



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

Appeal Number: IA/02020/2020
PA/51049/2020 : (UI-2021-001360)

THE IMMIGRATION ACTS

**Heard at : Field House
On : 1 April 2022**

**Decision & Reasons Promulgated
On : 30 May 2022**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**SA
(Anonymity Order made)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill, instructed by MTC Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against the decision of the First-tier Tribunal dismissing his appeal against the respondent's decision refusing his asylum and human rights claim.

2. The appellant is a citizen of Sri Lanka of Sinhalese ethnicity, born on 3 April 1989 in Colombo. He arrived in the UK on 29 May 2010 on a student visa valid until 30 January 2013 and was granted further leave as a student. His leave was curtailed on 15 August 2014. He claimed asylum on 11 November 2015 but then failed to attend his asylum interview and his claim was treated as

withdrawn on 6 May 2016. On 15 March 2017 the appellant was served with removal papers. He failed to report as required and was declared as an absconder. On 6 September 2019 he made further submissions which were treated as a claim for asylum.

3. The appellant's asylum claim was made on the basis that he was suspected of being a terrorist and part of the LTTE after he was observed taking his friend, S, and S's sister on his bicycle in Colombo in 2008. Both were suspected of being suicide bombers and the appellant was suspected of assisting them in their activities, although he claimed that he was simply taking them to hospital when his friend's sister was not feeling well. He was stopped and questioned by the CID on 10 May 2010 and was arrested and detained for 17 days. He was sexually abused and tortured in detention and was released on 27 May 2010 when his father paid a bribe. He had to sign a blank piece of paper and his fingerprints were taken. After his release he left Sri Lanka, as he already had a visa for the UK, issued in February 2010, and he arrived in the UK two days later. He attended a demonstration in the UK but had not otherwise been involved in any political activities. His mother called him in 2011 to inform him that the authorities had come looking for him.

4. The respondent, in a decision of 5 August 2020 refusing the appellant's claim, considered that he would be of no interest to the Sri Lankan authorities as he had had no previous involvement with the LTTE and no political role in Sri Lanka or in the UK. He had been nothing more than a bystander at the demonstration in the UK and would not have come to the adverse attention of the Sri Lankan authorities. The respondent did not accept that the appellant was at any risk on return to Sri Lanka and considered that his removal would not breach his human rights. Although he claimed to have depression and suicidal thoughts, and had produced a psychiatric report in that regard, the respondent did not accept that his removal would give rise to a breach of Article 3 or 8 on that basis.

5. The appellant appealed against that decision. In a statement dated 18 January 2021 he expanded upon his claim, stating that he only found out about S and S's sister's involvement in the suicide bombing when he was in detention and was questioned about them. He was told about CCTV footage of him taking them to hospital and was accused of being associated with them. During his detention he was often beaten, hung from the ceiling and sexually assaulted and threats were made that his testicles would be put in a drawer and the drawer closed. After his father paid a bribe for his release he came to the UK, but his parents informed him that the authorities had come looking for him in 2011 and, again, in 2016 or 2017. He lived with a friend in the UK, L, who was a Tamil and encouraged him to join protests in the UK, organised by the TGTE, against human rights abuses in Sri Lanka. He attended demonstrations prior to the pandemic but then none more recently. He feared being identified and targeted by the Sri Lankan authorities as a result of his participation in those TGTE events and was suffering from anxiety and depression as a result of his experiences.

6. In a Respondent's Review produced on 8 April 2021 for the appeal, the respondent confirmed that the appellant's account was not considered to be credible and provided reasons for his claim not being accepted.

7. The appellant's appeal against the respondent's decision was heard by First-tier Tribunal Judge Roots on 30 September 2021. The judge did not consider the appellant's account of his arrest and detention to be credible, noting the unexplained two-year gap between him assisting his friend and his friend's sister in 2008 and his arrest in 2010 and the appellant's inability to provide details of the events, and finding it significant that the appellant had not sought any medical treatment in the UK despite claiming to have been tortured up until his release two days before his arrival. The judge found the appellant's account of being able to leave Sri Lanka without any special arrangements in place undermined the credibility of his account of events and also considered that the delay in claiming asylum, and his immigration history since coming to the UK, undermined his credibility further. The judge accordingly rejected the appellant's claim to have been detained and tortured in Sri Lanka and considered that it had been fabricated. As for the appellant's activities in the UK, the judge found that at its highest the appellant had engaged in very limited activities and had attended demonstrations in 2018 and 2021 as a passive bystander, and he did not accept that the appellant would be of any interest to the Sri Lankan authorities. The judge found, in regard to the appellant's human rights claim, that he was not at risk in relation to any mental health issues and that there were no very significant obstacles to his integration in Sri Lanka nor any basis for a grant of leave on Article 8 grounds. He accordingly dismissed the appeal on all grounds.

8. The appellant sought permission to appeal the decision to the Upper Tribunal on five grounds: that the judge had adopted an unfair procedure by finding the appellant's credibility to be damaged by matters of which he had not been put on notice; that the judge had erred in finding that the appellant's failure to seek medical attention damaged his credibility despite the absence of evidence that such attention would have been required; that the judge had erred in his approach to the absence of evidence from two of the appellant's friends; that the judge had failed to give adequate reasons for his finding that the Sri Lankan government would have been aware of the appellant's departure from Sri Lanka; and that the judge had failed to have regard to material matters when assessing risk on return, namely the appellant's association with the TGTE.

9. Permission was granted in the First-tier Tribunal and the matter came before me. Both parties made submissions and I shall address those in my discussion below.

Discussion

10. The appellant's first ground is that Judge Roots adopted a procedurally unfair approach by making adverse credibility findings on matters not put to him. Ms Revill submitted in particular that the judge had unfairly drawn adverse

conclusions from the lack of detail given by the appellant about various matters, such as the two-year delay between him assisting his friend S and his arrest, the photographs shown to him of S and S's sister during his detention and the alleged suicide bombing, when that had never been put to him in order that he could respond. However, as Ms Isherwood properly submitted, the burden of proof was on the appellant to demonstrate that his claim was a credible one and it was therefore for him to provide a full and clear account of the events upon which he relied. Ms Revill accepted that it had been made clear by the respondent's review that credibility was in issue and the appellant had therefore had plenty of notice that his account was disputed. Indeed, it is evident from the judge's comments at [33] that he distinguished between those matters specifically raised in the review and those not raised by the respondent, in assessing which matters the appellant could reasonably be expected to address. As the judge noted in the following paragraph at [34], the respondent specifically rejected the appellant's account of being perceived by the Sri Lankan authorities as associated with a suicide bombing and, at [4] of the review, expressed concerns about the two-year delay before his claimed arrest. There is therefore no merit in a claim that the judge acted unfairly by drawing adverse conclusions from the appellant's inability to provide details about those events and about that period of time. As the judge said at [37], those were crucial elements of the core of the appellant's claim and he was therefore perfectly entitled to draw the adverse conclusions from the appellant's inability to provide a more detailed account.

11. In her second ground, Ms Revill challenged the adverse conclusions drawn by the judge from the fact that the appellant did not seek medical attention on arrival in the UK and submitted that Judge Roots did not have the medical expertise to assess the appellant's medical needs at that time. However, the judge was clearly not holding himself out to be a medical expert and neither was he imposing any requirement upon the appellant to have sought medical treatment in order for his account to be credible. He was simply making the point, taking his findings at [38] to [42] as a whole, that the appellant's ability to commence a course of studies shortly after arriving in a new country, with no problems, appeared to be at odds with his claim to have been released, only two days earlier, from a period of detention during which he was, according to his own evidence, repeatedly beaten and tortured and was "in no condition to do anything". It seems to me that the judge was perfectly entitled to draw the adverse conclusions that he did in that regard.

12. Much is made in ground three of the adverse conclusions drawn by the judge from the appellant's failure to adduce evidence from two friends who supported him in the UK, namely L and R. However, the judge's findings in that respect have to be regarded in the context of his overall assessment at [54] to [65] where he considered the appellant's inability to provide a credible explanation for his delay in claiming asylum and his adverse immigration history, in response to the concerns specifically raised in the respondent's review. The judge was perfectly entitled to note the absence of any supporting evidence which could have produced by the appellant in that regard, and it was entirely open to him to make the credibility findings that he did from the

appellant's adverse history and behaviour. Ground four likewise fails to take the judge's observation on a single issue in the overall context in which it was made, at [49] to [53], when the judge provided reasons for rejecting the appellant's account of the adverse attention received from the Sri Lankan authorities up to and subsequent to his departure from the country. It seems to me that the judge was perfectly entitled to find that the appellant's account of adverse interest in him over a prolonged period of time was inconsistent with a lawful departure from the country several years previously.

13. The final ground asserts that the judge failed to have regard to a relevant risk factor, in line with the country guidance in KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 130, namely the appellant's perceived support for the TGTE as a result of attending demonstrations organised by that group. However, the judge's summary of the evidence and submissions at [67] to [74] makes it entirely clear that he was aware of the association with the TGTE and the fact that the demonstrations attended by the appellant were said to have been organised by that party. His assessment of risk arising from the appellant's *sur place* activities was plainly undertaken in that context. That assessment, from [76] to [80], was a detailed and comprehensive one. The judge's conclusion, that the extent of the appellant's involvement in such activities, and any profile or perceived profile that he had, was not such as to put him at risk on return to Sri Lanka, was fully and cogently reasoned, and was entirely consistent with the guidance in KK and RS. The challenge made in the grounds to the judge's findings in that regard is without any merit.

14. Indeed, there is no merit in any of the challenges in the grounds. The judge's decision is a detailed and comprehensive one, based upon a full and proper assessment of all the evidence against the relevant country guidance and background country information, with cogently reasoned findings and conclusions. The conclusion, that the appellant had not provided a credible account of events and that he was at no risk on return to Sri Lanka as a result of any past or *sur place* activities, was one which was fully and properly open to the judge on the evidence before him.

DECISION

15. 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 anonymity direction made by the First-tier Tribunal is maintained.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 3 April 2022