



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

Appeal Number: PA/08712/2017

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 7 October 2019**

**Decision & Reasons Promulgated  
On: 14 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**PS  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Muquit, instructed by A & P Solicitors

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka born on 31 May 1983. He has been given permission to appeal against the decision of First-tier Tribunal Judge Talbot dismissing his appeal against the respondent's decision to refuse his asylum and human rights claim.

2. The appellant arrived in the United Kingdom on 11 September 2011 with entry clearance as a Tier 4 student migrant valid until 21 January 2013. He was granted leave to remain on the same basis until 27 January 2014. During that period, in August 2013, he returned to Sri Lanka for 15 or 18 days and then

came back to the UK. On 27 January 2014 the appellant made an application for further leave to remain as the spouse of a person settled in the UK, further to his marriage on 22 July 2013, but his application was refused on 26 August 2015. An appeal against that decision was withdrawn on 8 February 2017. On 27 February 2017 the appellant claimed asylum. His claim was refused on 24 August 2017.

3. The appellant's asylum claim was made on the following basis. He was involved with events organised by university students from 2002 until 2005 and then moved with his family to Colombo in 2006 where he helped the LTTE by finding rooms for Black Tigers to stay using his ID card. The Black Tigers were arrested by the Sri Lankan authorities and he was arrested in December 2008 and detained for three months and tortured. His leg and arm were broken during his detention. He was released on 26 March 2009 after his father paid a bribe. He went to stay with a friend of his parents for two years whilst he recuperated. In 2010 someone from TID went to his parents' house asking about him. He managed to obtain a student visa and came to the UK in September 2011. He returned to Sri Lanka in 2013 because his father had a heart attack and remained there for 15 to 18 days. The TID went to his parents' house again on 28 July 2014 asking for him and they took his father for enquiries and then released him. The appellant claimed to have become involved with the Transnational Government of Tamil Eelam (TGTE) in the UK and had attended three demonstrations. He would be at risk on return to Sri Lanka.

4. The respondent rejected the appellant's claim in its entirety owing to inconsistencies in his account and did not accept that he was actively taking part in TGTE activities. The respondent considered that he was at no risk on return to Sri Lanka and that his removal would not breach his human rights.

5. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Sweet on 13 February 2018. Judge Sweet dismissed the appeal on 20 February 2018. That decision was, however, set aside in the Upper Tribunal on 7 August 2018, both with respect to the adverse credibility findings made by the judge and to the findings on the appellant's sur place activities which had not been fully and properly assessed. The case was remitted to the First-tier Tribunal.

6. The appeal then came before First-tier Tribunal Judge Talbot on 12 July 2019. The appeal proceeded on the basis of submissions only as it was said that the appellant was not fit to give evidence. There was a statement before the judge from the appellant's father who said that the family started having problems in October 2018 when the Sri Lankan authorities came to their house and enquired about the appellant's activities in the UK. He said that they showed the family a file with photographs, newspaper cuttings and website news about his diaspora activities. The judge also had documents and photographs regarding the appellant's diaspora activities in the UK including a letter dated 4 February 2018 from the TGTE (UK) stating that he had been an activist with the TGTE since May 2017, a copy of the appellant's Tamil Eelam

national card issued in the UK in July 2017, a letter dated 10 February 2018 from the International Centre for Prevention & Prosecution of Genocide stating that the appellant had participated in human rights and genocide meetings and events and had provided written evidence under oath, and a medical report. Judge Talbot found the appellant's account of his problems in Sri Lanka to be broadly consistent and he accepted his evidence of his activities in Sri Lanka and accepted that the claimed arrest and detention had occurred as described by the appellant. As for his activities in the UK, the judge accepted that the appellant had attended some Tamil protests and cultural events from 2013 and that he had become a bit more actively involved since 2017 but still at a low level. The judge did not accept the appellant's account of adverse interest in him by the Sri Lankan authorities in the aftermath of his release from detention in 2009 and did not accept his account of the visit to his family home in October 2018. He did not accept that the appellant's low-level involvement with the TGTE would have come to the adverse attention of the Sri Lankan authorities or would lead them actively to pursue him on his return to Sri Lanka.

7. The appellant sought permission to appeal on three grounds. Firstly, the judge had erred by failing to assess risk on the basis that the appellant was involved in activities for a proscribed organisation in line with UB (Sri Lanka) v Secretary of State for the Home Department [2017] EWCA Civ 85. Secondly, as a result of the failure to recognise the significance of the appellant's activities on behalf of a proscribed organisation, the judge had wrongly and unreasonably failed to assess the evidence that the Sri Lankan authorities were still interested in him. Thirdly, the judge had failed to consider risk on return on account of the appellant's past LTTE links in light of the judgment in X v. Switzerland - 16744/14 (Judgment (Merits and Just Satisfaction) : Court (Third Section)) [2017] ECHR 103.

8. Permission was granted in the First-tier Tribunal with particular reference to the first and second grounds.

### **Appeal hearing and submissions**

9. Mr Muquit, in his submissions, relied and expanded upon the first two grounds, concerning the judge's failure to assess risk on return in light of the appellant's involvement with a proscribed organisation and the fact that the appellant could not be expected to lie to the Sri Lankan authorities when questioned on return.

10. Mr Clarke accepted that the judge did not expressly state that the TGTE was a proscribed organisation, but submitted that he gave proper consideration to the appellant's activities which he found to be of a low level. He submitted that the matters relied upon in UB were not material to the appellant's case. The appellant would not be questioned at the airport in Sri Lanka as he had left the country on his own passport, he had returned to Sri Lanka in 2013 and he still had his own passport. He relied upon GJ (post-civil war: returnees) Sri Lanka CG (Rev 1) [2013] UKUT 319 in that regard. UB did

not say that mere membership of a proscribed organisation was enough to engender risk. The judge's findings were sustainable.

11. Mr Muquit, in response, submitted that UB was relevant as it made clear that the information in the Home Office guidance was material since it included evidence that enforced returnees to Sri Lanka would be questioned about their activities with a proscribed organisation. Involvement with the TGTE had consequences and would result in the appellant being at risk on return. The judge's failure to deal with the fact that the TGTE was proscribed was therefore a material error. The visit to the family home in October 2018 coincided with the appellant's membership of the TGTE in 2017 and was therefore credible. Mr Muquit requested that the judge's decision be set aside and re-made and allowed.

### **Discussion and conclusions**

12. I agree with Mr Clarke that the case of UB is limited in its relevance to the appellant's case. The Court of Appeal in UB did not conclude that the appellant had made out a claim to be at risk on return to Sri Lanka. Presumably that was still to be determined by the Tribunal following a fresh consideration of the case. The outcome of UB was simply that the decision of the Upper Tribunal upholding the decision of the First-tier Tribunal was quashed on the basis that the First-tier Tribunal Judge's failure to make findings on the appellant's involvement with the TGTE was material in light of the Home Office guidance and the annexed letters from the British High Commission in Sri Lanka referring to the treatment of people involved with proscribed organisations.

13. In the appellant's case, however, the judge did make findings about the appellant's level of involvement with the TGTE. Although the judge did not expressly state that the TGTE was a proscribed organisation, he made findings on the basis of the appellant's involvement with a Tamil separatist movement and he addressed the issues raised in the appellant's skeleton argument in which reference was made, at [35], to the appellant's involvement with a proscribed organisation and there is accordingly no reason to believe that he was unaware of that fact. The judge was plainly cognisant of the implications of involvement in such an organisation and it was on that basis that he assessed the risk on return to Sri Lanka. He made his assessment on the basis of the documentary evidence relied upon by the appellant, to which he referred in some detail at [16]. It is clear from his findings at [24] that the judge accorded little weight to the documentary evidence and he addressed in particular the letter from the TGTE dated 4 February 2018 which he noted provided no details of the appellant's activities as would reasonably have been expected in the case of an actively involved member. Having fully and properly assessed all the evidence including the photographs produced by the appellant and the supporting letters, the judge found, as he was entitled to do, that the appellant's activities for the TGTE were at a low level and did not consider that he was an active member of the organisation.

14. Contrary to the suggestion in the grounds of appeal, the case of UB did not conclude that membership of the TGTE was determinative of a risk on return to Sri Lanka. At [24], the Court of Appeal considered that low level activities would not demonstrate membership of the TGTE and were not likely to carry risks. In the circumstances it seems to me that Judge Talbot was perfectly entitled to conclude that the appellant was not, and would not, be of any adverse interest to the Sri Lankan authorities. As for the reference in the grounds to the appellant not being expected to lie if questioned on return to Sri Lanka, the judge's findings at [30] adequately address that point, in that he found that even if the Sri Lankan authorities were aware of the appellant's activities in the UK they would not be of sufficient interest to them to lead them to actively pursue him.

15. On the basis of the properly made findings as to the low level of the appellant's activities and the lack of interest that that would arouse on the part of the Sri Lankan authorities, the judge was entitled to reject the appellant's claim that the authorities had visited his family home in October 2018. He found the appellant's evidence in that regard to be lacking in credibility and to be an attempt to bolster his claim, not only because the account was implausible in the context of the country guidance in GJ, but also because he considered the accounts of previous visits to the family home, in 2010 and 2014, to be untrue for the reasons given at [25].

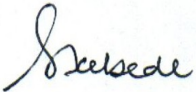
16. For all of these reasons it seems to me that the judge was perfectly entitled to reach the conclusions that he did on risk on return to Sri Lanka and that he did so upon a careful and detailed assessment of all the relevant evidence and taking all relevant matters into consideration. On the evidence available to him he was fully entitled to dismiss the appeal on the basis that he did and he did not make any errors of law in doing so.

## **DECISION**

17. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

### **Anonymity**

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed   
Upper Tribunal Judge Kebede  
2019

Dated: 8 October