



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

Appeal Number: PA/14282/2018

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 25 April 2019**

**Decision & Reasons  
Promulgated  
On 21 May 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ESHUN**

**Between**

**R M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Walsh, Counsel

For the Respondent: Mr M Diwnycz, HOPO

**DECISION AND REASONS**

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Feeney dismissing his appeal against the decision of the respondent made on 28 November 2018 refusing to grant him asylum in the United Kingdom.
2. The appellant is a citizen of Sri Lanka born on 27 June 1985. He is of Tamil ethnicity.

3. In his claim for asylum the appellant said he provided assistance to the LTTE from September/October 2004 until December 2010. He had been asked by his uncle to help the LTTE members with accommodation in Colombo. He also bought them food and other items. From April/May 2009 he was mainly helping people leave Sri Lanka.
4. On 20 December 2010 he applied for a student visa and arrived in the UK on 29 May 2011 to study management. While living here he became involved in pro-Tamil independence demonstrations and he distributed leaflets.
5. On 21 March 2012 he returned to Sri Lanka to attend his sister's wedding in Colombo. He told his parents and trusted friends about his activities in the UK.
6. On 27 March 2012 he was detained at a location where he had been scheduled to meet one of his friends. He was held at a police station for three to four hours and told that his activities with the LTTE had been disclosed by his friend. He was tortured for eight days which included being beaten with sticks and burned with a lighter and cigarettes. He was released following the payment of a bribe by his parents on 3 April 2012 and two days later he fled to the UK with the assistance of an agent.
7. When he arrived in the UK he was confused about what he should do and applied to extend his valid student visa which was granted until 21 May 2014. He applied for asylum on 26 June 2013. His father had been detained in Sri Lanka in November 2012, January 2013 and June 2013.
8. He continued his political activities in the UK with the British Tamil Forum, TGTE and since 1 June 2017 as a volunteer with the World Tamil Historical Society.
9. The appellant claimed asylum on 26 June 2013, but his asylum claim was refused on 26 July 2013. His appeal challenging the decision was dismissed on 12 September 2013 by First-tier Tribunal Judge Black. He unsuccessfully appealed to the Upper Tribunal who dismissed the appeal on 27 June 2014 with a finding that there was no error of law in the determination of First-tier Tribunal Judge Black and that the decision should stand.
10. Further submissions were lodged by the appellant on 10 October 2018 which became the subject of the respondent's decision to refuse his application on 28 November 2018. It was his appeal against this decision that was dismissed by First-tier Tribunal Judge Feeney and whose decision is now the subject of this appeal before me.
11. In reaching her findings of credibility and fact, the judge applied the principles in **Devaseelan [2002] UKIAT 00702**. The judge took into account the appellant's new witness statements, a report by Dr Chris Smith, whose report the judge noted was not materially different from the

sources of background information relied on by the Upper Tribunal in **GJ**, evidence from the appellant's father and uncle, and evidence of the appellant's sur place activities.

12. The judge did not accept the appellant's claim that he was poorly represented during the preparation of his case or at his hearings. This was because when he was asked why he had not produced the information about his uncle at the previous hearing, he relied on the incompetence of his previous representatives. The judge however noted that the appellant has not reported his solicitors to their regulatory body and they have not had an opportunity to deal with the concerns he now raises. The judge concluded that the appellant's appeal was not materially affected by any error made by his representatives.
13. The judge did not believe the appellant's evidence that he could not obtain more information from his uncle as he was hiding in India. The judge found that there was limited explanation as to why the uncle would be hiding in India, especially as the appellant had previously said that it had taken his uncle some time to settle safely and had also said that his uncle now had an Indian passport.
14. The judge found that there were inconsistencies in the documents themselves as to his uncle's place and date of birth and the different names used by his uncle. There was also an inconsistency in the contact between the appellant's uncle in India and the appellant's uncle in the UK. The appellant had said that he moved out of his uncle's home some three years ago to live with a family friend but his uncle said the appellant still lived with him together with his family.
15. For these reasons the judge concluded that she could not depart from the findings made by Judge Black and upheld those findings.
16. The judge's findings upholding the decision by Judge Black have not been challenged and therefore shall stand.
17. The judge went on to consider the sur place activities the appellant claimed he had engaged in since he has been in the UK and his claim that his conduct may be relevant to his risk on return.
18. It is the judge's findings on these activities that are the subject of challenge by the appellant.
19. The judge noted that Judge Black did consider the appellant's involvement in diaspora activities but found his evidence to be inconsistent and unreliable with limited evidence beyond the existence of an identity card to support involvement. The judge noted however that there was more evidence before her to show involvement in diaspora activities.
20. The judge noted that it has been nearly five years since the appellant became appeal rights exhausted. During this time, he has been engaged in diaspora activities. He has now been a member of the TGTE for

approximately five years. His involvement was supported by a letter from Mr Yogalingam, the Deputy Minister of Sports and Community Health for the TGTE. The letter confirmed that the appellant volunteers with the TGTE, organises public events, demonstrations and fundraising. The letter specified the events in which the appellant has played a key role. Accompanying the letter was a photograph of the appellant shaking hands with Mr Yogalingam.

21. The judge said she had seen various photographs of the appellant at demonstrations. There was a letter dated 18 July 2018 from the World Tamil Historical Society to say that the appellant has been an action team member since 1 June 2017 and was working as a volunteer. A letter dated 28 November 2013 congratulated the appellant on becoming a member of the British Tamil Forum.
22. During the hearing the appellant gave more evidence about his diaspora activities. He provided information about the demonstrations he attended. He described the photographs and said these related to events for the TGTE and events for the World Tamil Historical Society. He admitted that he has never led the protests, but he had been involved in organising them. His attendance at meetings (which take place every Sunday) was limited to every two-three months because of problems with transport.
23. The appellant's evidence led the judge to find that he attends a meeting every two or three months. She noted the letter from Mr Yogalingam stated that the appellant attended many meetings. The judge however found that inconsistent with the appellant's own stated level of involvement. The judge therefore reduced the weight to attach to Mr Yogalingam's letter as he had overstated the extent of the appellant's involvement.
24. The judge bore in mind that the appellant was a member of the TGTE and had been attending meetings over a long period of time. She factored this into her assessment of risk.
25. In terms of organising events, the judge noted that the appellant said he was involved in requesting members of the public to sign a petition to take matters to the International Criminal Court, handing around a collection tin and also organising a "pick up plastic" event. The judge noted that the appellant provided limited further information about the role he played. She noted that Mr Yogalingam did not describe how the appellant had active involvement. While she was prepared to accept that the appellant helped with the events, the judge said there was limited information other than Mr Yogalingam's evidence to satisfy her that it is likely that he was an organiser. She therefore reduced the weight she attached to Mr Yogalingam's letter as she was of the opinion that he had overstated the extent of the appellant's involvement in the past.
26. The judge noted that the appellant has attended demonstrations and in evidence said he had attended four or five in total. Whilst Mr Yogalingam

said the appellant took an active role in organising events and public demonstrations, the judge noted that Mr Yogalingam did not explain how the appellant was involved in demonstrations. She noted that the appellant himself gave limited information as to how he organised demonstrations, if at all. The judge held that as no-one had attended to support the appellant, she found that he did not play a significant role within the organisation.

27. Looking at matters as they stood before her, the judge accepted that the appellant was a member of the TGTE, a proscribed organisation. He attends four to six meetings with diaspora groups a year, attends on average one demonstration a year, collects money for diaspora groups, asks people to sign petitions and helped organise a “pick up plastic” event. It was against this background that the judge assessed whether the Sri Lankan authorities would perceive the appellant as being actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state.
28. The judge took into account the decision in **UB** which concluded that the appellant’s membership of the TGTE could be relevant but was not determinative of any appeal. The fact that the appellant would still need to be stopped, arrested and detained would still need to be considered. In order to assess this the judge considered **GJ**, the Country Policy and Information Note Sri Lanka: Tamil separatism, and the report by Dr Smith.
29. The judge considered paragraph 351 of **GJ**:

*“41. ‘351. Our overall conclusion regarding diaspora activities is that the GOSL has sophisticated intelligence enabling it to distinguish those who are actively involved in seeking to revive and re-fund the separatist movement within the diaspora, with a view to destabilising the unitary Sri Lankan state. Attendance at one, or even several demonstrations in the diaspora is not of itself evidence that a person is a committed Tamil activist seeking to promote Tamil separatism within Sri Lanka. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.*

*352. The evidence before us indicates that any Tamil who seeks a travel document from the SLHC in London or another diaspora hotspot will have a file created in Colombo and will be interviewed in London before a decision is made to issue a TTD. By the time the DIE in Colombo emails a TTD to London to be issued to such an individual, the Sri Lankan authorities will know all they need to know about what activities an individual has undertaken outside Sri Lanka and, in particular, whether the returnee poses a real risk to the unitary Sri Lankan state or the GOSL on return’.*

Also

'268. We consider that Dr Smith's factor (c) has relevance, in circumstances where the GOSL has reason to consider that a person has significant involvement in diaspora activities which may unsettle the situation in Sri Lanka and lead either to the resurgence of the LTTE or a similar militia, or to the revival of the internal conflict'.

42. I take into account the CPIN. I note at 9.3.5 the following:

'According to a lawyer who spoke to the FFM team about Tamils returning to Sri Lanka, 'it is a given fact they will be questioned and may be monitored, if not at the airport, then when they return to their homes'.

This was taken from a report titled 'UK Home Office's Fact Finding Mission to Sri Lanka, 11 - 23 July 2016, Section 13: Meeting with two lawyers, 21 July 2016'.

And at 12.1.1,

'Those on a watch list are not likely to be detained, although there have been some media reports claiming that individuals, mostly Tamils, travelling from the United Kingdom have been detained on arrival at the airport. DFAT has not been able to verify these reports but notes that those on a watch list are likely to be monitored'.

Section 13 of the CPIN contains information regarding sur place activities. It refers to the DFAT reports on Sri Lanka dated 24 January 2017. That extract records that Sri Lankans living overseas are encouraged to return to Sri Lanka or invest in the Sri Lankan economy. It is reported that in general the DFAT assesses that Sri Lankan authorities may monitor any member of the Tamil diaspora returning to Sri Lanka, depending on their risk profile.

At 13.1.2 reference is made to a July 2015 International Truth and Justice Project Sri Lankan report on Sri Lanka's survivors of torture and sexual violence. In that report it was recorded that the Sri Lankan security forces had shown people photographs of themselves attending events and other commemorations abroad. This suggested there was a continuing interest in surveillance of diaspora activities".

30. The judge considered Dr Smith's report in which he stated that the appellant has been "extremely active" with the British Tamil Forum. Whilst he said that the appellant's activities have been plentiful and that the Sri Lankan authorities are extremely likely to be aware of him, the judge stated that Dr Smith did not refer to the "plentiful" activities which

he said the appellant has undertaken. To prepare his report Dr Smith said he had seen a copy of the appellant's witness statements prepared in 2013 and 2018. He had seen a copy of the asylum interview. The 2013 witness statement and the asylum interview were before Judge Black whose view was that the appellant had a low level involvement. The judge said she had taken into account the appellant's 2018 witness statements. There was limited mention of his involvement in diaspora activities in the statements. The judge said it was not clear what else Dr Smith had been shown or what he had been told by others about the extent of the appellant's involvement. The judge found that Dr Smith's analysis was predicated on the appellant's extensive involvement in diaspora activities. However, this extensive involvement was not borne out by the evidence before her.

31. The judge noted that Dr Smith provided examples of TGTE supporters who were at risk on return. The judge made observations in relation to each. Mrs Chandrapala was previously assisting the LTTE and held a formal position within the TGTE. The judge found that Mrs Chandrapala's situation could be distinguished from the situation facing this particular appellant as he had never been involved with the LTTE and held no formal position within the TGTE.
32. The judge noted that Mr Puthirasigamani was a TGTE activist and independent researcher who went to Sri Lanka to study the life conditions of rehabilitated ex-LTTE combatants on behalf of the International Centre for Prevention and Prosecution of Genocide. The judge found that his situation was different to this particular appellant as this appellant would be returning as a failed asylum seeker. He will not be involved in researching the ill-treatment of ex-LTTE members on behalf of a public body.
33. The judge noted that Mr Rubaranja was a human rights activist who was previously involved in the TGTE in the UK. He assisted Mr Puthirasigamani with the research identified above. Dr Smith states he was targeted purely because of his TGTE activities. The judge said she was unclear as to how Dr Smith has concluded that Mr Rubaranja was targeted because of TGTE involvement rather than being targeted for the same reasons as Mr Puthirasigamani. She accepted that Mr Rubaranja was asked about the TGTE while he was being detained but there was limited information to support the claim that this was the reason why he was targeted in the first place.
34. The judge noted that Mr Antony was a former member of the LTTE and held a prominent role in the TGTE which included giving interviews on well-known Tamil television channels. His sister was assaulted by the CID. In contrast the judge held that this appellant does not have a prominent role in the TGTE and he has not given interviews with television channels.
35. The judge noted that Miss Subramaniy is a well-known traditional Tamil dancer who has performed on stage at many TGTE events. The judge held

that this appellant does not share her profile. He has attended a few demonstrations as a protester only.

36. The judge noted that Mrs Velathuyapillai was a former journalist for the LTTE radio. She was a prominent TGTE activist and was also involved in diplomatic meetings. Her brother on return to Sri Lanka was abducted and questioned about his sister's activities in the TGTE. The judge held that this particular appellant has not been involved with the TGTE to the same degree.
37. The judge held that she was unclear as to why Dr Smith says membership of the TGTE in itself gives rise to adverse interest. She noted that the individuals named in his report seemed either to have prominent roles in the TGTE or to be related to those who do. The examples do not address the type of low level involvement undertaken by the appellant.
38. The judge noted Dr Smith's report in which he states that in February 2018 there was an incident at the Sri Lankan High Commission which was reported in the media under the headline "Sri Lanka envoy suspended over throat slitting gesture". Dr Smith suggested that this left little doubt as to the views amongst the authorities with regards to the diaspora. The judge noted that the envoy was suspended by the authorities. She also bore in mind that this gesture was not directed at the appellant himself.
39. The judge took into account Dr Smith's report that the TGTE is a proscribed organisation and cited extracts from two letters from the British High Commission in Sri Lanka. The letters are that individuals belonging to these proscribed organisations would face arrest under anti-terrorism laws. To date there have been no known arrests based on membership of one of the newly proscribed groups. Returnees may be questioned on arrival by Immigration, CID, SIS and TID. They may be questioned about what they have been doing whilst out of Sri Lanka, including whether or not they have been involved in one of the diaspora groups. Members of the organisations are not banned from returning to Sri Lanka but will be questioned on arrival and may be detained.
40. The judge stated that **GJ** sets out the current categories of persons at real risk of persecution. Although the appellant has been involved in diaspora activities, the judge said that he has not held a significant role in relation to post-conflict Tamil separatism.
41. The judge concluded that it is likely that this appellant will be questioned when obtaining his travel document. She accepted that there may be intelligence and/or surveillance of him participating in demonstrations and he may need to disclose his involvement with the TGTE, a proscribed organisation. However, the judge found that the appellant is fit and well enough to answer questions about the extent of his involvement, which she has found is limited. In reaching her decision the judge took into account that the appellant has never been a member of the LTTE. He has no connections with the LTTE. He was not detained and tortured as



claimed. There was no past persecution in this case. His credibility is low. She found that he has engaged in some diaspora activities over the course of the last few years in an attempt to place himself into one of the risk categories in **GJ**.

42. The judge said she appreciated the perception of the Sri Lankan authorities was significant and that she had taken into account what Dr Smith states. However, even accounting for his membership, the judge found that the reality is that given his limited involvement he could not be seen to be attempting to re-invigorate the LTTE. He has attended some meetings and demonstrations and has organised a couple of fundraising events. When taking into account the length of time he has been in the UK, she found that his involvement was extremely limited. She bore in mind that there have been no known arrests as a result of TGTE membership. The judge said she had taken into account the examples of arrest and detentions provided by Dr Smith but had discounted these as material to the appellant's case for the reasons already stated by her. Based on the appellant's level of involvement, it could not be said that he posed any risk whatsoever to destabilising the new Sri Lankan state and found that he would be of no adverse interest to the authorities. As a consequence, even if he were to face further questioning in his home area, the judge found that he would not be at risk of being arrested or detained.
43. The judge said that since she heard the appeal, the case of **KK (Sri Lanka) [2019] EWCA Civ 172** has been promulgated. She took into account in particular paragraph 32 and bore in mind the cumulative effect of the individual factors identified in that decision. In particular, she took into account that the appellant is being returned as a failed asylum seeker who has participated in demonstrations. KK had been convicted of a serious conspiracy to smuggle Tamils into the UK and there had been considerable media attention in the case. It was the combination of these factors that created a risk on return. The judge held that the media attention in **KK** distinguishes the circumstances faced by that particular appellant with the appellant that is the subject of this appeal. She found that there has been no media attention directed towards this particular appellant that might affect the Sri Lankan authorities' perception of him.
44. Mr Walsh took me through the judge's decision which I have cited at great length.
45. Mr Walsh relied on paragraph 19 and paragraph 24 of **UB (Sri Lanka) [2017] EWCA Civ 85**. Essentially the appeal before the Court of Appeal turned on the failure of the respondent to bring the fresh guidance, postdating the decision in **GJ**, to the attention of the First-tier Tribunal or Upper Tribunal. At paragraph 19 the Court of Appeal held that the guidance was clearly material and should have been served in advance. UB had claimed membership of the TGTE. The respondent in her refusal letter had not accepted that UB had any links with the organisation. At paragraph 23 the Court of Appeal held that if the material had been served, then the issue of TGTE membership would have been of more

significance. At paragraph 24 the Court of Appeal held that consideration of the risk to the appellant UB turns not merely on him showing that he was actually a member of the TGTE but relied on his membership being detected on arrival in Sri Lanka.

46. Mr Walsh relied on paragraph 13 of **UB** which cited the letter from the British High Commission in Sri Lanka dated 25 July 2014 and the relevant text which reads:

*“The spokesperson from the DIE stated that returnees may be questioned on arrival by Immigration, CID, SIS and TID. They may be questioned about what they have been doing whilst out of Sri Lanka, including whether they have been involved with one of the Tamil diaspora groups. He said that it was normal practice for returnees to be asked about their activities in the country they were returning from”.*

47. In the light of this evidence, Mr Walsh submitted that the appellant would face danger if he was asked about his involvement with the TGTE.

48. Mr Walsh also relied on Dr Smith’s report, paragraph 54, in which he states:

*“It is not clear how effective or efficient Sri Lankan intelligence is in relation to the diaspora, though received wisdom considers that it has improved. If the Sri Lankan authorities have identified the appellant, this will provide an additional reason as to why his name, will be on the electronic database and therefore on one of the lists. It is noted that in February 2012, during a speech in Jaffna, former President Rajapaksa requested the paramilitary EPDP leader to organise to infiltrate hostile Tamil organisations amongst the diaspora to disturb their activities”.*

49. Mr Walsh said that evidence of individuals who were found to be at risk on return following their activities in the diaspora were set out by the judge at paragraph 56. Mr Walsh accepted that these individuals had more involvement with their proscribed groups but said that this should not nullify that being a member of the TGTE will be a trigger factor to cause adverse interest in the appellant, as stated by Dr Smith at paragraph 59 of his report.

50. Mr Walsh submitted that it was wrong to treat the appellant as having a low level involvement, considering the acceptance of his membership, as not to attract the hostile interest of the Sri Lankan authorities.

51. Mr Diwnycz submitted that the judge had found at paragraph 55 that the appellant has attempted to place himself into one of the risk categories in **GJ** and therefore had acted in bad faith. He was referring to the **Danian** principle. He said that this may be irrelevant, nevertheless it is the questioning of the appellant that may lead to the authorities transgressing

the normal course of behaviour. He said this was a question that needed to be answered.

52. Mr Walsh submitted that the appellant will be questioned by the Sri Lankan High Commission in London if he obtains a travel document. This in turn will lead to further questioning on his return to Sri Lanka.
53. I find that the judge did not err in law. I find that the judge dealt with every issue that needed to be considered. The judge's conclusion that based on the appellant's level of involvement, it cannot be said that he poses any risk whatsoever of destabilising the new Sri Lankan state and that he would be of no interest to the authorities is a conclusion that, I find, was properly made following consideration of all the evidence that was before her.
54. At paragraph 55 of his report Dr Smith states:

***"GJ and Others** clearly states that anyone who has a commitment to undermining Sri Lanka as a unitary state will be of adverse interest. By definition the TGTE and its members and supporters are actively engaged in working towards a separate Tamil state within Sri Lanka's border which directly seeks to undermine Sri Lanka".*
55. I find Dr Smith's assertion to mean that all members and supporters of TGTE will be at risk. However, the judge at paragraph 51 said she was unclear as to why Dr Smith said membership in itself gave rise to adverse interest. The judge looked at the individuals named by Dr Smith in his report and found that those individuals seemed either to have prominent roles in the TGTE or to be related to those who do. The judge held that the examples did not address the type of low-level involvement undertaken by the appellant.
56. The judge concluded that it is likely that the appellant will be questioned when obtaining his travel document, which was a point made by Mr Walsh. The judge held that there may be intelligence and/or surveillance of him participating in demonstrations and that he may need to disclose his involvement with the TGTE, a proscribed organisation. The judge said it was important to assess the perception of the authorities and in particular how the authorities will perceive his involvement with the TGTE. The judge took into account that the appellant has never been a member of the LTTE. He has no connections with the LTTE. He was not detained and tortured as claimed. There was no past persecution in this case. His credibility was low. Whilst the judge found that he has engaged in some diaspora activities over the course of the last few years, the judge found that the appellant's involvement with the TGTE was extremely limited.
57. The judge found that there have been no known arrests as a result of TGTE membership and that even if he were to face further questioning in his home area, he was not at risk of being arrested or detained. The judge considered Dr Smith's assessment as to how the authorities treat people

who are of interest to them on return. This was predicated on the appellant being a member of the LTTE and known as such to the authorities. The judge found that the appellant has never been a member of the LTTE, was not associated with them and never has been.

58. I find that the judge placed the appellant's evidence in the context of Dr Smith's report. The judge relied on current case law. I find that the judge's findings are well reasoned and sound. I find that the judge's decision discloses no error of law.

59. The judge's decision dismissing the appellant's appeal shall stand.

**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: 19 May 2019

Deputy Upper Tribunal Judge Eshun