



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-001550  
First-tier Tribunal No:  
PA/51297/2022  
IA/03499/2022

**THE IMMIGRATION ACTS**

Decision & Reasons Issued:  
On the 20 July 2023

Before

**UPPER TRIBUNAL JUDGE BLUNDELL**

Between

**WMF (SRI LANKA)**  
**(ANONYMITY ORDER MADE)**

Appellant

and

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person  
For the Respondent: Mr Wain, Senior Presenting Officer

**Heard at Field House on 3 July 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court. I make this direction because the appellant is an asylum seeker and there is nothing to displace the presumption in favour of anonymity.**

**DECISION AND REASONS**

1. The appellant appeals, with the permission of First-tier Tribunal Judge Monaghan, against the decision of First-tier Tribunal Judge Juss. By his decision of

7 April 2023, Judge Juss (“the judge”) dismissed the appellant’s appeal against the respondent’s refusal of his claim for international protection.

**Background**

2. The appellant is a Sri Lankan national who was born on 4 September 1989. He has an inauspicious immigration history. He entered the United Kingdom in 2011, holding entry clearance as a student. Further leave to remain was granted on application in 2013. That leave expired on 30 April 2016, whereafter the appellant chose to remain without attempting to regularise his status. In June 2019, he was found to be working illegally in Luton, and was detained accordingly. Shortly after being detained, the appellant claimed asylum.
3. The appellant underwent a screening interview on 24 June 2019. He said that his main language was Sinhalese but that he also spoke Tamil and English. He was born in Negombo and was of the Catholic faith. He said that the government of Sri Lanka suspected him of supporting the Tamil minority and killed 200 of his friends. He was also concerned about the actions of ISIS in Sri Lanka. Asked whether he had ever been detained in the UK or any other country, for any reason, the appellant answered ‘No’.
4. Four months later, the appellant underwent a substantive interview in the Tamil language. He detailed various mental and physical health conditions from which he suffered. He confirmed that he was content with his screening interview. He spoke of his relationship with an ex-girlfriend and her three children in the UK. He said that his family was in Negombo. They were being monitored in Sri Lanka because he was suspected of supporting the LTTE. He confirmed that he had in fact supported that proscribed organisation although he was of Sinhalese ethnicity and had attended a Sinhalese school. He had learned Tamil from his parents and had lived amongst Tamils in Negombo. He said that he had a ‘question mark within myself whether I am Tamil or Sinhalese’.
5. The appellant stated that he had been arrested in Sri Lanka in October 2010 because he had helped the LTTE, although he could not remember how long he had been detained. He had supported the United National Party in the Sri Lankan election, although he could not remember the year in which the election was held. He used to travel from Negombo to Mannar in the north to work as a fisherman. Whilst he was there, he supplied the LTTE with a boat engine. He had also permitted them to stay at his house in Negombo. He did not know the full name of the movement, or when they were founded, but he had supported them because the government had killed innocent Tamil civilians. He had been arrested in the street in 2010 and had been tortured using electric shocks, burning and beating in detention. They wanted to know about the people from Mannar who had stayed at his house in Negombo. He had been tortured until he lost consciousness and then he had been left on a road. He had then stayed at other houses before leaving the country on his student visa. He experienced no difficulties at the airport. The police had been asking after him since he left. He had been to a number of demonstrations in the UK after he had been arrested for immigration offences. The group he supported in the UK was called Sri Lankan Tamil Union and he had given them money from time to time. He had given an interview on Heroes Day. Although he had been in fear during his time in the UK, and had lived amongst Tamils throughout, he had not known about claiming asylum until he was arrested.

6. The appellant adduced medical evidence in support of his claim. He also provided a letter from a Sri Lankan attorney, Mr Senanayake, in which the latter confirmed that the appellant had been involved in the election campaign in 2010 and had faced 'severe hardships from the opposition candidates and their henchmen'. Mr Senanayake also confirmed that the appellant was a 'strong supporter of police alliance.'
7. The respondent refused the claim on 24 March 2022. She accepted that the appellant was Sri Lankan and that he was of Tamil ethnicity (although the appellant had not made that claim). She rejected his claim to have helped the LTTE or to have come to the attention of the authorities as a result. She did not accept the appellant's account of activities in the UK. She did not consider the claim made in the appellant's attorney's letter that he had been targeted on account of his election activities and his support for the police alliance.

### **The Appeal to the First-tier Tribunal**

8. The appellant appealed to the First tier Tribunal and adduced a number of documents in support of his appeal. Amongst those documents was a witness statement in which the appellant provided further details of his claim, including his assertion that he identified as Tamil 'to a certain extent'. He stated that he had been targeted on account of his LTTE support and his activities for the UNP. When he had said in the asylum interview that he supported the Transitional Government of Tamil Eelam ("TGTE") in the UK, this had been mistranslated and the interpreter had said that it was the Tamil Union.
9. There was also before the FtT a psychiatric report from a Consultant Psychiatrist, Dr Saleh Dhumad, who considered that the appellant was experiencing a severe episode of recurrent depressive disorder. He thought that the appellant would suffer a serious deterioration in his mental health if returned to Sri Lanka. He was at risk of suicide in that event. Dr Dhumad stated that the appellant was unfit to give evidence due to his mental health. He did not consider the appellant's symptoms to be feigned.
10. The judge heard the appeal in Birmingham on 9 February 2023. The decision states that the appeal was heard at Sheldon Court but that cannot be correct as that hearing centre was decommissioned some years previously. The appellant did not attend the hearing, although he was represented by Mr Paramjorthy of counsel. The respondent was represented by a Presenting Officer. The representatives made concise submissions before the judge reserved his decision.
11. In his reserved decision, the judge seemingly rejected the appellant's account of events in Sri Lanka and he did not accept that the appellant's limited activities in the UK would have brought him to the adverse attention of the Sri Lankan authorities. He did not consider that the appellant's removal to Sri Lanka would be unlawful under section 6 of the Human Rights Act 1998. So it was that he 'refused' the appellant's appeal.

### **The Appeal to the Upper Tribunal**

12. The grounds of appeal to the Upper Tribunal were settled by trial counsel. There are in essence two grounds of appeal, which are that (i) the judge failed to come to grips with the report of Dr Dhumad; and (ii) that he failed to apply the country

guidance in considering the risk to the appellant in light of his sur place activity. Judge Monaghan found both grounds to be arguable.

13. At the outset of the hearing before me, I noted that the appellant's former solicitors had written to the Tribunal stating that they were no longer acting. The appellant said that he had been unable to pay them. He was content to proceed without them and he would do so in English, he said. I asked the appellant about his mental health, noting that it had been said by Dr Dhumad in December 2022 that he was unfit to attend court. The appellant said that he was fine and was quite happy to proceed. That certainly seemed to be so, and his affect was bright, cheerful and conversational. I considered that it was fair to proceed with the hearing and I did so, having ensured that the appellant had all the papers he needed to represent himself.
14. I asked Mr Wain to make his submissions first so that the appellant could understand the case which was made against the grounds of appeal. I asked Mr Wain to address me first on [15] of the judge's decision, in which he had stated that the appellant was a female who had given oral evidence before him in a fluent and emphatic manner. Mr Wain submitted that this was a slip on the part of the judge, who had clearly been aware that the appellant had not attended the hearing.
15. Mr Wain submitted that the judge's treatment of the psychiatric evidence was lawful and that the judge had given proper reasons for finding that the appellant's account was untrue. The judge had considered that report with anxious scrutiny and the first ground was nothing more than a challenge to the weight given to it.
16. I asked Mr Wain whether there were any findings made by the judge on the first and second issues identified in the Appeal Skeleton Argument: whether the appellant was arrested in 2010 and whether the authorities had maintained an interest in him thereafter. Mr Wain accepted that there was no clear finding in these respects but he submitted that the judge appeared to have rejected those assertions. The penultimate sentence of [19] appeared to be a finding, albeit the reasons for that finding were not clear.
17. Mr Wain submitted that the judge had clearly considered the appellant's TGTE activities. The appellant was not on a watchlist and would not be exposed to risk on account of those activities. The nature of the activities was borne carefully in mind by the judge. The judge was aware of the reality of those activities, in that the appellant had seemingly attended only a single demonstration.
18. I indicated to the appellant that I did not need to hear from him. I was satisfied that the judge had erred materially in law and that his decision could not stand. Mr Wain and the appellant invited me to remit the appeal to the FtT for hearing de novo, which I agreed to do. My reasons for doing so are as follows.

## **Analysis**

19. Before I turn to the grounds of appeal, I consider it appropriate to observe that the judge's decision unfortunately gives indications of a general lack of care in preparation and proofreading. There is the reference to the appeal having been heard at a long-since decommissioned hearing centre. There is the suggestion that the appellant is a female who gave oral evidence before the judge. The judge made reference to counsel's skeleton argument at [10] but simply to his

'skele' at various points thereafter. This was an appeal against the refusal of international protection; the appellant claims that his life is at risk on return to his country of nationality. Mistakes and shortcuts of this kind do not fill the reader with any confidence that the appeal has been considered with the anxious scrutiny required.

20. I am grateful to Mr Wain for his submissions on the first ground. Even with the benefit of those submissions, however, I cannot understand the judge's treatment of the psychiatric report of Dr Dhumad. He turned to that report in the latter half of [19] of his decision. He made no reference to the specific mental health condition from which Dr Dhumad considered the appellant to be suffering. The judge noted that the appellant was said by Dr Dhumad to be 'vulnerable and at risk if he gives evidence'. I doubt very much whether that comes to grips with the detail of that report. Be that as it may, the judge's reasons for rejecting those conclusions are wholly inadequate. Those reasons were as follows:

This [the report] comes rather late in the day, and even after the Respondent's Review of 6th July 2022, and it is not persuasive in the over-all context of the evidence as a whole. I am not satisfied that the Appellant, who was found working in Luton after having entered as a student, is having suicidal ideations. He has not been tortured and not been mistreated. There is in any event a medical service in Sri Lanka that he is can utilise upon return.

21. As Mr Paramjorthy noted in his grounds of appeal, the timing of the report is largely immaterial if it gives cogent reasons for concluding that the appellant is suffering from severe and remitting depression which renders him at risk of suicide. The judge's remark that the report is 'not persuasive in the context of the evidence as a whole' appears to refer to the subsequent observations about the fact that the appellant had gone to ground and was working unlawfully. These were certainly relevant matters, but they were to be considered in light of the reasons given by Dr Dhumad for concluding that the appellant was mentally unwell. The judge did not attempt to do so. He was not bound, of course, to accept what was said by Dr Dhumad. His duty was to approach the evidence with appropriate care and to give good reasons for his decision not to accept it: *SS (Sri Lanka) v SSHD* [2012] EWCA Civ 155, at [21]. I do not consider the judge to have discharged either function in this case.
22. My examination of the first ground of appeal during Mr Wain's submissions resulted in a further concern coming to light. The appellant in this case advanced a claim based on events in Sri Lanka, on the one hand, and the UK, on the other. In relation to the former claim, it was for the judge to decide whether the appellant had given a truthful account of being detained by the Sri Lankan authorities and whether they had continued in the intervening twelve or thirteen years to show an interest in him and his family despite his absence. It is not clear to me that the judge reached a finding on either of those issues, despite the fact that they were identified (as one would expect) in counsel's skeleton argument. Mr Wain submitted that the penultimate sentence of [19] represented a rejection of the appellant's account but that is not clearly so, not least because of the absence of any reasons to support such a finding. I note a subsequent observation – at [22] of the judge's decision – to the effect that the appellant had poor knowledge of the LTTE. That was undoubtedly so, but the judge did not state in terms at any point of his decision that he had rejected the appellant's

historical account in its entirety. If that was his conclusion, he gave no clear reasons for reaching it. It is notable that Mr Wain was unable to identify either a conclusion on the historical account or any clear reasons for that conclusion when he was pressed upon it.

23. The second ground of appeal is also made out, although I can express my reasons for that conclusion more briefly in view of the conclusion I have reached on ground one. Despite his citation of the decision in *KK and RS (sur place activities: risk) Sri Lanka* [2021] UKUT 130 (IAC), I am satisfied that the judge failed to apply the guidance in that decision when considering the appellant's sur place activities. He failed, in particular, to note that the TGTE is a proscribed organisation in Sri Lanka and he failed to consider what of the appellant's activities in the UK would be revealed during the interview he was likely to have with the Sri Lankan authorities in preparation for any return.
24. In the circumstances, and notwithstanding the hesitancy which an appellate body should exercise before interfering with the decision of an expert Tribunal, I come to the clear conclusion that the decision of the judge cannot stand. He failed to come to clear findings on material issues and he failed to give clear reasons for his decision to dismiss the appeal. His treatment of the expert evidence was legally inadequate, and his application of the country guidance was similarly flawed. Given the extent of the FtT's failings, and the extent of the fact finding which is now necessary, I accept the submission made on both sides that remittal to the FtT *de novo* is the proper relief.
25. I should add this. Whilst the reasons given by the judge for dismissing this appeal were plainly inadequate, the appellant clearly has the most difficult of cases. He delayed significantly in claiming asylum, seemingly preferring to work without leave to do so. His account has changed radically over time, as the summary at [3]-[5] above shows. And the evidence which was adduced from a Sri Lankan attorney might be thought to undermine his claim, not least with reference to the appellant's apparent support for the police. The respondent accepted in the refusal letter that the appellant is a Tamil but I do not understand him ever to have claimed that ethnicity; he seems to be a Sinhalese Catholic who is able to speak Tamil. The FtT will wish to give careful consideration to the truthfulness of the appellant's account, and the extent of any commitment to the separatist aims of the TGTE, in light of all of these apparent difficulties. In the event that the historical account is a fabrication and the sur place activity a contrivance, the appellant could be properly be expected not to disclose any UK activity to the authorities of his own country before and after removal.

### **Notice of Decision**

The decision of the FtT involved the making of an error on a point of law. That decision is set aside. The appeal is remitted to the FtT to be heard afresh by a judge other than Judge Juss.

**M.J.Blundell**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

20 July 2023