



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

Appeal Number: AA/10038/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5 August 2015**

**Decision & Reasons Promulgated  
On 17 August 2015**

**Before**

**UPPER TRIBUNAL JUDGE PITT  
UPPER TRIBUNAL JUDGE MARKUS QC**

**Between**

**AM**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Harris, instructed by Biruntha Solicitors

For the Respondent: Ms Savage, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a national of Sri Lanka and was born in 1989.
2. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a

likelihood of serious harm arising to the appellant from the contents of her protection claim.

3. This appeal is against the decision promulgated on 9 March 2015 of First-tier Tribunal Judge Griffith which refused the appellant's asylum and human rights appeal.
4. Permission to appeal was granted by Upper Tribunal Judge Blum in a decision dated 12 June 2015. Although it focuses on particular aspects of the grounds in [3], the decision does not explicitly refuse permission on any ground; Ferrer (Limited Appeal Grounds; A/vi) [2012] UKUT 00304 (IAC0 applied.
5. The background to this matter is that whilst the appellant was a student she became acquainted with Dinesh Rajapakse, a relative of the former President of Sri Lanka. He made unsolicited sexual advances towards her. Also whilst a student, the appellant assisted a friend by receiving parcels which were then collected from her home. The appellant thought that the parcels were in connection with distributing books to rural areas. On 2 February 2011 the appellant was arrested and told that the parcels contained weapons and explosives. The appellant was released and her file closed on payment of a bribe by her father.
6. The appellant then came to the UK on 23 February 2011 to study. She returned to Sri Lanka for a holiday on 30 July 2013. During the holiday she campaigned for the JVP and as part of those activities again came to the attention of Dinesh Rajapakse. This resulted in the appellant being raped by Mr Rajapakse on two occasions. On the first occasion a police officer was present and she was also raped by him. The police officer warned her that he knew of her arrest in 2011. He also showed her evidence that a false case had been prepared against her showing her to be involved with the intelligence wing of the LTTE. She was warned not to say anything about the rapes or the material would be used against her and also told that her father would also be placed at risk.
7. The appellant returned to the UK on 10 September 2013 having said nothing about the rapes other than to her father. After she left her father was threatened by a local police officer. He went to the Institute of Human Rights (IHR) who assisted him to prevent further police harassment. The IHR confirmed their intervention in a letter dated 3 October 2010. The letter went on to refer to a pending investigation against the appellant under the Prevention of Terrorism Act (PTA). It further referred to a "reliable highly placed source within the police department" confirming the existence of a PTA arrest order against the appellant.
8. The appellant's father also contacted a lawyer, Mr Rathnadiwakara, who, in a letter dated 20 September 2014, stated that he met with:

“... a senior superintendent of police (SSP), who is a close friend of mine. On condition of anonymity he showed me a copy of the Arrest Order no: PTA/AO/2013/LT/CP 14 in his file, issued against [the appellant]. “

The letter from Mr Rathnadiwakara went on to state that he had been able to note down details from the arrest order.

9. Judge Griffith did not find the appellant’s account of being raped by Dinesh Rajapakse and a police officer or existence of a false case and arrest order to be credible.
10. Ms Harris’ first challenge at the hearing before us related to the findings of First-tier Tribunal Judge Griffith concerning the letters from IHR. The reasons given for finding the letters did not attract weight are at [54]:

“I have considered the evidence from the Institute of Human Rights. The names of the officers of that organisation are in the public domain. There does not appear to be a manager as such of the organisation yet this is the title assumed by the author of the letter dated 3 October 2013. Furthermore, the information set out in the first paragraph of the letter dated 3 October 2013 does not accord with the aims and objectives as stated in the organisation’s key areas of work, which are available in the public domain. I have noted Dr Smith’s view that there is a reasonable likelihood that they are genuine. However, he states that the organisation does not have the resources to investigate individual cases and “all it can do is hand cases over to the police”. In the present case the IHC seems to have done far more than that; not only claiming to have discussed the matter with a high ranking police officer but also to have received in confidence information from the police. I have decided I cannot place weight of any significance on the letters.”

11. There are a number of difficulties with this paragraph. Firstly, the organisational chart of IHR is set out at N1 of the appellant’s bundle. It shows there to be a number of posts with the title “manager” in the organisation. The staff profile is contained at N2 and shows a “Sujith Silva” as “Manager.” The letter from IHR before the First-tier Tribunal is signed by “Sujith Silva” who is stated to be “The Manager. That information was at odds with Judge Griffith’s view that the organisation had no manager. We were not taken to any other document that could bear the comments made to that effect at [54] that the organisation not having a manager.
12. Secondly, the reference in [54] misrepresents the comments of Dr Chris Smith about IHR in his country report. Dr Smith states at [84] of his report that IHR are involved in legal access and representation. The work that the appellant maintains was conducted by IHR for her father and as set out in the IHR letter of 3 October 2013 was therefore consistent with Dr Smith’s view.
13. What the First-tier Tribunal appears to have done is confuse the comments of Dr Smith in [84] about another organisation, Human

Rights Commission (HRC) which does not have the resources to investigate individual cases and “all it can do is hand cases over to the police”.

14. We also noted that the appellant’s claim as to the part played by IHR is also entirely consistent with the description of the organisation’s key areas of work set out at M1-M2 of the appellant’s bundle.
15. Our conclusion was that the First-tier Tribunal judge reached an impermissible adverse finding about the appellant’s claim of the involvement of IHR and the letter of 3 October 2013 as a result. Where this evidence is a core part of the claim, it was our view that the error was material and such that the decision had to be set aside.
16. Ms Harris also submitted that the findings about the IHR letter undermined the next conclusion of the First-tier Tribunal at [55], that Mr Rathnadiwakara’s letter of 20 September 2013 concerning the arrest order carried no weight. We found merit in that argument as credibility factors tend to feed off each other and the IHR letter and letter from Mr Rathnadiwakara are linked to the extent that they address the same core part of the appellant’s account.
17. We also heard argument on the remaining grounds, noting in particular that at [56] the First-tier Tribunal appears to have reached a conclusion on credibility, then addressed the medical evidence, long since found to be an incorrect approach. The medical report here also shows at 9.4.8 that the Consultant Psychiatrist specifically considered the possibility of the appellant fabricating her symptoms or her symptoms arising from other causes. The judge’s reasons for placing little weight on the medical report were undermined where they failed to note this approach, stating “Dr Gupta’s report was based on the appellant’s own account” and that “it is possible that there are other reasons, not disclosed by the appellant that led to the diagnosis of PTSD.”
18. For all of these reasons, we found that the credibility finding on core parts of the appellant’s account disclosed an error on a point of law and had to be set aside.
19. We were in agreement with the parties, following paragraph 7.2 (b) of Part 3 of the Senior President’s Practice Statement dated 25 September 2012, that the nature of the fact finding that will have to take place is such that it is appropriate to remit the appeal to the First-tier Tribunal to be re-made *de novo*, none of the findings of First-tier Tribunal Judge Griffith remaining.

### Decision

20. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
21. The appeal is remitted to the First-tier Tribunal to be re-made *de novo*.

Signed   
Upper Tribunal Judge Pitt

Date 10 August 2015