelling on a TTD, the GOSL is likely to have information about whether the person is involved with a particular diaspora organisation and whether they have attended meetings or demonstrations and the nature of such involvement, particularly if those events concerned the prominence of LTTE emblems. I do not find that the Appellant is at risk. I do not find the appellant to have made out his claim on the lower standard. First, even if he has now attended one or more demonstrations, I find that he is in no way significantly involved in the organisation or running of the group, and that at most he is just an ordinary, low-level, supporter. His fear is that he has been monitored and observed. Second, whilst reliance is placed on the latest CG case KK and RS,

the Appellant would be shown as an ordinary member of the crowd attending such an event. Third, when the appellant left Sri Lanka he did so without any difficulty. He travelled to Europe, and he did not experience any issues in leaving, and he did so on his own documentation. The fact is that appellant has not been of any significant interest to the Sri Lankan authorities, and taking part in demonstrations in the UK does not make him so. It is true that his wife and daughter are missing but it is speculative to assume that they have been abducted by the state authorities.”

12. The Judge then cited from KK and RS before concluding as follows:

“21. On this basis, it simply cannot be said that on the basis of his attending some events, the Appellant will be at risk, if he returned to Sri Lanka. I am inclined to agree with the Respondent that the Appellant has not substantiated that he is involved with any organisations in the UK which are proscribed by Sri Lankan authorities. The fact is that he has no credible history of adverse attention or familial connections. The reality is that he has infrequently attended some public demonstrations in the UK. However, he has not undertaken any fundraising, written or published articles, has no significant social media presence.”

13. Mr Paramjorthy adopted his pleaded grounds of appeal. As he pointed out, the Fact-Finding Mission Report referred to at [18] of the Decision was before the Tribunal in KK and RS. As such, it was already taken into account in the guidance given in KK and RS. Having regard to that guidance, the Judge had materially erred by failing to take into account the following matters:

- (1)The questions which the Appellant would be likely to be asked on return ([411-414] of KK and RS);
- (2)The Appellant’s involvement in a proscribed organisation, namely the TGTE. As a matter of fact, the Judge was wrong to say that the Appellant had not shown his involvement with a proscribed organisation. There was evidence in the form of a membership card, letters from that organisation and photographs of the Appellant at demonstrations showing support for the LTTE;
- (3)The guidance in KK and RS confirmed that the Sri Lankan authorities were likely to be aware in relation to those returning to Sri Lanka on an emergency travel document (ETD) of involvement with the TGTE ([10] of the headnote in KK and RS);
- (4)The Judge applied the wrong test in relation to risk from sur-place activities. The test was perception of the authorities and not level of involvement ([20] and [21] of the headnote in KK and RS);
- (5)The Judge had treated as determinative that the Appellant had left Sri Lanka without interest from the authorities which ignored the guidance given in GJ ([394]) about the ability to do so via payment of a bribe and/or by use of an agent. In any event, the Appellant had left Sri Lanka prior to the sur place activities on which he now relies.

14. In summary, Mr Paramjorthy said that the Judge erred by failing to take into account that the Appellant, a person known to have had some limited involvement with the LTTE in the past, would be returning with the knowledge of the Sri Lankan authorities that he was a member of and supported a proscribed organisation. The Judge had failed to engage with that case or make findings on it.
15. Ms Newton pointed out that the Judge may have erred in fact as to the Appellant's mode of exit from Sri Lanka. She referred to the earlier appeal decision where it was said that the Appellant has a passport but left that at home in Sri Lanka. It was there said that he had left Sri Lanka by boat to India before coming to the UK. The Judge was therefore wrong to find that the Appellant had left Sri Lanka through the airport in that country using his own document. That was key to his findings on risk on return.
16. Ms Newton also accepted that the Judge had applied the wrong test in relation to the Appellant's involvement in sur place activities. She accepted that the guidance in KK and RS required the Judge to consider the perception of the Sri Lankan authorities about those activities and not the level of the Appellant's participation. The Judge therefore erred in his application of the guidance.
17. We accept both points made by Ms Newton. We also accept Mr Paramjorthy's submissions that the Judge has failed to take into account that the TGTE is a proscribed organisation and has failed to consider what the Sri Lankan authorities would know about the Appellant's involvement and their perception of his anti-Government beliefs. Those are all relevant factors as to risk having regard to the relevant country guidance.
18. For those reasons, we accept that errors of law have been established by the Appellant.

CONCLUSION

19. For the reasons set out above, the Decision contains an error of law. We therefore set that aside in its entirety and remit the appeal to the First-tier Tribunal for a full de novo hearing.

NOTICE OF DECISION

The Decision of First-tier Tribunal Judge Juss dated 15 July 2024 involves the making of an error of law. We set aside the Decision in its entirety. We remit the appeal to the First-tier Tribunal for rehearing before a Judge other than Judge Juss.

L K Smith
Upper Tribunal Judge Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

13 January 2025