



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

Appeal Number: RP/00092/2019 (P)

THE IMMIGRATION ACTS

On the papers on 17 June 2020

**Decision & Reasons Promulgated
On 26 June 2020**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

KS

(anonymity direction made)

Respondent

ERROR OF LAW FINDING AND REASONS

1. On 12 February 2020 First-tier Tribunal Judge M A Khan ('the Judge') allowed KS's appeal under the Immigration Rules and on human rights grounds against the order for his deportation from the United Kingdom.
2. Permission to appeal was granted by Upper Tribunal Judge Martin, sitting as a judge of the First-Tier Tribunal. The operative part of the grant is in the following terms:

It is arguable, as clearly set out in the grounds, that the Judge erred in his assessment of the revocation of refugee status given the appellant's reasons for claiming asylum in 2001 no longer subsist and he has done nothing in the UK to cause him to be at risk on return.

3. Following the Covid-19 pandemic directions were sent to the parties advising them of the preliminary view of the Upper Tribunal that the question of whether the Judge had made an error of law that was material to the decision to allow the appeal could be determined on the papers and seeking their views.
4. No response has been received from the Secretary of State who will no doubt rely on the grounds of appeal in any event. A response from KS's representative has been received objecting to this proposed course of action on the basis of the benefits of an oral hearing and claiming the Judge, in any event, has not erred in a manner material to the decision but, if he has, that the matter be remitted to the First-tier Tribunal to be heard afresh.

Background

5. KS is a citizen of Sri Lanka born on 23 April 1983 who is subject to an order for his deportation from the United Kingdom. KS's immigration and offending history is set out between [14 - 22] of the decision under challenge.
6. KS was recognised as a refugee on 17 October 2001 but was served with notice of intention to revoke his refugee status on 19 March 2019 leading to its revocation on 11 June 2019.
7. The Judge sets out findings of fact from [43] finding neither the appellant nor his partner credible or consistent witnesses with regard to their current claimed relationship for the reasons given at [44 (i) - (iv)] of the decision under challenge.
8. In relation to the challenge to the revocation decision the Judge finds at [51 - 54]:
 51. The fact that the appellant was recognised as a refugee in October 2001 on the basis that he was forced to work for the LTTE, and he was detained for period of 5 months by the authorities. I find that if this is the premise of the grant of refugee status to the appellant in October 2001, there would be some type of record kept of the appellant's past detention by the Sri Lankan authorities and he would be subject to further difficulties on his return to the country of origin, Sri Lanka.
 52. I find that the appellant would be on the Sri Lankan authorities official records because of his past arrest, detention and also due to his late father's suspected membership of the LTTE. The appellant is covered by category (4) and (5) of GJ, which states:
 - (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.
 53. Further, the fact that the appellant has previously been granted asylum in the UK, he would be on the radar of Sri Lankan authorities as a person who been of some interest the authorities there.

54. I find that the respondent has failed to establish that there has been a fundamental durable change in Sri Lanka.
9. At [57] Judge finds KS's deportation will put the United Kingdom in breach of article 3 ECHR.
 10. The Secretary of State sought permission to appeal on 3 grounds. The first asserted the Judge failed to apply the correct approach regarding the question of cessation of refugee status as found in MA (Somalia) [2018] EWCA Civ 994. The material before the Judge, including that from the Secretary of State which supported a finding there has been fundamental durable change in Sri Lanka. It is asserted the Judge's statement the Secretary of State failed to establish this is so a conclusion arrived at without proper engagement of the applicable test or proper analysis of the country situation at the time KS claimed asylum and the position at the date of the hearing to establish whether there has been a change of circumstances that is of a significant and non-temporary nature.
 11. Ground 2 asserts the Judge materially erred when considering whether KS will be on the records of the Sri Lankan authorities due to past arrest and detention and suspicion of his late father's activities; misconstruing the head note of GJ when finding that the appellant's past detention meets the GJ requirements. It is argued paragraph (4) of the headnote considers current detention as opposed to past detention with no reference in the headnote to historical detention. The Secretary of State also refers to paragraph 356(8) of GJ which found the Sri Lankan authorities aware of migrants who had some past involvement with the LTTE, particularly those from the Northern Province such as the appellant, but were only concerned with those that represent a current risk to the Sri Lankan government. The Judge finds at [44 (iv)] that KS had not been politically active in the UK undermining the Judge's findings regarding KS's profile placing him at risk on return.
 12. Ground 3 asserts the Judge's finding at [53] is devoid of sufficient reasoning as the Judge fails to set out how he has come to the conclusion that the appellant will be on the radar the Sri Lankan authorities as a person who had been of some interest to the authorities there solely because he has been granted asylum in the UK. This is not made out such finding originates from GJ and appears to be purely speculative not supported by any of the evidence.
 13. The Secretary of State also note the Judge allowed the appeal under the Immigration Rules with there being no consideration as to whether the appellant met the Rules, the inference to be drawn from the Judge's findings would suggest KS had not met the rules in relation to his relationship with his partner and children.
 14. Although the appellant's representative in his reply to the earlier directions sets out the best case possible, when arguing any error is not material, I do not agree.
 15. The Judge was required to approach the question of cessation of refugee status in line with the guidance provided in MA (Somalia) and properly analyse all the available evidence which he does not appear

to have done so. The Judge makes a finding purportedly in accordance with Gj in relation to the country situation and risk on return which does not appear to be supported by the findings in that Country Guidance case. The Judge speculates as the future risk at [53] yet such a conclusion is not supported by adequate reasons and does not appear to have been one reasonably open to the Judge in any event. The Judge also allowed the appeal under the Immigration Rules with no reasoning, no analysis, or ability to identify which rule he was talking about.

16. I find the errors made by the Judge are so fundamental that it undermines the decision in its entirety. I agree with KS's representative, and in accordance with the Presidential Guidance on the remission of appeals, the interests of justice and fairness requires this matter be remitted to the First-tier Tribunal sitting at Taylor House to be heard afresh, de novo, by a judge other than Judge MA Khan.

Decision

17. **The First-tier Tribunal Judge materially erred in law. I set aside the decision of the original Immigration Judge. I remit this appeal to the First-tier Tribunal sitting at Taylor House to be heard by a judge other than Judge Khan.**

Anonymity.

18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed
Upper Tribunal Judge Hanson

Dated the 17 June 2020