



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

Appeal Number: PA/05855/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 9 August 2019**

**Decision & Reasons Promulgated
On 3 September 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**MR T N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel.

For the Respondent: Miss A Fijiwala, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka who made an application to the Respondent for international protection. He claimed to be at risk of persecution due to his political and imputed political opinion, namely that he was a supporter of the LTTE whilst in India, that he is a supporter of the TGTE in the United Kingdom involved in sur place activities and that his father and sister also supported the LTTE. Beyond claiming asylum, he also relied on breaches of Article 2, 3 and 8 of the European Convention on Human Rights if he were returned to Sri Lanka.

2. He appealed the Respondent's decision which was heard by Judge of the First-tier Tribunal Hosie. In a decision promulgated on 7 February 2019 the Judge dismissed the Appellant's appeal on all grounds.
3. The Appellant sought permission to appeal. It was initially refused but a renewed application to the Upper Tribunal was granted on 5 July 2019 by Upper Tribunal Judge Rintoul. His reasons for granting permission were: -

"The application is out of time but only by a matter of hours. In the circumstances, I am satisfied that time should be extended to admit it.

It is arguable that the First-tier Tribunal erred in his application of UB (Sri Lanka) [2017] EWCA Civ 85 and in particular the evidential value of the material identified in the grounds at [4] and [5] as well as the submission the he erred by in effect, requiring high level involvement — see also KK (Sri Lanka) [2017] EWCA Civ 2412 at [9]

There is less merit in grounds 2 and 3, and it is not clear what the former adds to ground 1. In respect of ground 3 it is unclear whether the point made at [24] was put to the judge; this must be addressed at the forthcoming hearing. Nevertheless, I grant permission on all grounds."

4. Thus, the appeal came before me today.
5. Ms Jegarajah relied upon the grounds which supported an initial application for permission to appeal. At the outset, she acknowledged that ground 2 effectively related to ground 1 and that the main submission she wished to make was that the Judge materially erred, having accepted that the Appellant was involved with the TGTE, in concluding that the Appellant was required to show that he was of "significant profile". In so doing, the Judge failed to apply the judgement in **UB (Sri Lanka) v. Secretary of State for the Home Department [2017] EWCA CIV 85**. She highlighted paragraph 23 of the Judgement which states:-

"If the material had been served, then the issue of TGTE membership would have been of more significance. As the matter stood, the FTT reached no conclusion on the point. The Appellant's argument is that, if it had been accepted that he was a member, then the indication from the High Commission's letters is that (1) he would be questioned, (2) he might be arrested, and (3) he might be detained. If Detained, the guidance in GJ points to a risk of mistreatment."

She then referred me to the material not served being as follows:-

"The following passage from the 28 August 2014 COIS report entitled "Tamil Separatism" which includes a letter from the FCO dated 16 April 2014. This evidence illustrates the risk that our client would face simply for being involved with proscribed groups."

“The spokesperson from the SIS said that people being ‘deported’ will always be questioned about their overseas activities, including whether they have been involved with one of the proscribed organisations.”

“Among the organisations proscribed are the Transnational Government of Tamil Eelam (TGTE) and the UK-based Global Tamil Forum (GTF) and British Tamil Forum (BTF). When making the announcement on 1 April, Brigadier Ruwan Wanigasooriya said that individuals belonging to these organisations would face arrest under anti-terrorism laws when to date, there have been no known arrests based on membership of one of the newly proscribed groups.”

6. Ms Jegarajah further submitted that it was incumbent upon the Judge in the First-tier Tribunal to engage with the judgement in **UB**. This was not done. He has failed to appreciate that risk arises as a result of membership of the TGTE and not significant involvement. She then made reference to her second ground and the facts surrounding the demonstration organised by the TGTE outside the Sri Lankan High Commission in London on 4 February 2018. The Appellant attended both this demonstration and a further protest on 9 February 2018. There was video evidence in relation to both protests. Both, it was submitted, are significant events which were openly monitored by the Sri Lankan High Commission. Ms Jegarajah’s submission was that the Judge had erred in marginalising the effect of the Appellant’s attendance at these protests and the consequent adverse State interest in him.
7. Further, the Judge failed to assess the resulting risk to the Appellant of political opinion that may be attributed to him as a result of his familial relationship with his sister.
8. Miss Fijiwala argued that the Judge had taken everything into account and correctly applied the judgement in **UB**. She referred me to Paragraph 120 of the Judge’s decision which states:-

“I have also considered the case of UB (Sri Lanka) v SSHD [2017] EWCA Civ 85 and the Home Office policy guidance (CPIN Sri Lanka: Tamil Separatism, version 5.0 June 2017). I note that the most recent guidance supports the position as stated in GJ & Others in relation to risk on return and that it is no more beneficial to the Appellant (section 3). The fact that he has spent time in India and the UK does not of itself place him at real risk as most Tamils from the northern province were displaced during the civil war in Sri Lanka.”

She went on to submit that the conclusions (paragraph 24) of **UB** were applied by the Judge to the Appellant’s appeal at paragraph 115 of his decision where he found that, even if the Appellant can be identified in relation to his activities, this in itself does not show risk on return. Even if he had been identified by the Sri Lankan authorities in relation to his involvement with the TGTE, he has failed to show that he would be viewed as a threat to the Sri Lankan State or to come within any of the risk

categories within **GJ & Others (post-civil war: returnees) Sri Lanka CG v. Secretary of State for the Home Department, [2013] UKUT00319 (IAC)**. She Submitted the Judge was entitled to conclude that any activity by the Appellant in the United Kingdom was low level and not likely to carry risks, that he did not play an integral role in the event outside the Sri Lankan High Commission and, that even if he had, he failed to show that he would be viewed as a threat to the Sri Lankan State or to come with any other risk categories in **GJ & Others**. The Judge has considered the totality of the evidence before coming to conclusions that were open to be made. This includes considering the Appellant's claim in the context of his sister being granted asylum, which the Judge refers to at paragraph 75 of his decision and analyses at paragraph 119 of the decision before concluding that he does not accept that the Appellant's sister's evidence or grounds for claiming asylum places the Appellant at risk on return.

9. Albeit that this is a very lengthy and detailed decision, I am persuaded that the Judge has failed to apply the judgement in **UB (Sri Lanka)** and has fallen into error in marginalising the effect of the Appellant's attendance at protests outside the Sri Lankan High Commission in London in February 2018. Further, that he has failed to assess the risk to the Appellant as a consequence of political opinion that might be attributed to him by reason of his relationship with his sister who herself had been arrested, detained and tortured in Sri Lanka in 2013 and subsequently granted refugee status.
10. Especially for the reasons put forward by Ms Jegarajah, I find the Judge has erred in his application of **UB** and in particular the evidential value the material identified at paragraph 23 of **UB** and referred to earlier in this decision. The Judge has looked for high level involvement or a significant profile and has failed to recognise that mere involvement with a proscribed organisation would put the Appellant at risk. I also conclude that there is a failure to assess risk toward the Appellant by reason of the familial relationship with his sister.
11. Further fact finding is required and, in the circumstances, it is necessary for a de novo hearing.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judges Hosie and Boylan-Kemp.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 21 August 2019

Deputy Upper Tribunal Judge Appleyard