IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000775

First-tier Tribunal No: PA/52602/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 18 June 2023

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

S M
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms K. Renfrew, instructed by MTC Solicitors
For the Respondent: Mr A. Basra, Senior Home Office Presenting Officer

Heard at Field House on 24 May 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity because the case involves a protection claim. 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.

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 27 June 2022 to refuse a protection and human rights claim.

2. First-tier Tribunal Judge Chana ('the judge') dismissed the appeal in a decision sent on 01 December 2022. The judge did not find the appellant's account of arrest and detention as a result of his connection with two Tamil men credible. She noted that there was limited evidence to show that he had been active with the TGTE in the UK. Having considered the most up to date country guidance, she

concluded that it was not reasonably likely that the appellant would be at risk on return. The judge went on to consider the limited evidence relating to the appellant's relationship with a Romanian citizen and her daughter, but concluded that there was insufficient evidence to show that there would be insurmountable obstacles to their family life continuing outside the UK.

3. The appellant applied for permission to appeal to the Upper Tribunal. The grounds drafted by Ms Renfrew identified six points, but at the hearing she argued them out of the original order.

Protection claim

(i) The First-tier Tribunal erred in relying on outdated country guidance in *PT (risk – bribery – release) Sri Lanka* CG [2002] UKUT 03444 in assessing the plausibility of the appellant's claim to have been released on payment of a bribe. It was argued that the findings in *PT* were overtaken by evidence considered by the Upper Tribunal in the later country guidance decision of *GJ and Others (post-civil war; returnees) Sri Lanka* CG [2013] UKUT 00319 (IAC) (**ground 3**).

(ii) The First-tier Tribunal erred in its assessment of the appellant's claimed activities for the LGTE in the UK by failing to follow a structured approach to the risk factors identified by the Upper Tribunal in the most recent country guidance decision in *KK and RS (Sur place activities; risk) Sri Lanka* CG [2021] UKUT 0130 (IAC) (**ground 4**).

(iii) The First-tier Tribunal failed to give adequate reasons for a series of findings including:

(a) at [43] to explain what the inconsistency was in his account of the raid on his family home or why it was material to his credibility;

(b) at [44] the judge failed to give any evidential basis for her finding that it was implausible that the appellant would not seek medical attention upon his release from detention;

(c) at [45] the judge failed to give adequate reasons to explain why the appellant's lack of knowledge about the bribe paid for his release and the involvement of the Buddhist monk damaged his credibility given that she stated at [46] that she did 'not find it incredible' that he would not know how much his father paid to have him released.

(d) at [48] the judge failed to give adequate reasons to explain why the appellant's evidence that he no long recalled his father's telephone number rendered his account incredible.

(e) in three paragraphs of the decision the judge referred to a screening interview when there was none (**ground 1**).

(iv) The First-tier Tribunal placed undue weight on the absence of corroborating evidence relating to the two friends who he said the authorities were looking for. It was submitted that the appellant had given a credible explanation for not having any photographs or other evidence of their friendship in Sri Lanka (**ground 2**).

Human Rights claim

(v) Contrary to her finding at [71], the judge failed to take into account evidence to show that the appellant's partner's daughter was in education in the UK (**ground 5**) and failed to consider the proportionality of removal with reference to Article 8(2) of the European Convention on Human Rights (**ground 6**).

4. I have considered the First-tier Tribunal decision, the grounds of appeal, the respondent's rule 24 response and any documents that might have been relevant that were before the First-tier Tribunal. It is not necessary for me to set out the submissions made at the hearing in full because they are a matter of record. I will refer to them, where relevant, in my findings.

Decision and reasons

5. As noted by the judge who granted permission, aspects of the First-tier decision indicate some careless mistakes.

6. There are several references to a screening interview that was not in evidence in this case, which appear to be stock phrases from standard paragraphs that were not tailored to this case [7][16][40]. However, nothing turned on this inaccuracy because the judge did not, and could not, make any adverse findings based on an interview that did not take place.

7. In two places, the judge says that she 'did not find [aspects of the evidence] incredible' [44][46]. When this phrase is considered in context of the overall findings, in the first of those paragraphs it would appear to be a typographical error because it is clear that the judge did not find it credible that the appellant would not seek medical attention if he had been tortured for four days in the way he claimed [44]. In the second paragraph it is less clear whether it is a typographical error [46]. However, little turns on it because the second half of the paragraph makes clear that even if the judge accepted that he might not know how much was paid for his release on payment of a bribe, on the appellant's own evidence his father did not have any political connections. It is clear from the surrounding paragraphs that the judge did not accept the overall plausibility of his claim that his father was able to arrange for his release through a political contact or how he could afford the bribe given that he was said to be a farmer on a low income [45][46].

8. The First-tier Tribunal Judge who granted permission to appeal also noted that there was an unnecessary annex to the decision that did not appear to relate to this case. My own observation is that there are several other typographical errors that might have arisen either through a dictation programme or autocorrect, that were not corrected in the final draft. For example, at [56] and [58] the term *sur place* is left as 'surplus' and a reference to the country guidance decision in *GJ (Sri Lanka)* is left as 'CJ'.

9. Whilst a persistent level of carelessness in a decision can on occasion give rise to concerns as to whether the claim has been considered properly, in my assessment the minor errors identified above do not reach that level of concern. It is clear from the rest of the decision that the judge engaged with the correct

factual basis of the appellant's claim to have been detained in Sri Lanka and with his claimed support for the TGTE since he has been in the UK.

10. I find that the list of complaints about the judge's credibility findings amount to little more than forensic disagreements with the findings. It is not necessary, or even desirable, for a judge to set out each and every piece of evidence. The judge heard evidence from the appellant at the hearing. Having considered his evidence in the round she gave a series of reasons for finding that his account either lacked detail, was unsupported by evidence that he could reasonably have obtained or contained inconsistencies. Many of her findings have not been challenged, including sustainable findings relating to the appellant's delay in claiming asylum.

11. I accept that the judge's reference to *PT (Sri Lanka)* at [51] might well have been drawn from the respondent's decision letter given the country guidance is now 20 years old. Ms Renfrew embarked on a forensic analysis of evidence that was heard in *GJ (Sri Lanka)* to argue that the evidence in that case showed that, contrary to *PT (Sri Lanka)* releases on payment of a bribe were likely to be recorded as an escape.

12. Although the respondent's rule 24 response states that *PT (Sri Lanka)* is still on the Upper Tribunal website, this does not mean that it is extant country guidance. The Upper Tribunal in *GJ (Sri Lanka)* made clear that the decision replaced all existing country guidance at the time [Headnote (1)]. Neither the respondent nor the judge should have relied on it. Having said that, the country guidance given in *GJ (Sri Lanka)* did not include specific guidance on the way release on payment of a bribe would be treated.

13. In so far as the judge wrongly relied on *PT (Sri Lanka)*, the finding should be read in the context of the surrounding paragraphs and in light of the appellant's own evidence. The appellant claimed that he left Sri Lanka the day after his release on payment of a bribe. Even if a person who is released on payment of a bribe were to be treated as having escaped, the appellant's evidence was that he did not think they would have had time to put him on a watchlist. In any event, the evidence relating to Sri Lanka has for a long time suggested that bribery is widespread and that it might be possible to bribe officials at the airport. Nevertheless, it was open to the judge to consider the credibility of this aspect of his account in light of her other negative credibility findings and the fact that the appellant was able to travel through the airport on a valid passport without any apparent difficulty. When the erroneous reference to *PT (Sri Lanka)* is placed in context with all the other findings made about the credibility of the appellant's account, I find that the error would not have made any material difference to the outcome of the appeal.

14. Similarly, I find that the point argued in ground 4 would not have made any material difference to the outcome of the appeal. The appellant is Sinhalese and on his own evidence was never politically active in Sri Lanka yet he now claimed to have attended a number of meetings and demonstrations in support of the TGTE, a Tamil separatist group. The appellant's explanation for supporting the group in solidarity with their cause was weak. The evidence to support his claimed attendance at 3-4 events a year was event weaker, consisting of three photographs (two of the four are the same) that appear to have been taken on the same day in Trafalgar Square. Two photographs showed only the back of people's heads watching a speech. Only one appeared to be a possible selfie (the

appellant did not attend the hearing so it is difficult to say with any confidence if it is him in the foreground of the photograph). There was no evidence of membership of the TGTE and only limited evidence of passing attendance at a single public event in central London. The judge referred to the relevant country guidance in *KK & RS (Sri Lanka)*. Although the judge did not take the structured approach suggested in *KK*, given the dearth of evidence relating to the appellant's claimed political activities in the UK, it was not necessary to do so because the outcome would have been the same given the very limited evidence produced by the appellant.

15. For the reasons given above, I find that grounds 1-4 do not disclose any arguable errors of law that would have made any material difference to the outcome of the appeal on protection grounds.

16. The last two grounds relate to the appellant's human rights claim based on his marriage to a Romanian citizen who has settled status under the EU Settlement Scheme. I note that it is said that the appellant has made a separate application for leave to remain on this basis.

17. I accept that the findings made by the judge are quite brief and do not follow a particularly structured approach [70-76]. I also accept that the judge made a mistake of fact when she stated at [71] that there was no evidence to show that the appellant's 17-year-old stepdaughter attended Strathmore college when there was a copy of her student ID card and a copy of her birth certificate in a supplementary bundle prepared for the hearing.

18. Although this aspect of the decision does contain a factual error, I find that it is necessary to place the judge's findings in some context. The decision that was the subject of the appeal was the decision dated 27 June 2022, which was primarily concerned with the appellant's protection claim. It is apparent from the decision letter that no detailed representations appear to have been made in relation to Article 8 family life. The existence of the appellant's stepdaughter did not seem to have been highlighted to the respondent at that stage.

19. Nor did the child's existence appear to have been highlighted during the case management stages in the First-tier Tribunal. The list of issues identified between the parties only included consideration of whether there were insurmountable obstacles to the couple continuing their family life outside the UK. It did not mention the best interests of a child. Nor did the appellant's skeleton argument before the First-tier Tribunal make any points about the child. The appellant's witness statement only set out a cursory history of his relationship with his wife and asserted in the most general terms that it would be difficult to continue their relationship in Sri Lanka or in Romania. He did not mention that his wife had a daughter let alone describe the strength of any relationship he might have with her or the effect that it might have on her if they had to continue any family life outside the UK. Similarly, the appellant's wife's statement only outline a technical history of their relationship and the immigration applications that have been made, but failed to say anything about whether they could continue their family life outside the UK. The statement failed to mention that she had a child who is in education in the UK.

20. It is apparent from the evidence that was before the First-tier Tribunal that the focus of the preparation of the appeal was on the protection claim. The Article 8 claim was prepared in a cursory way that did not outline all the facts and did not

address the relevant legal framework. The day before the hearing, a 28 page bundle was filed and served, which contained a copy of the child's passport, birth certificate, pre-settled status and student ID. This appears to have been the first time that the existence of a child was notified. There was no witness statement from her mother or any other evidence relating to the best interest of the child to assess what impact the decision might have on her.

21. When the judge's error about the lack of evidence relating to the child's school attendance is placed in the context of such limited evidence, I conclude that it would not have made any material difference to the outcome of the assessment. It was open to the judge to find that there was insufficient evidence to show that there would be insurmountable obstacles to the couple continuing their family life outside the UK. Even if the judge had noted the evidence in the supplementary bundle, at highest, it was limited to showing that the sponsor has a child who has leave to remain in the UK. In any event, the judge went on at [72] to consider whether the child could live in Romania.

22. The judge's findings did not make specific reference to the five-stage test outlined in *Razgar* and lacked structure. However, this reflected the limited way in which the Article 8 claim had been prepared. Nevertheless, it is tolerably clear that the judge used the language of the relevant legal test and that she had considered whether there were 'insurmountable obstacles' to the couple continuing their family life outside the UK (paragraph EX.1 Appendix FM). The immigration rules are said to reflect where the respondent considers a fair balance should be struck for the purpose of Article 8. Having concluded that there was insufficient evidence to show that there would be insurmountable obstacles to family life continuing outside the UK, I conclude that it is not fatal to the judge's findings that she did not go on to conduct a detailed balancing exercise. She noted that the appellant's immigration status was precarious when the relationship began (an oblique reference to the relevant public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002). No meaningful evidence had been produced relating to the best interests of the child. No other compelling or compassionate circumstances had been identified that might render the decision disproportionate if the appellant did not meet the family life requirements of the immigration rules. The fundamental problem was the inadequate preparation of this aspect of the appellant's case. For these reasons, I conclude that any criticism of the Article 8 findings would not have made any material difference to this aspect of the appeal.

23. For the reasons given above, I conclude that the First-tier Tribunal decision did not involve the making of material errors of law.

Notice of Decision

The First-tier Tribunal decision did not involve the making of a material error of law

The decision shall stand

M.Canavan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

01 June 2023