



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2024-002772

First-tier Tribunal No:  
PA/51156/2022  
IA/03300/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:  
On 17 September 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

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

Appellant

**and**

**A (SriLanka)  
(anonymity order made)**

Respondent

**Representation:**

For the Appellant: Mr E Terrell, Senior Home Office Presenting Officer  
For the Respondent: Mr A Bandegani, counsel, instructed by the Joint Council  
for the Welfare of Immigrants.

**Heard at Field House, on 22 August 2024**

**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. Failure to comply with this order could amount to a contempt of court.**

**DECISION AND REASONS**

1. I make an anonymity direction because this appeal arises from the appellant's protection claim.

2. The Secretary of State for the Home Department brings this appeal but, to avoid confusion, the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge T Lawrence, promulgated on 30 April 2024.

### Background

3. The Appellant is a national of Sri Lanka who applied for asylum on arrival in the UK on 22 February 2002. On 11 April 2002 the respondent refused the appellant's asylum claim. The appellant appealed that decision, and his appeal was dismissed by the First-tier Tribunal on 7 April 2003.

4. On 11 December 2015, at Birmingham Crown Court, the Appellant was sentenced to 15 months imprisonment for assault occasioning actual bodily harm (after a jury found him guilty).

5. The Appellant made representations to the Secretary of State on asylum and human rights grounds arguing that he should not be deported from the United Kingdom, which were refused in a decision dated 31 March 2016. A deportation order was made, which was certified under Paragraph 94B of the Nationality, Immigration and Asylum Act 2002, and so removing appeal rights from within the United Kingdom.

6. The Appellant was transferred to immigration detention on 12 February 2016 until he was released on bail on 9 March 2017.

7. The Appellant made further representations against his deportation, which were refused (with a right of appeal) on 7 December 2016. His appeal was dismissed by the First-tier Tribunal in a decision promulgated on 12 May 2017. The Appellant appealed to the Upper Tribunal and his appeal was dismissed in a decision promulgated on 3 August 2017. The Appellant's appeal rights were exhausted on 5 June 2018.

8. The Appellant made further representations against deportation which were refused by the Respondent's decision dated 7 February 2022.

### The Judge's Decision

9. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge T Lawrence ("the Judge") allowed the appeal under the refugee convention and on Article 3 ECHR grounds.

10. The Respondent lodged grounds of appeal, and, on 24 June 2024, Upper Tribunal Judge Jackson granted permission to appeal, stating

The Secretary of State for the Home Department seeks permission to appeal in time against the decision of First-tier Tribunal Judge Lawrence dated 30 April 2024 dismissing HK's appeal against the Respondent's refusal of his protection and human rights claims.

The grounds of appeal are that the First-tier Tribunal erred in law in (i) failing to give adequate reasons for the findings that the Appellant was tortured by the Sri Lankan authorities; that he has a profile with the Sri Lankan authorities which places him at risk on return; and for departing from the findings of the previous Tribunal contrary to the principles in *Devaseelan*; and (ii) failing to give adequate reasons as to why the sur place activities were a genuine expression of political identity rather than an attempt to frustrate deportation. The errors in the assessment of the protection claim are said also to infect the findings on Article 3.

It is just arguable that the findings in paragraph 25 of the decision as to the Appellant having been tortured by the Sri Lankan authorities fails to engage with or give reasons for the departure from previous findings on this and the adverse credibility findings in the round as to the core of the Appellant's claim which was dismissed on appeal in 2003 and more recently. It is further arguable that in the round, there are inadequate reasons for finding the Appellant would have a sufficient profile to be at risk on return to Sri Lanka now, contrary to earlier findings and in circumstances where he has produced only limited Facebook evidence of sur place activity (as per paragraph 27) and very late evidence of family links (paragraph 28).

The errors are arguable relevant to the Article 3 assessment which is predicated on the Appellant having established a risk profile on return to Sri Lanka and therefore would be monitored on return.

The First-tier Tribunal's decision does contain any arguable error of law capable of affecting the outcome of the appeal and permission to appeal is therefore granted.

### The Hearing

11. For the Respondent, Mr Terrell moved the moved the grounds of appeal. He took me to [25] of the decision after explaining that the Secretary of State accepted that the appellant had been tortured, but that concession was a limited concession because the Secretary of State did not accept that the appellant had been tortured by Sri Lankan authorities. Mr Terrell said it was important to look back to the decision of the First-tier Tribunal in 2017. There, it was found that the appellant did not discharge the burden of proving that his injuries were caused in the way he said there were. At [31] of the 2017 decision, the First-tier Tribunal Judge made strident criticism of the appellant's credibility.

12. Mr Terrell told me that, even allowing for the concession that the appellant had been tortured by someone, the Judge failed to follow the Devaseelan principles. In short, the Judge failed to explain why he found the appellant credible when his fellow First-tier Tribunal Judge had already determined that the appellant was lying about the same facts and circumstances.

13. Mr Terrell said that the Judge had failed to engage with the determinative findings of his fellow First-tier Tribunal Judge, and gives inadequate reasons for alternative findings.

14. Mr Terrell said that the Judge failed to give adequate reasons for accepting that the appellant's sur place activity is genuine. He said that, overall, the

Judge's decision was tainted by inadequate reasons. He asked me to allow the appeal and set the decision aside.

15. Mr Bandegani opposed the appeal. He told me that the Judge's decision does not contain errors, material or otherwise. He reminded me that the respondent does not suggest that the judge misdirected himself in law, nor does the respondent say that the Judge failed to take account of relevant considerations, nor that the Judge considers irrelevant material, nor that the Judge failed to follow country guidance, nor that the Judge made findings which are perverse or irrational.

16. Mr Bandegani said that the narrow focus in this case is that the previous First-tier Tribunal Judge found the appellant to be an incredible and unreliable witness. The Judge (whose decision is the subject of this appeal) found the appellant to both be credible and reliable. Mr Bandegani told me that the Judge's decision adequately sets out why the Judge was able to depart from the findings of his fellow First-tier Tribunal Judge.

17. Mr Bandegaini stressed the importance of the respondent's concession that the appellant has been tortured (even though the respondent does not know by whom). He asked me to dismiss the appeal and allow the decision to stand.

### Analysis

18. In 2017 Judge NMK Lawrence dismissed the appellant's appeal. He found the appellant to be an incredible and unreliable witness. His findings were upheld by the Upper Tribunal.

19. Judge T Lawrence allowed the appellant's appeal in 2024. The two main differences between the content of the appellant's appeal in 2017 and his appeal in 2024 are

- (i) the appellant, in 2024. advanced a sur place claim about his political activity in the UK, and
- (ii) the respondent accepts that the appellant was tortured in Sri Lanka, but does not accept that the torture was inflicted by the Sri Lankan authorities.

20 In Devaseelan 2002 UKIAT 00702, the Tribunal was concerned with a human rights appeal which followed an asylum appeal on the same issues. The Tribunal said that, in such circumstances, the first Tribunal's determination stands as an assessment of the claim the Appellant was making at the time of that first determination. It is not binding on the second Tribunal but, there again, the second Tribunal is not hearing an appeal against it. The Tribunal set out various principles: the first decision is always the starting point; facts since then can always be considered; facts before then but not relevant to the first decision can always be considered; the second Tribunal should treat with circumspection relevant facts that had not been brought to the first Tribunal's attention; if issues and evidence on the first and second appeals are materially

the same, the second Tribunal should treat the issues as settled by the first decision rather than allowing the matter to be re-litigated.

21. The respondent made two concessions, both of which were rehearsed in the Judge's decision. The first concession is that the respondent accepts there may be a possibility that the appellant's *sur place* activities have placed the appellant on a Sri Lankan watchlist. The second concession is that the appellant was tortured in Sri Lanka.

22. Between [1] and [7] of the decision, the Judge sets out the history of the appellant's applications. He records what has brought the appellant to the appeal hearing before him in April 2024.

23. At [13] of the decision, the Judge quotes from the respondent's reasons for refusal letter, and so sets out the exact terms of the respondent's concessions. At [15] the Judge correctly reminds himself of the Devaseelan principles. The Judge goes on to take guidance from the Upper Tribunal's decision in KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 00130 (IAC).

24. Between [18] and [23] the Judge considers the evidence given by a consultant psychiatrist in light of the guidance given in KK & RS. The Judge explains why he finds that the forensic medical evidence supports the appellant's claim to have been tortured by the Sri Lankan authorities. Throughout his decision, the Judge refers back to the guidance given in KK & RS.

25. Throughout his decision, the Judge refers back to the findings of his fellow First-tier Tribunal Judge in 2017, and explains why he feels unable to depart from some of those findings, but able to depart from others.

26. The Judge's conclusions are set out between [36] and [46]. There, the Judge gives adequate reasons for reaching his conclusions.

27. The respondent's argument at appeal is that in 2017 the appellant was not found to be credible. It is argued that in 2024 the Judge does not explain why he can now find the appellant to be credible. A fair reading of the decision makes it clear that the Judge takes the First-tier Tribunal decision 2017 as a starting point. He explains that there are four factors before him which were not available in 2017, which are

(i) The guidance given in KK & RS

(ii) The concession that the appellant is a victim of torture by someone in Sri Lanka.

(iii) The additional medical evidence

(iv) Further evidence of social media activity and the appellant's hostility to the government of Sri Lanka.

28. The Judge clearly takes those four new factors and lays them over the decision of the First-tier Tribunal from 2017. The Judge is clearly mindful of the guidance given in Danian v SSHD (2002) IMM AR 96.

29. In Danian v SSHD (2002) IMM AR 96 the Court of Appeal said that there is no express limitation in the Convention in relation to persons acting in bad faith, despite Counsel's attempt in Danian to have one implied. In YB (Eritrea) v SSHD 2008 EWCA Civ 360 the Court of Appeal sounded a note of caution in relation to the argument that, if an appellant was found to have been opportunistic in his sur place activities, his credibility was in consequence low. If he had already been believed ex hypothesi about his sur place activity, his motives might be disbelieved, but the consequent risk on return from his activity sur place was essentially an objective question.

30. The Judge adequately explains why he is able to depart from certain findings made in 2017 (He also explains why he adheres to other findings made in 2017). The Judge follows the Devaseelan principles.

31. The Judge does not narrate that the First-tier Tribunal Judge in 2017 found that the appellant was not telling the truth, but the Judge does explain adequately why he found that the appellant produces sufficient evidence in 2024 to establish a well-founded fear of persecution for a convention reason.

32. The weight to be attributed to each strand of evidence is a question for the First-tier Judge.

33. A fair reading of the decision demonstrates that the Judge applied the correct standard of proof. The Judge carried out a holistic assessment of each strand of evidence. There is nothing unfair in the procedure adopted nor in the manner in which the evidence was considered. There is nothing wrong with the Judge's fact-finding exercise. The respondent might not like the conclusion that the Judge arrived at, but the correct test in law has been applied. The decision does not contain a material error of law.

34. The decision does not contain a material error of law. The Judge's decision stands.

## **DECISION**

35. The appeal is dismissed. The decision of the First-tier Tribunal, dated 30 April 2024, stands.

Signed **Paul Doyle**  
August 2024  
Deputy Upper Tribunal Judge Doyle

Date 28