



IAC-AH-V1

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

Appeal Number: PA/06912/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 5 March 2020**

**Decision & Reasons Promulgated  
On: 19 March 2020**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**DK  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr A Swain, counsel instructed by Nag Law Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is the remaking of an appeal against the decision of the Secretary of State dated 10 July 2019 refusing the appellant's application for asylum.

### Anonymity

2. No such a direction was made previously however as this is a protection matter involving an appellant with mental health issues, a direction is given below.

### Background

3. Prior to arriving in the United Kingdom in July 2010 on a student visa, the appellant, who claims to be a national of Sri Lanka, made three earlier unsuccessful applications for student visas, using an Indian passport, during 2008. The appellant applied for asylum on 29 January 2012. That claim was refused and certified as clearly unfounded on 15 November 2012. The appellant was removed to India on 2 March 2013. The appellant returned to the United Kingdom during 2014 using irregular means. He made further submissions which were refused on 7 February 2017. It is the refusal of a second set of further submissions in a decision letter dated 10 July 2019 which is the subject of this appeal.
4. The basis of the appellant's claim is that he is a Sri Lankan citizen of Tamil ethnicity who was born in India to Sri Lankan Tamil parents who fled the conflict in Sri Lanka and did not regularise their stay. The appellant says that he has never been recognised as an Indian citizen. The appellant fears the Sri Lankan authorities owing to his father's links to the Liberation Tigers of Tamil Eelam (LTTE). He describes being detained and tortured in Sri Lanka after his removal from the UK in 2013; that an arrest warrant had been issued against him and that the Indian passport he used previously had been falsely obtained. The appellant also relied on his sur place political activity in the United Kingdom as well as a psychiatric report. He claims that his removal to Sri Lanka would breach Articles 3 and 8 ECHR.
5. In refusing that claim, the respondent noted that the appellant had repeatedly described himself as an Indian national and had used an Indian passport to travel and apply for visas. The respondent placed no weight on a newspaper article said to support the appellant's claim that he was removed from India to Sri Lanka nor any of the other documents he relied upon. It was not accepted that his involvement in sur place activities would lead to a risk of being recognised if he travelled to Sri Lanka. Little weight was placed on the psychiatric report provided by Dr Roger Singh dated 5 July 2018.

### The previous decision of the First-tier Tribunal

6. At a hearing before me on 2 December 2019, I found that the previous Tribunal made a material error of law in failing to consider evidence which gave support to the appellant's claim to be a Sri Lankan national and set aside that decision, for remaking. Directions were given for appellant's solicitors to obtain expert evidence as to whether there was any basis for concluding that a child of Sri Lankan refugees, as the appellant appeared to be, would be entitled to Indian nationality. Such evidence was to be served on the respondent and the Upper Tribunal no later than 10 days prior to the resumed hearing date.

### The hearing

7. The appellant attended the hearing and gave evidence with the assistance of a Tamil interpreter. Mr Swain confirmed that no specific reasonable adjustments were required other than to bear in mind the content of the report of the appellant's treating physician. In addition, the appellant's father, PK also gave evidence.
8. I duly heard submissions from both advocates and I have taken the oral evidence and submissions into account in my consideration of this appeal. I shall not repeat that here but will refer to relevant aspects in my findings.

### Discussion

9. The burden is on the appellant to show there are substantial grounds to believe he meets the requirements of the Protection Regulations and that he is entitled to be granted humanitarian protection in accordance with paragraph 339C of the Rules and that his return to Sri Lanka will cause the UK to be in breach of the 1950 Convention.
10. I take into account the Joint Presidential Guidance Note No. 2 of 2010, in relation to Child, Vulnerable Adult and Sensitive Appellant Guidance. I have also taken into account the following documents placed before me which include the respondent's bundle comprising the screening and asylum interview records and the reasons for refusal letter, alongside various other documents relevant to the appellant's immigration history. There are also psychiatric reports on the appellant dating from 2018 and 2020 alongside the appellant's medical records which together amount to over 150 pages. A witness statement from the appellant's father was also provided together with the respondent's Country Information and Guidance on Sri Lanka and Tamil Separatism (Version 5.0 June 2017). The appellant additionally relies on an expert report from Mr Shatanu Mohan Puri as well as an additional email from Mr Puri. I have been guided by the findings in *GJ & Ors (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)*.
11. The principle question to be determined is the appellant's nationality. I have determined this matter after consideration of all the evidence before me as well as the submissions made.
12. I was assisted by the opinion of Mr Puri. He cites his extensive experience which includes the following. He was called to the Bar in 1999 and specialises in Indian nationality, citizenship and immigration law, particularly regarding non-resident Indians. He received the Felix Scholarship which enabled him to study for an LLM at SOAS, specialising in Comparative Nationality and Immigration Laws. He has been retained by the British High Commission, the Canadian High Commission and the Embassy for the United States of America, among many other missions. I take into consideration that Mr Puri was provided with all relevant documents relating to the appellant including the decision letter and the previous decision of the First-tier Tribunal. It is fair to say that Ms Everett did not challenge the conclusions of the

expert nor his expertise but submitted that the appellant had failed to provide a credible account.

13. Mr Puri was instructed to address whether a person with the appellant's history of being born in India to Sri Lankan parents residing there without permission, could have become an Indian national or whether he would now be able to become an Indian national under the provisions of the Citizenship Act, 1955 (as amended). Essentially, Mr Puri explained that the appellant was not entitled to acquire Indian citizenship by birth or descent because neither of his parents were Indian citizens at the time of his birth. Mr Puri further explained that the appellant could not acquire citizenship by registration as a person of Indian origin ordinarily resident outside undivided India, because his previous residence was illegal. Mr Puri also examined the latest amendments to the citizenship laws but concluded they did not assist the appellant owing to his Sri Lankan nationality. Lastly, Mr Puri considered whether the appellant could acquire citizenship by naturalisation but concluded that he could not owing to the provisions of section 6 of the Act which prohibits applications by "an illegal migrant."
14. I have also considered additional evidence which tends to show that the appellant is likely to be a citizen of Sri Lanka. The appellant's father (PK) was recognised as a refugee in the United Kingdom and is now settled here. His Sri Lankan nationality is confirmed on his UK residence permit. The appellant has provided his birth certificate which shows that PK is his father and DNA evidence dating from 22 October 2014 has proved the relationship. The appellant also provided his mother's birth certificate which confirms her Sri Lankan nationality, as well as a document which the appellant said was issued to him in 2008 by the Indian authorities which is titled "Particulars of Sri Lanka National." None of these documents were challenged by Ms Everett during her submissions and having considered them carefully, I can see no reason to reject them as being unreliable.
15. The respondent relies on the appellant's use of an apparently genuine Indian passport issued to whom when he was aged 17. I place weight on the fact that the appellant used this document to enter the United Kingdom and that he was also removed using this document without any concerns being raised as to its validity. The appellant's oral and written evidence was consistent, in that this document was obtained by his uncle by fraudulent means. He is unaware of the details, which I do not find to detract from his credibility given his age at the time the document was issued. While no evidence was before me as to the prevalence of false documents in India, I considered a document in the public domain, specifically the Home Office Country Background Note on India, Version 1.0 of January 2019 where the following was stated, under the heading of Fraudulent Documents at 6.4.1:

*"Passports are relatively more difficult to forge than other types of identity documents, but genuine passports may be obtained relatively easily using fraudulent information."*
16. Taking into consideration, the respondent's background information as to the ease of obtaining a genuine passport with fraudulent information, the appellant's evidence

as to the circumstances in which the Indian passport was issued cannot simply be dismissed out of hand.

17. I have also considered the respondent's point, that the appellant claimed to be an Indian national during his 2012 screening and substantive interviews, in particular. I found the appellant's evidence on this point to be credible, in that he explained, essentially, that his attempts to explain that he was a Sri Lankan national despite being born in India and in possession of an Indian passport fell on deaf ears and in the end he allowed the officers put his nationality down as Indian.
18. The appellant provided a newspaper article and translation which supports his claim to have been deported from India to Sri Lanka in 2013 owing to the discovery that he had falsely claimed Indian nationality using a "*forged*" passport. During the hearing, the appellant confirmed that his friend, a Mr SK had seen the article and sent it to the appellant in the UK. There is confirmation of this account in the form of a letter from Mr SK and a translation, as well as the accompanying envelope. The reliability of these documents was challenged in the decision letter and I accept that the article is not entirely accurate in referring to the involvement of the London police and that the credentials and availability of this newspaper were not produced. I therefore place little weight on these documents.
19. Ms Everett submitted that there was a "profound connection" with India, evidenced by recent visits made by the appellant's father to the country. I do not accept that submission. The evidence of the appellant's father was that his visits were recent and for religious reasons or owing to an interest in religious buildings and that he has no relatives in India.
20. Furthermore, PK's evidence was that his wife was safe in Sri Lanka and lived with her mother and that was why he had visited India more frequently than Sri Lanka since obtaining settlement in the UK.
21. I now consider the credibility of the appellant's claim. The core of his account has been generally consistent throughout during his Home Office interviews, his witness statement and his contacts with the mental health professionals who are treating him. That consistency continued during the hearing, despite extensive cross-examination. The manner in which the appellant gave evidence contributed to my findings, in that his replies were given without hesitation and were rich with detail. In addition, his demeanour was not incongruous with the considerable medical evidence provided as to his mental state in that he came across as extremely vulnerable and was visibly upset when giving his evidence.
22. The appellant's account of his nationality and his mental state was confirmed by his father whose evidence was also consistent and given in an open manner. Ms Everett raised no credibility issues with the oral evidence of either witness. The appellant has provided further evidence by way of psychiatric reports, which I find, for reasons set out below, lend significant support and weight to show that he is likely to be telling the truth about what happened to him in Sri Lanka.

23. Dr Roger Singh provided two reports in relation to the appellant's mental health. Dr Singh is a consultant psychiatrist working for a specific team in the North East London NHS Trust and he is the appellant's responsible clinician, meaning that he is in charge of the appellant's care and treatment.
24. From the first report, dated 30 June 2018 it is apparent that the appellant became known to psychiatric services in around March 2016 and he was referred to Dr Singh's team on 22 November 2016. The report notes that the appellant was assessed and treated in the psychiatric clinic, on four occasions during 2017 as well as receiving treatment through the Redbridge Refugee Psychology Service.
25. That treatment continued into 2018. Dr Singh reviewed the appellant's electronic medical records including from his GP and those relating to his admission to hospital following four "impulsive overdoses." The 2018 psychiatric report notes that the appellant was diagnosed with PTSD and moderate to severe depressive episode with suicidal ideas. The appellant told Dr Singh that he was experiencing distressing flashbacks from torture which he underwent in Sri Lanka, that he was not concerned about his immigration status and that he had self-harmed, albeit not at the time Dr Singh produced this report. At the time of the 2018 report, the appellant was being treated with antidepressants, antipsychotics and sedating medication. The opinion of Dr Singh was that the appellant, whose progress was slower than expected, retained the need of long term formal therapeutic psychiatric and psychological services to address his PTSD, combined with medicines. Dr Singh was concerned that the appellant's symptoms could worsen on removal to Sri Lanka due to a lack of resources and that he may act impulsively to end his life.
26. Dr Singh has provided an updated report dated 20 February 2020. He states that since the previous report, the appellant has been assessed in the clinic on 6 occasions, most recently on 6 February 2020 and has attended "numerous" psychological therapy appointments. The report notes that the appellant was twice admitted to accident and emergency following overdoses and that he continued to self-harm in a variety of ways. The appellant's current diagnoses are PTSD, moderate to severe depressive episode, anxiety and insomnia. Dr Singh's opinion is that the appellant has benefitted from antidepressant medication and had counselling for his symptoms.
27. Dr Singh also considered that the appellant's PTSD diagnosis continued, albeit during the February 2020 appointment it was at reduced levels. Dr Singh was concerned regarding the appellant's "risk behaviours" and daily suicidal ideation. While he remarked that the appellant had completed a course of trauma focussed therapy, his disorder continued and was of the view he could receive further therapy.
28. Dr Singh feared that the appellant's removal to Sri Lanka would worsen his disorders and may lead to loss of life. He described the degree of risk as "unquantifiable" but emphasised that the appellant had told him that he "*would not wish to live.*"

29. Ms Everett did not challenge the expertise of Dr Singh nor the content of the psychiatric reports. Her submission is simply that the appellant has not given a credible account. I have placed significant weight on these reports, as evidence of the appellant's mental state because they are written by his treating physician who has had access to his medical records as well as information regarding his therapeutic sessions and has assessed him regularly for in excess of three years. I therefore accept that the appellant is suffering from PTSD, moderate to severe depression, anxiety and insomnia and that there is a real risk of suicide.
30. The appellant has provided additional evidence to support his claim that he was of adverse interest to the Sri Lankan authorities after his release from detention was secured. He relies on a chit from the Sri Lankan CID dated 1 June 2018, which was handed to a family friend, Uncle K, which requested that the appellant report on 7 June 2018. Uncle K sent this document to the appellant along with an accompanying letter which confirmed the circumstances. Those documents as well as the accompanying letter have been produced but were not challenged during the hearing. I could no obvious reason to reject the reliability of these items.
31. The appellant gave evidence of his participation in demonstrations and his membership of Tamil Eelam and the TGTE in the UK. He also relies on a quantity of photographs showing that participation, some of which have been published on the eelamalar.com website as well as his membership cards for both organisations. Ms Everett did not challenge the extent of the appellant's sur place activity, her submission being that his activities did not suffice to engage the adverse interest of the Sri Lankan authorities. I accept that the appellant is involved in the said organisations and his oral evidence that his involvement is born of genuine support for a separate Tamil state. He also explained that working with others for this purpose helped to calm his mind.
32. Having considered all the evidence and submissions I heard, in the round and for reasons set out above, I accept that the appellant is a Sri Lankan national, that he is not a national of India and is not entitled to seek Indian citizenship, that he was deported from India to Sri Lanka in 2013 where he was detained and subject to severe torture owing to suspicions that he was involved with the LTTE. The extent of that torture is described in the medical reports. I accept that it is reasonably likely that the appellant's psychiatric diagnoses are overwhelmingly owing to the ill-treatment he experienced when detained in Sri Lanka in 2013. I further accept that the appellant has been politically active in the UK.
33. I now consider whether the appellant is likely to be at risk of persecution if removed to Sri Lanka. Ms Everett's strongest point was her reliance on the fact that the appellant's father had recently travelled to Sri Lanka given the appellant's evidence was that he was accused of LTTE involvement because of his father's activities. I reject that submission because the evidence was that PK's visits to Sri Lanka were brief, of around two weeks duration, he is a mature man who has been absent from Sri Lanka for many years and he returned only after obtaining indefinite leave to remain in the UK.

34. Turning to further risk factors identified in GJ, the relevant conclusions of the Tribunal to this case as set out at the head note are:

(3) *The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.*

(4) *If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.*

(5) *Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.*

(6) *There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.*

(7) *The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:*

(a) *Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.*

(b) *Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.*

...

(d) *A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.*

(8) *The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.*



(9) *The authorities maintain a computerised intelligence-led “watch” list. A person whose name appears on a “watch” list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a question of fact in each case, dependent on any diaspora activities carried out by such an individual.*

35. The respondent’s CPIN on Sri Lanka: Tamil Separatism June 2017, reports arrests and detention of LTTE members and supporters as well as the risk posed to perceived LTTE supporters, all of whom are at risk of being sent to “rehabilitation centres” at unknown locations where a range of human rights abuses are known to occur.
36. I also take into consideration that the appellant suffers from PTSD and severe to moderate depression, that he has made several attempts on his life, he self-harms and continues to express suicidal ideation. In *GJ* the following was said about resources for the mentally ill in Sri Lanka [456] and I was not referred to any evidence to the contrary;
- “The resources in Sri Lanka are sparse and are limited to the cities. In the light of the respondent’s own evidence that in her OGN that there are facilities only in the cities and that they “do not provide appropriate care for mentally ill people”*
37. The appellant has been receiving psychological help over an extended period of time and it is the opinion of his psychiatrist that this work is not complete. In *GJ*, there was reference to the dearth of psychologists working in Sri Lanka [455].
38. I find that the appellant’s previous lengthy detention and torture owing to the authorities suspicions of his LTTE support, combined with the indication of further interest in his whereabouts in 2018 as well as his current activism on behalf of the Tamil separatist movement is reasonably likely to attract the adverse attention of the authorities in Sri Lanka. Furthermore, the appellant’s mental state is poor and according to the medical evidence is likely to deteriorate on removal. I find that there is enough in the appellant’s background and personal history for him to come to the immediate and adverse attention of the Sri Lankan authorities upon arrival and certainly shortly afterwards.
39. Having followed the most recent and up to date country guidance in *GJ*, I find that the appellant has shown that he will be at risk of persecution upon return. Internal relocation is not an option as is stipulated at sub-paragraph 5 of paragraph 356 of *GJ*. The appellant’s claims under Articles 2 and 3 of the ECHR stands with his claim for asylum. In addition, the appellant’s freestanding claim under Article 3 succeeds for the same reasons as those of the third appellant in *GJ*.
40. I therefore find that the appellant has successfully discharged the burden which rests upon him to prove his case to requisite standard

**Notice of Decision**

The appeal is allowed on protection grounds.

The appeal is allowed under Article 3 of the ECHR.

**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: 12 March 2020

Upper Tribunal Judge Kamara