



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/11582/2018 (P)**

**THE IMMIGRATION ACTS**

**Decided Under Rule 34 (P)  
On 17 August 2020**

**Decision & Reasons Promulgated  
On 19 August 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**[M N M K]**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation (by way of written submissions)**

**For the appellant: No submissions received**

**For the respondent: Ms H Aboni, Senior Home Office Presenting Officer**

## Background

1. This appeal comes before me following the grant of permission to appeal by Upper Tribunal Judge O'Callaghan on 24 December 2019 against the determination of First-tier Tribunal Judge Oliver, promulgated on 9 October 2019 following a hearing at Hatton Cross on 30 August 2019.
2. The appellant is a Sri Lankan national born on 4 August 1989. His immigration background is not impressive. He entered the UK as a student in September 2009 with leave until November 2011 but he stopped studying within three months of his arrival, started to work and overstayed his visa. He admitted to the judge that an agent had arranged his visa because he had no qualifications to study, that he never intended to be a student or to return to Sri Lanka. When encountered in 2012 he claimed asylum. The application was refused in August 2012 and the appellant breached the terms of his bail and absconded. He was subsequently encountered in July 2013 again working illegally. He gave a false address, reported once thereafter before absconding again. In October 2016 he was encountered yet again. This time he submitted representations which were refused under paragraph 353 in December 2016. He then gave notice of appeal against the August 2012 decision but it was rejected as out of time in May 2017. In July 2017 he made representations on the basis of his relationship with a new partner. These were rejected in August 2017. In October 2017 the appellant married his partner. She, an Indian national also without leave, made her own application for leave and the appellant made his. His wife maintained that she would be at risk because she had changed her religion after marriage. Her application was refused on an unspecified date. The appellant's application was refused in September 2018.
3. His claim is that he has been blamed by his father's political rival for the death of his school principal in a car accident because he and other students were angry that he had not allowed them to re-sit their examinations. Additionally, he was wanted for questioning about a friend who had disappeared and who was suspected of involvement with the LTTE. Finally, he had attended TGTE demonstrations in the UK.
4. The appeal came before First-tier Tribunal Judge Oliver. Following oral evidence from the appellant and submissions from the parties, the judge dismissed the appeal.

## Covid-19 crisis

5. The appeal was listed for hearing on 31 March 2020 following the grant of permission to appeal but due to the Covid-19 pandemic and need to take precautions against its spread, it was adjourned and directions were sent to the parties on 20 April and again on 22 June

2020 granting the appellant his request for an extension of time of 28 days to comply. The parties were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.

6. The Tribunal has received written submissions from the respondent dated 7 May 2020 in compliance with the earlier directions but there has still been no response from the appellant. Given that he has now had 28 additional days to comply with the April directions and that there has been no further response from him, I now proceed to consider the matter
7. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "to enable the Upper Tribunal to deal with cases fairly and justly". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
8. I take into account that a full account of the facts are set out in the papers, that the arguments for and against the appellant have been clearly set out and that the issues to be decided are straightforward and have been fully addressed in the submissions made. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I have regard to the two opportunities provided to the appellant to comply with directions issued four months ago and the delay in the resolution of this appeal which was filed in October 2018. I have regard to the importance of the matter to the appellant and consider that a speedy determination of this matter is in his best interests. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

### Submissions

9. The respondent's submissions are prepared on 7 May 2020 by Ms Aboni. She submits that the judge directed himself appropriately and gave adequate reasons for his finding that the appellant was not a credible witness and was someone who had used every means at his disposal to avoid return to Sri Lanka. It is submitted that the judge

gave adequate reasons for finding that the appellant would not be at risk on return because of any events before he left his country and that his low-level activities for the LTTE would not be of interest to the authorities or put him at risk of return now. It is pointed out that there has been no challenge to the finding that the appellant's sur place activities and low-level involvement with the TGTE were wholly opportunistic and that he lacked any real commitment to the organisation. It is submitted that it was open to the judge to find that the appellant did not have a profile which would put him at risk on return, a finding which is consistent with the country guidance. The Tribunal is asked to maintain the decision.

10. No submissions have been received from the appellant despite being given two opportunities to comply with directions. I am satisfied that the directions were properly served on both occasions and, indeed, that they were received, given the request for an extension of time. The approval of such an extension and further directions were also properly served on the appellant. Given his non-compliance, I have considered the grounds in support of the application for permission to appeal.
11. Those grounds maintain that the judge made material errors of law. It is submitted that the TGTE is a proscribed organisation and that there was no challenge to the fact that the appellant had attended a number of their demonstrations in this country. It is argued that the fact that the appellant had joined the organisation to enhance this claim did not mean that he would not be at risk on return due to his involvement. It is argued that the appellant would be perceived to be involved in a significant way in Tamil separatism and that this would place him at risk. It is argued that the judge misunderstood the evidence and misapplied the burden of proof by requiring the appellant to have provided supporting evidence. It is argued that the appellant's account of having been arrested and detained is supported by the background evidence and that the judge provided no sound basis for rejecting the findings of the doctor as to the fact that his condition would deteriorate at the point of removal. It is submitted that the appellant would face intense suffering at the point of removal and that there is insufficient psychiatric treatment for him in Sri Lanka.

#### The legal framework

12. The judge properly took into account the law and the tests to be applied at paragraphs 4-11 of his determination.

#### Discussion and Conclusions

13. I have considered all the evidence, the determination of the First-tier Tribunal Judge, the grounds for permission and the respondent's submissions.

14. This is a case where the judge's reasoning is criticised as inadequate and he is alleged to have overlooked matters and to have misapplied the correct tests.
15. Contrary to what the appellant's grounds argue, I am satisfied that there is nothing in the determination which even remotely suggests that the judge misapplied the standard/burden of proof or that he misunderstood country guidance. It is plain that the judge directed himself wholly appropriately and at length (at 4-11). He is criticised for referring to the absence of corroborative evidence but such comments were made in circumstances where the appellant could easily have obtained supporting material.
16. The judge rejected the claim of risk due to any suspected involvement in his school principal's accident for the reasons given at paragraph 52. It was open to him to point out that there was no information at all about what happened to the students who had been to the principal's house and attacked him and that over the ensuing ten years there had been no further ramifications of incidents involving the appellant's father's rival and indeed his family remained in Sri Lanka.
17. The claim concerning his friend is adequately addressed at 53 with the judge finding that even taken at its highest his involvement was so low level that there would no longer be any interest in him.
18. On the matter of his sur place activities he found that the appellant's involvement with the TGTE was wholly opportunistic, that he had no real commitment to the organisation at all and that he could not be identified from photographs (at 54). It would be the case, therefore, that the appellant's activities would be seen by the Sri Lankan authorities for what they were: an attempt to remain in the UK rather than any serious or genuine attempt to aid in the overthrow of the government. Any error in the judge's failure to consider how the appellant would be perceived by the authorities is therefore immaterial.
19. The judge noted that after the incident concerning the principal when the appellant claimed to be wanted, he was still able to travel through the normal channels to Dubai and back and indeed subsequently to the UK, further undermining his claim to be of adverse interest (at 55).
20. The judge also gave weight to the appellant's delayed asylum claim and the many failures to make a claim when he was encountered on several occasions (at 56).
21. At 57 the judge considered the medical reports and, contrary to what the grounds argue, gave clear reasons for why he gave them little weight. The appellant adduced no evidence to show that he would not

be able to access medical care in Sri Lanka where his family remain and would be able to assist him.

22. No challenge is made to the article 8 findings.
23. Accordingly, it was open to the judge to dismiss the appeal and his determination contains no errors of law.

**Decision**

24. The decision of the First-tier Tribunal does not contain an error of law and it is upheld. The appeal is dismissed.

**Anonymity**

25. I continue the anonymity order made by the First-tier Tribunal Judge.
26. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, unless the Upper Tribunal or a court directs otherwise, no reports of these proceedings of any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed

R. Kekić

Upper Tribunal Judge

Date: 17 August 2020