IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003794

First-tier Tribunal Nos: PA/50874/2022
IA/02382/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 24 June 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

WSGKL
(ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms A Patyna, Counsel instructed by Reeves & Co Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 6 December 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. I make this order because the appellant seeks international protection.

DECISION AND REASONS

1. Ms McKenzie confirmed that there was no Rule 24 notice but the appeal was opposed.

2. I apologise for the delay in promulgating this decision that was based closely on a draft I received from the typist on 11 December 2023.

3. The appellant is a national of Sri Lanka. He is Sinhalese. He did not give evidence before me or take any active part in proceedings but he did attend and I could not help noticing his youthful and subdued appearance. He was born in 1982 and so is now about 21 years old. He appeals a decision of the respondent on 11 February 2022 refusing him leave to remain in the United Kingdom. It is the appellant's case that he is entitled to international protection. He has made a similar claim previously. It was refused and an appeal dismissed and his appeal rights exhausted in January 2019.

4. The basis of his claim is set out quite aptly at paragraph 5 of the Decision and Reasons. There the judge said that the appellant:

> "... was convicted of possession of indecent images in 2016 and was sentenced to a community order. The appellant states that his offence became known in his home village and that he is at risk as a result of this. The appellant further states that he was sexually assaulted by his uncle as a child and that his uncle has made false accusations against the appellant because he wishes to discredit the appellant's account of sexual abuse. The appellant has provided Court documents which he states confirm the false charges against him".

5. It is clear from the decision as a whole that the appellant was particularly concerned that the false accusations were, or at least appeared to, relate to terrorist offences which would put the appellant at risk because the Sri Lankan authorities could be expected to know of the reason for his return and to link him with the Tamil separatist movement.

6. I begin by considering the First-tier Tribunal's Decision and Reasons. This is an appeal where the Secretary of State was not present before the First-tier Tribunal and the judge, rightly, continued in his absence.

7. The appellant gave evidence and the judge has referred to various documents. Ms Patyna, who appeared below, in her submissions to the First-tier Tribunal accepted, uncontroversially, that this was an appeal where regard had to be given to the earlier decision. However in the earlier decision it had been accepted that the appellant is a vulnerable adult who had been abused in childhood. A previous judge had also found that the appellant's abuser, his uncle, had been reported to the authorities but no action was taken against him but the appellant's offending in the United Kingdom had become known so that his family was threatened. It was the appellant's case that he had further documentary evidence supporting his contention that criminal proceedings had been brought against him in Sri Lanka which, she said, would put him at risk in the event of his return.

8. Ms Patyna argued that the First-tier Tribunal had dismissed the appeal because the evidence that the appellant was wanted by the authorities was unpersuasive. It was his case that he now had better evidence to address that point. The appellant had now provided evidence from three different Sri Lankan attorneys who had made enquiries and provided credible confirmatory evidence that the appellant was indeed wanted by the authorities. She said that it was the appellant's case that he was not merely wanted, but wanted for offences connected with the Terrorism Act and he was at risk.

9. The judge reminded herself of the correct approach and referred to **Devaseelan (Second Appeals, ECHR, Extra-Territorial Effect) [2002] UKIAT 702** and **R (on the application of MW) v SSHD (Fast track appeal: Devaseelan guidelines) [2019] UKUT 411 (IAC)**. The judge set out the findings made by the First-tier Tribunal. They were very much as indicated above with the possibly important addition of findings that the appellant's two sisters were also sexually abused by his uncle when they were minors. She agreed that the police had not taken action. However, the judge also found that the appellant had no real or perceived association with the LTTE and had not been involved in sur place activities of a kind that might make him of interest and no arrest warrant had been issued and that he was not on a kind of stop list that would be problematic in the event of his return.

10. The First-tier Tribunal Judge in the present appeal had considered the evidence of a psychiatrist. She accepted that the appellant had a Moderate Depressive Episode with risks of suicide. The report had not been updated.

11. The judge then considered the new evidence. She said that there were documents from attorneys in Sri Lanka. There was a letter from Chaminda Jayasinghe dated 15 October 2022 addressed directly to the appellant's solicitors. There was evidence that the attorney was chosen by his present solicitors rather than at the appellant's suggestion.

12. Mr Jayasinghe reported that he had made enquiries of the Magistrates' Court in Colombo and there was a report against the appellant but Mr Jayasinghe did not give details. In particular (and tantalisingly?) did not give the substance of the report or the judge's remarks or the nature of a warrant said to be open against him.

13. The judge was also referred to a letter dated 20 November 2019 from Indika Muhandiram who is an attorney at law in Sri Lanka. This is addressed to the appellant's then solicitors and this does indeed confirm that there was a warrant issued in the court register against the appellant. It matches against a copy of the one sent to him and that there is an order from the magistrate that the appellant's details be given to the immigration and emigration department at Bandaranayaka International Airport because the appellant was seen as someone evading arrest. It was that writer's opinion that the document was genuine but again the judge noted that the contents of the warrant or the details of the case were missing.

14. The appellant's bundle contained a document called a "Prohibit Order of Immigration and Emigration" stating that the appellant was prohibited from leaving Sri Lanka.

15. There is then a letter from Bandula Wijesinghe which is undated but the writer says that he was instructed by the appellant's sister in November 2017. The appellant's sister says that she was harassed by the Sri Lankan authorities and the appellant's sister asked him to find out why the authorities had been visiting her property and asking about the appellant. Mr Wijesinghe says that he contacted the police station in the appellant's home area and was informed that the matter was being dealt with by the Terrorism Investigation Department. That letter came about as a result of the appellant's solicitor in the United Kingdom emailing the attorney directly and saying that she was aware that he was acting for the appellant's sister. There was a practising certificate produced to give substance to Mr Wijesinghe's evidence.

16. The complainant is named as “Malani” and although the nature of the complaint is not entirely clear, it relates to weapons. There is something described as a further acknowledgement of complaint that gives the name of the complainant as KLLDG which the judge described as slightly different to that name given by the appellant in his witness statement but sufficiently similar to suggest that it is the same person.

17. There is supporting evidence from a Mr Munandiram supported by a purported copy of his Bar Association card but no practising certificate was produced. Further, although a warrant provided, it was printed on ordinary paper so the effect could be produced easily by an inkjet printer. There was a stamp but that too could be produced on an ordinary printer.

18. At paragraph 33 the judge said that she had “some concerns about the evidence”.

19. She noted the only official reference to the Terrorism Act was in an official document coming from Mr Wijiesinghe. Judge Eban considered the letter and found it to be less than reliable. Other attorneys had visited the Magistrates’ Court in Colombo and had viewed documents. These confirmed that there was an order restraining the appellant from leaving Sri Lanka but did not identify the “type” of case taken against the appellant. This interested the judge because the nature of the offence, the judge found, could impact on treatment on return.

20. The previous appeal had been heard on 15 October 2018. Mr Muhandiram referred to being given a copy document but does not identify the sender or the document. It was not clear to what the complaint relates and the second complaint is only about threats and shouts of abuse. The appellant referred to proceedings and an arrest warrant in 2018 but the judge said “the evidence before me does not fully support that”.

21. The judge noted the letter from Mr Wijiesinghe is undated and gives little information about when the alleged events occurred, particularly when proceedings were commenced.

22. Judge Eban had expressed concerns about the document in 2018. The tone of the document referred to by the attorneys has a 2019 case number suggesting it is linked to a case from 2019 and not the first appeal hearing.

23. However the judge found that the document relating to the complaint dated June 2016, which was only part-translated, does relate to weapons but it was not a sufficiently clear copy to be translated completely. The judge concluded “it cannot be assumed that this would lead to action under the Terrorism Act”.

24. The judge made important findings at paragraph 36. She said there is evidence from an attorney contacted directly by the appellant’s solicitor that there is a case against the appellant in Sri Lanka but there are no details of the case and nothing to connect it with offences under the Terrorism Act.

25. The judge found that there is a reference to an order dated 15 July 2019, to a copy being sent to the Director State Intelligence Bureau but again that does not mean it has to relate to the Terrorism Act. There was an order prohibiting the appellant from leaving Sri Lanka issued in July 2019 and that has a 2019 case reference shown on it. There was no reference in the letters from the most recently involved attorneys of any warrant being issued in 2018.

26. The judge said that the "only cogent evidence before me" relates to a 2019 document, no cogent evidence of a 2018 arrest warrant. The judge said:

> "I therefore consider the matter on the basis that there are some Court proceedings against the appellant but it is unclear on what basis those proceedings have been taken. I also accept that there is an Order prohibiting the appellant from leaving Sri Lanka and that there is a likelihood, therefore, that the appellant will be stopped by the authorities on his return to Sri Lanka or traced by the authorities shortly after his return becomes known".

27. The judge then went on to say that the issue was how the appellant would be treated on return to Sri Lanka and the judge found that the evidence does not show a real likelihood that the appellant was wanted under the Terrorism Act. The judge found nothing to suggest that a person of Sinhalese ethnicity who was wanted for any offence that did not relate to the Terrorism Act would face persecution or serious harm. The judge found no evidence to support the appellant's claim that his uncle was an influential political figure. The judge also found some mental health issues troubled the appellant but not that he was too poorly to cope with court proceedings in the event of his return.

28. Ms A Patyna reminded me of her three grounds. It was her first contention that the appeal should be allowed outright. Having found that there were some court proceedings against the appellant in Sri Lanka so that he would be stopped on return, the judge said that some of the evidence referred to a warrant issued under the Prevention of Terrorism Act.

29. Ground 3 complained that the judge did not apply the **Surendran** guidelines. The point here is that the judge's reasons for rejecting the appellant's case go beyond the Secretary of State's reasons in the refusal letter and simply note the Secretary of State's apparently correct observation that they could have been produced on an ordinary inkjet printer. This does not mean the document is not genuine but it means there is little about it that gives it credibility and there was not expert evidence to say if documents of that kind were produced on ordinary paper with an ordinary printer.

30. However Paragraph 35 of the Decision and Reasons is particularly troubling. Most of the reasons for being unimpressed are valid but not conclusive. However the judge was concerned that "The name of the complainant is not the appellant's uncle; it is given as Malani which is not the name given by the appellant regarding his uncle".

31. This, with respect, on the face of it is a perfectly cogent point but it was not one that had been raised by the Secretary of State. Ms Patyna said that if the matter had been raised the appellant would have said that Malani is his mother's name. Of course, it was not put and the appellant now is deprived of the advantage that comes from giving the explanation at the time without notice. I find on reflection that this is a very strong point in the appellant's case. The Secretary of State chose not to attend the hearing. The judge, rightly, purported to rely on the reasons in the refusal letter and put them to the appellant. But she went beyond that. She took a point that was not raised. I am satisfied from submissions made that if it had been raised a sensible answer might have been given and it might not have seemed a good point at all.

32. It is also plain to me that the evaluation of the reliability of the country expert evidence from Sri Lanka from the lawyers is, rightly, very much an "in the round" assessment. It may be that without the "Malani" point the judge was unimpressed with the documents to the point of not finding them at all helpful, as was the Secretary of State. But the judge thought it important enough to rely on this point. It plainly played a part in her reasoning and because it was not put it was a bad point. I accept Ms McKenzie's observation that there is no evidence that it was not put but that is never an attractive argument from a party that did not attend. The point could have been made better in the grounds and the respondent would have been expected to have considered it. It is quite clear that there was no concern with the use of the name "Malani" in the Secretary of State's refusal and there was concern and reliance on the use of the name "Malani" in the judge's decision. If it was put by the judge it would be very likely that a brief outline of the explanation would have been given especially, as would have to have been the case, that the judge found it unsatisfactory. I cannot avoid concluding that this is a point that was not taken and is a point that might have impacted the outcome.

33. It is now consider also ground 2. Ground 2 in terms says:

> "The Judge did not resolve the question on whether a warrant had been issued for A's arrest. Given the centrality of this point to A's case on risk, this was a material matter on which the judge was required to reach conclusions".

34. There is then a variation on this point saying that the judge should have made a finding relating to the warrant. I do not find this point impressive. What is quite clear from the judge's Decision and Reasons is the judge did not accept that the appellant was at risk for anything under the Terrorism Act. There is implicit in this finding a finding that the appellant was not wanted for anything that was likely to put him at risk.

35. This still leaves the problem whether the appellant would be at risk in the event of his return on the judge's findings. I have considered this carefully. The fact that the claimant is Sinhalese rather than Tamil is not important. Supporters of Tamil separatism tend to be Tamils but many Tamil people do not want a separate state and many of those who do are in no way connected with terrorism. Similarly, there are some Sinhalese people who because of principle or possibly because of fear or because they see an opportunity for their advantage do give support to Tamil separatism. I do not accept that the appellant's ethnicity will take him out of the category of people who would be interrogated on return.

36. The First-tier Tribunal recognised that the appellant is vulnerable. He did not give evidence before me but attended at the hearing and although this is only at the extreme peripheries of my analysis I did find his general presentation completely consistent with the medical history of a moderate depressive episode with a moderate risk of suicide. Put simply, I cannot imagine him coping very well in the event of interrogation by the Sri Lankan authorities. It is perfectly right that the judge was not persuaded there was any evidence linking the appellant directly with terrorist activities but there is something linking with weapons. That, and the established fact that he will be identified as a person who should not have left the country and his general vulnerability, satisfies me that there is a real risk of his being severely ill-treated in the event of his return and the appeal had been allowed on the judge's findings.

Notice of Decision

37. For all these reasons I find the First-tier Tribunal erred in law. I set aside the decision and I substitute a decision allowing the appellant's appeal.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 June 2024