Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/03365/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 4 October 2018	**On 12 October 2018**

Before

Deputy Upper Tribunal Judge MANUELL

Between

MR P T
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Miss A Benfield, Counsel (instructed by York Solicitors)
For the Respondent: Mr T Lindsay, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Landes on 10 August 2018 against the determination of First-tier Tribunal Judge Pullig who had dismissed the appeal of the Appellant against the refusal of his second international protection claim. The decision and reasons was promulgated on 11 July 2018.

2. The Appellant is a national of Sri Lanka of Tamil ethnicity, born on 16 February 1993. He said he arrived in the United Kingdom on 29 September 2013, travelling on a false German passport. He claimed asylum on 18 November 2013, asserting a fear of the Sri Lankan government as a suspected separatist. His claim was refused by the Secretary of State on 20 March 2015. His appeal was dismissed by First-tier Tribunal Judge Birk on 30 July 2015, which was upheld by the Upper Tribunal. The Court of Appeal refused permission to appeal on 13 June 2016. The Appellant failed to leave the United Kingdom. He made further submissions on 8 December 2016, asserting that his *sur place* activities in connection with the TGTE in the United Kingdom were a source of real risk. Ultimately these submissions were accepted as a fresh claim. The fresh claim was refused on 13 February 2018.

3. Judge Pullig provided a complete history of both of the Appellant's claims and the previous determinations in the First-tier Tribunal and Upper Tribunal. He set out full details of the *sur place* claim, including the evidence, expert evidence and submissions. The Appellant was treated as a vulnerable witness at the hearing. Counsel's skeleton argument ran to 18 pages. The judge spent some time considering his decision. The determination as promulgated contained 168 paragraphs and 32 pages. Judge Pullig found that the Appellant's credibility was low. The Appellant had engaged in *sur place* activities with the TGTE for the purpose of promoting his fresh asylum claim. Those activities were at too low a level to cause him a real risk on return. The Appellant was not at real risk of suicide if his return were enforced. The appeal was accordingly dismissed.

4. Permission to appeal was granted because it was considered arguable that the judge had given insufficient reasons for some of his findings, and had failed to consider the risk of detention on return because of his illegal exit. Two further grounds, failure to apply country guidance and relevant authority, were given little encouragement but were left open.

Submissions

5. Ms Benfield for the Appellant relied on the grounds and grant of permission to appeal, and referred to her skeleton argument from the First-tier Tribunal hearing which was available in the First-tier Tribunal appeal file and was read. Counsel developed each of the four nominal grounds of onwards appeal in some detail. It is sufficient to summarise them here. The judge had not given adequate reasons for rejecting parts of the Appellant's evidence and had failed to apply anxious scrutiny to the fresh

claim. More weight should have been given to the evidence of the Sri Lankan attorney and the Appellant's father. Judge Birk had made largely positive findings which had been insufficiently taken into account. There had not been a rounded assessment of the risk on return and relevant authority had not been applied to that issue, in particular ME (Sri Lanka) [2018] EWCA Civ 1486, a decision which had been handed down between the hearing and promulgation of the judge's decision. Nor had country guidance as provided in GJ (Sri Lanka) CG [2013] UKUT 00319 (IAC) been properly applied. Finally, the judge had not considered the separate Article 3 ECHR risk faced by the Appellant as a forced returnee.

6. Mr Lindsay for the Secretary of State for the Home Department opposed the appeal. The judge had dealt with the Appellant's claim exhaustively, in a comprehensive decision and reasons. ME (Sri Lanka) (above) was a post hearing decision from the Court of Appeal, and was not relevant. The facts of that case had concerned an arms cache and were far removed from the Appellant's history. The judge had given sufficient reasons. He had not been required to deal with every single point. There was no hint of irrationality. Judge Birk had found discrepancies in the Appellant's evidence, as highlighted by the Upper Tribunal. Judge Pullig had taken a generous approach. He had given sustainable reasons for his findings and had applied GJ (above). The illegal exit claim was bound up with the protection claim which had been dealt with.

7. In reply, Ms Benfield emphasised that the contact with the authorities which the Appellant would face on return was an exacerbating risk factor.

No error of law finding

8. In the tribunal's view, the determination of First-tier Tribunal Judge Pullig was meticulous and, as Mr Lindsay submitted, was exhaustive of all elements of the Appellant's claim. That claim, by the time it reached Judge Pullig, was an elaborate one, with a large amount of information and a much detail. Judge Pullig did not shirk from what by any standards was an onerous judicial task in sifting through the evidence. It is not surprising that it took some time for the determination to be prepared. Its structure is one of constant review and analysis, highlighting points considered to be of significance, and then drawing the threads together in the findings reached. The approach taken was a generous one, with maximum allowance made before adverse credibility findings were reached. It would be hard to

find a better example of anxious scrutiny, or a fuller consideration of a repeat claim.

9. The grounds of onwards appeal were largely generic, with the familiar litany of complaints about a perfectly satisfactory decision, as so often seen in this jurisdiction. The decision and reasons explained to the Appellant in clear terms why he had been disbelieved and why his appeal was dismissed. The very experienced judge applied Devaseelan* [2002] UKAIT 00702 correctly, working from the Upper Tribunal decision which was binding: see [10] of Judge Pullig's decision. The material facts are very different from those found in ME (above) and there was no need for the judge to mention ME in his decision as it was not the subject of any post hearing submission. As First-tier Tribunal Judges receive weekly bulletins, and other updates, it is highly likely that Judge Pullig was well aware of the decision. There was nothing new in ME of relevance.

10. An example of the generic nature of the grounds of onwards appeal was the complaint that the judge had given insufficient weight to parts of the evidence. That invites the response that it is trite law that weight is a matter for the trial judge, which of course it is, but it should also be pointed out that Judge Pullig gave a full explanation of why he was unable to give significant weight to the evidence of Dr Saleh Dhumad, Mr Sockalingam Yogalingam (of the TGTE) and Mr Kanatheepan (Sri Lankan attorney). Those reasons were cogent and secure.

11. A similarly generic complaint was that GJ (above) had not been correctly applied. In fact the judge examined all of the relevant risk categories set out in GJ in depth, with particular and relevant attention to the Appellant's attendance at public demonstrations in London in his claim-building role presenting himself as a TGTE supporter. Perception, not motive, was the issue. The judge correctly directed himself in accordance with Danian [1999] EWCA Civ 3000, YB (Eritrea) [2008] EWCA Civ 360 and BA (Demonstrations in Britain) CG [2011] UKUT 36 (IAC). He found that the Appellant's attendance was of such low profile that it was not reasonably likely to be of any interest to the authorities: see [153] onwards of the decision and reasons. It is obvious that such demonstrations attract large numbers of persons.

12. Those findings, reached after an exhaustive examination of the evidence, encompassed any additional real risk (asylum as well as Article 3 ECHR) faced by the Appellant as a forced returnee, which included consideration of the Upper Tribunal's decision on the previous claim, which was that the Appellant was of no continuing interest to the authorities: again see [10] of the decision and reasons.

13. Thus in the end the submissions advanced for the Appellant in the onwards grounds of appeal amounted to no more than disagreement with the very experienced judge's decision. This was an elaborate repeat claim, it has to be said of a kind frequently seen. It might be thought that its very elaborateness, requiring argument and justification at every stage seeking to overcome its deficiencies, only served in the end to underline its contrived nature and lack of substance. The tribunal finds that the onwards appeal has no proper basis and that there was no material error of law in the decision challenged. Indeed, the tribunal considers that Judge Pullig deserves commendation for a most careful and comprehensive examination of the Appellant's claims.

DECISION

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed **Dated** 8 October 2018

Deputy Upper Tribunal Judge Manuell