



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-005372

First-tier Tribunal No: PA/60935/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 29th of January 2025

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

AS
(Anonymity Order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Aghayere, instructed by Lawland Solicitors

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 24 January 2025

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 to refuse his asylum and human rights claim.

2. The appellant is a citizen of Sri Lanka born on 4 October 1965. He and his wife first came to the UK in September 2014 when their son was the victim of a serious violent attack in Aylesbury and was hospitalised. The appellant claimed asylum on 15 October 2019. In 2021/22 his wife and his son returned to Sri Lanka, but he remained here. His asylum claim was refused on 7 November 2023 and he appealed against that decision.

3. The appellant claimed to be at risk on return to Sri Lanka as being of adverse interest to the Sri Lankan authorities and having his name on a 'stop list'. He claimed that that was a result of having taken a tenant into his home in Sri Lanka before coming to the UK who, unbeknownst to him, was a member of the LTTE, and for which he was detained and released on a reporting condition which he breached when he came to the UK in 2014.

4. The respondent accepted that the appellant was detained for a month in Sri Lanka and was released under the condition that he would be monitored by the Sri Lankan police, and that he came to the UK because his son had been stabbed. The respondent did not, however, accept that the appellant had perceived links to the LTTE, and did not find his account of ongoing adverse interest to be credible. The respondent accepted that it was likely that the appellant would be subjected to questioning and temporary detention as someone who was perceived to have links to the LTTE, but considered that he would not face persecution because he had not played a significant role which would have led to adverse interest in him by the Sri Lankan authorities. The respondent concluded that the appellant would not be at risk of persecution upon 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 Gray on 27 August 2024. Judge Gray did not accept the appellant's account of the Sri Lankan police continuing to visit his house regularly to look for him on suspicion of him being a supporter of the LTTE. The judge placed no weight upon a letter which the appellant claimed came from his daughter informing him of the regular police visits and the threat to arrest him if he returned home, noting inconsistencies in his account. The judge noted the evidence that the appellant's wife and son had not received any adverse interest since they returned to Sri Lanka and also noted evidence relating to a request for further leave whilst the appellant's son recovered in hospital, which referred to his intention to return to Sri Lanka once his son had recovered. The judge considered that those matters, together with the appellant's delay in claiming asylum, undermined his credibility, and she did not accept that the Sri Lankan authorities were actively looking for the appellant. The judge considered that the respondent's acceptance, in the refusal decision, of the appellant appearing on a 'stop list' had been made in error and was meant to refer to a 'watch list'. She did not accept that the appellant's name appeared on a 'stop list' but accepted that it was reasonably likely that it remained on a 'watch list' because of his past detention. She found, however, that that would not give rise to any risk on return to Sri Lanka, given that that related to an incident ten years ago and that the appellant had not engaged in any activity since coming to the UK. She did not accept that the appellant would be perceived as having undertaken a 'significant role' in Tamil separatism or that he was of sufficient adverse interest to warrant detention once he travelled back to his home area, and she accordingly found that he would not be at risk of persecution in Sri Lanka. The judge found that the appellant's removal to Sri Lanka would not breach his human rights and she accordingly dismissed the appeal on all grounds, in a decision promulgated on 9 September 2024.

6. The appellant sought permission to appeal Judge Gray's decision on the following grounds: that, having accepted that the appellant was on a 'wanted list', the judge's finding that he would not be of adverse interest to the Sri Lankan authorities was contrary to the background evidence; that the judge had erred in her credibility assessment; that the judge had failed to consider internal relocation risks adequately; and that the judge had erred by giving the weight that she did to the appellant's delay in claiming asylum.

7. Permission was granted in the First-tier Tribunal. The respondent filed and served a rule 24 response opposing the appeal.

8. The matter then came before me for a hearing. Both parties made submissions before me and those are addressed in my analysis below.

Analysis

9. The focus of Mr Aghayere's submissions was on the judge's findings on risk on return in the context of the appellant's name remaining on a 'watch list'. It was his submission that having accepted, at [33], that it was reasonably likely that the appellant's name still appeared on a 'watch list', the judge was wrong to find that he was not at risk on return and that such a finding was contrary to the background evidence and the country guidance in KK and RS (Sur place activities, risk) Sri Lanka (CG) [2021] UKUT 130. Mr Aghayere effectively addressed the other grounds as being subsidiary to that essential finding, in that the appellant's past activities, the minor inconsistencies in his evidence (which he accepted), the question of internal relocation, and the delay in his claim for asylum, were all immaterial to the outcome of the appeal once it was accepted that being on a 'watch list' put him at risk on return.

10. It seems to me that Mr Aghayere's submissions were based on a misunderstanding of the guidance in KK which, as Ms Cunha properly submitted, drew a significant distinction between the impact of being on a 'stop list' and a 'watch list'. In the appellant's case it was accepted that his name was likely to be on a 'watch list', and not a 'stop list'. That was clarified by Judge Gray at [31] of her decision where she observed that that was the intended view of the respondent in the refusal decision, an observation which the appellant does not seek to challenge in his grounds. At [32] the judge found that the appellant had not established that he would appear on a 'stop list' and, again, that finding has not been challenged. Rather, it was Mr Aghayere's submission that appearing on a 'watch list' was more significant and dangerous than appearing on a 'stop list', and that the fact that the appellant's name appeared on a 'watch list' was sufficient in itself to demonstrate that he was at risk on return. Mr Aghayere submitted that that was because the appellant would continue to be monitored by the Sri Lankan authorities after passing through the airport, whereas any risk to a person appearing on a 'stop list' ended once the person had passed through the airport.

11. However that is not what is said in KK. The guidance in the headnote in KK, at [18], states that returnees appearing on a 'stop list' will be detained at the airport and, at [27], that those detained by the Sri Lankan authorities are likely to be subjected to persecutory treatment. Therefore the guidance makes it clear that those appearing on a 'stop list' are likely to be at risk on return. Those returnees appearing on a 'watch list', however, fall into two sub-categories, as set out at [19] of the headnote to KK, only the first of which are likely to be at risk, arising from being detained after leaving the airport:

“ Returnees who appear on the watch list will fall into one of two sub-categories: (i) those who, because of their existing profile, are deemed to be of sufficiently strong adverse interest to warrant detention once the individual has travelled back to their home area or some other place of resettlement; and (ii) those who are of interest, not at a level sufficient to justify detention at that point in time, but will be monitored by the authorities in their home area or wherever else they may be able to resettle.”

12. At [22] of the headnote, the guidance makes it clear that the monitoring undertaken by the authorities in respect of returnees in sub-category (ii) will not, in general, amount to persecution or ill-treatment contrary to Article 3 ECHR.

13. It is therefore not the case, as Mr Aghayere suggested, that simply by appearing on a 'watch list' the appellant had demonstrated that he was at risk of being persecuted on return. In order to demonstrate that he would be at such risk, an assessment had first to be made if the appellant fell within the first sub-category which the guidance addresses at [20] and [21] of the headnote, namely those who had, or were perceived as having, undertaken a significant role in Tamil separatism, leading to their detention by the Sri Lankan authorities. In order to do so the judge was required, in accordance with the guidance at [21], to assess the appellant's profile and to consider various factors including his involvement in activities which would have brought him or would bring him to the adverse attention of the authorities. It was that assessment which Judge Gray undertook at [34] to [40], addressing the various factors at [21] of the headnote to KK, and it was in that respect that her findings on the credibility of the appellant's account of past and current interest in him were clearly material, contrary to the assertions made by Mr Aghayere.

14. Judge Gray's findings on the appellant's account are set out at [20] to [27] of her decision. In those paragraphs she gave various reasons why she did not find the appellant's account of remaining of adverse interest to the Sri Lankan authorities to be credible, referring at [20] and [21] to inconsistencies in his evidence about a letter from his daughter concerning police visits to their home, at [22] to the lack of attention received by his wife and son from the authorities, at [23] to his earlier stated intention to return to Sri Lanka, at [24] to his failure to explain why there would still be any interest in him after the passage of time, and at [25] and [26] to his delay in claiming asylum. For all of those reasons the judge, at [27], rejected the appellant's account of visits to his home by the Sri Lankan authorities and of the authorities actively seeking him on the basis of any perceived links to the LTTE, as she was perfectly entitled to do. The judge's findings in those paragraphs were cogently reasoned and were fully and properly open to her. The challenge in the grounds to those findings, in relation to the inconsistencies in the evidence and the appellant's delay in claiming asylum, are little more than disagreements with the weight the judge gave to the evidence and to those matters. Moreover, the judge was perfectly entitled to consider that all of those matters were material. They were material to the overall credibility of the appellant's account of past interest in him and were therefore, in turn, material to the question of whether he remained of adverse interest to the authorities and whether his profile was such as to fall into sub-category (i) as set out at [19] of the headnote in KK.

15. Having found, for the reasons fully and properly given in those paragraphs, that the appellant's account of ongoing interest in him was not a credible one, and having noted at [36] that the appellant had not been active in any diaspora organisations during his time in the UK and had no familial connections to the LTTE, and at [38] and [39] that his only accepted activities were limited to offering accommodation to a sole LTTE member on one occasion ten years ago, the judge was perfectly entitled to conclude, as she did at [40], that the appellant had failed to establish that he would be perceived by the Sri Lankan authorities to have undertaken a "significant role" in Tamil separatism and that he was not of sufficiently strong adverse interest to warrant detention once he travelled back to his home area for the purposes of falling into category (i).

16. Accordingly, the judge's conclusion, that the appellant was not at risk on return to Sri Lanka, was entirely consistent with the guidance in KK and was fully and properly open to her on the evidence available to her. For the reasons cogently given, the judge was entitled to conclude that the appellant could return to his home area where he would be at no risk. The question of internal relocation was accordingly not a relevant or material one. The grounds are not made out and the judge's decision is upheld.

Notice of Decision

17. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal stands.

Anonymity Order

The Anonymity Order previously made is continued.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 January
2025