



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

Appeal Number: AA/10872/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 February 2015**

**Determination  
Promulgated  
On 4 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS**

**Between**

**SURESH SEBASTIAN CADERAMAN PULLE  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr A Slatter of Counsel instructed by Mansfield Chambers  
For the Respondent: Ms L Kenny, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Herbert OBE promulgated on 20 January 2014 dismissing the appeal of Mr Pulle against a decision of the Secretary of State for the Home Department dated 28 November 2013 to remove him from the United Kingdom following rejection of his asylum claim.

## **Background**

2. The Appellant is a national of Sri Lanka born on 11 March 1979. He arrived in the United Kingdom in the company of his wife, Ms Karuna Pedige (date of birth 13 January 1987). The Appellant had included his wife as a dependant in his asylum claim. There has been no relevant immigration decision in respect of Ms Pedige and so she does not have her own appeal: a file was opened under reference AA/10924/2013 when a Notice of Appeal was lodged on Ms Pedige's behalf, but by way of a decision promulgated on 16 December 2013 it was determined that she had no valid appeal. Necessarily in those circumstances the outcome of this appeal will have a likely impact also upon the Appellant's wife.
3. The Appellant's immigration history is summarised at paragraph 10 of the decision of the First-tier Tribunal. It is set out in more detail in the Respondent's 'reasons for refusal' letter ('RFRL') of 28 November 2013 at paragraph 10 in these terms:

"The claimant applied for and was granted a Tier 4 (General) Dependents visa valid from 26/02/2010 until the 27/06/2012. He left Sri Lanka on the 13/03/2010 and travelled directly to the UK arriving at Heathrow on the 14/03/2010. He applied for an extension of his visa on the 22/05/2012. This was refused on the 23/10/2012. [He] then appealed this which was dismissed on 1/03/2013. [He] made applications to the First and Upper Tiers respectively, which were both refused and [he] became Appeal Rights Exhausted (ARE) on the 23/04/2013. [He] sought asylum on 17/08/2013 and [his] claim was registered on the 30/08/2013 at Croydon."
4. The basis of the Appellant's claim for asylum is summarised in the RFRL at paragraphs 5-9 - see also in this context the decision of the First-tier Tribunal at paragraphs 11-21. For present purposes it is unnecessary to rehearse the bases of the Appellant's claim here.
5. The Appellant's application for asylum was refused for reasons set out in the RFRL, and a removal decision was made in consequence.
6. The Appellant appealed to the IAC.
7. The First-tier Tribunal Judge dismissed the Appellant's appeal for reasons set out in his determination.
8. The Appellant sought permission to appeal which was granted by Designated First-tier Tribunal Judge Zucker on 6 January 2015. Judge Zucker also extended the time for appealing notwithstanding that there had been a very considerable delay between the promulgation of the decision of the First-tier Tribunal Judge and the application for permission to appeal. The reasons for that delay are set out in the grounds submitted in support of the application for permission to appeal and are supported by a witness statement signed by the Appellant on 15 December 2014.

9. At the commencement of the hearing before me today Ms Kenny brought this delay to my attention. However in circumstances where the matter has already been the subject of judicial consideration by Judge Zucker I do not propose to re-visit the issue in respect of delay and proceed on the basis that time was duly extended and permission to appeal was granted.

### **Consideration**

10. In granting permission to appeal Judge Zucker summarised the arguable grounds as broadly falling under three heads, which Mr Slatter adopted today in his submissions.
- (1) The Judge erred in looking for corroboration, (which I note that the grounds plead as "*a misapplication of the burden of proof*");
  - (2) The Judge erred in failing adequately to engage with the supporting medical evidence provided by the Appellant;
  - (3) There was insufficient engagement by the Judge with 'country guidance' cases. in particular the case of **GJ and Others (Post-Civil War returnees) Sri Lanka CG [2013] UKUT 00319.**

I address these grounds in turn before addressing a residual matter.

11. The complaint in respect of corroboration is summarised at paragraph 7(ii) of the grounds in support of the application for permission to appeal, and directs its focus on paragraph 37 of the decision of the First-tier Tribunal Judge. The relevant part of paragraph 37 is as follows:

"...although the Appellant gave a consistent account in relation to his distant relatives there was no published news report of the attack on Colombo airport, nor the arrest or detention of any suspects nor the fact that any motorbike had been seized by the authorities. One would have expected with such a high profile terrorist event there would have been some local newspaper reporting of the incident. None was produced by the Appellant."

12. I do not accept that that passage is demonstrative of the Judge elevating the assistance that might be derived from supporting evidence to a requirement to provide such evidence. Where there is an absence of supporting evidence that might be expected to be widely available and which it would be reasonable for an applicant or appellant to produce, it is open to a decision-maker to attach adverse weight to a failure to advance such materials. In context this is what the Judge did. I do not consider that he *required* corroboration as a matter of principle, or as a strict legal requirement: rather he evaluated the materials before him, took into account that materials that he would have expected to have been available as important corroboration of a core element of the Appellant's had not been presented, and, as was open to him, drew an adverse inference in this regard. I detect no error of law in these circumstances.

13. In respect of medical evidence, the Appellant provided in support of his application a medical report dated 21 August 2013 from Professor Lingam of the Medical Express Clinic. The report considered in particular two physical aspects of the Appellant's presentation. It was observed that there was a scar on his left thigh and also that there was an apparent abnormality in respect of two of his toes. In respect of the scar on the Appellant's thigh the medical practitioner in part said this:

"There are suture marks and on a clinical basis I would simply say it is consistent with the history. Such scars are very common from childhood injuries and it is for this reason I have indicated that the scar here is consistent according to Istanbul protocol."

14. As regards the Appellant's toes the following is stated:

"The patient stated that they pulled the nails from the two toes. I have shown the toes in the photographs. As seen here on the photographs there are clinically visible abnormalities however the nails have now grown which is the usual case. In this case I would say the clinical findings are consistent of the history. I am unable to give alternative causes here as what happened here is rare, and surgical removal of toe nail in total is never carried for a medical reason out and I would say this finding is difficult to prove clinically. Here I have taken the findings as stated and as seen on the photographs there are definite evidence of abnormalities which are keeping with removal of nails in two toes. Thus, I would say the findings are consistent according to Istanbul protocol."

15. The Respondent addressed the issue of the medical report in the RFRL at paragraphs 16-23. This is summarised by the First-tier Tribunal Judge at paragraphs 25-27 of his decision. So far as it is relevant the RFRL states the following:

"17. With regard to the medical report detailing your scars it is noted that it was written by Professor Lingam of the Medical Express Clinic which is a genuine organisation. With regards to the report itself, it is noted that there are various spelling and grammatical errors.

18. It is noted that he states that your injuries are consistent with the description you have given as to their cause...

20. However, he has failed to identify what the abnormalities on the toes are.... Furthermore he states that

"...surgical removal of toe nail in total is never carried for a medical reason out..."...

21. It is considered that this is incorrect given this is a standard procedure offered on the National Health Service. It is considered that this report is of poor quality and lacks proper consideration as to the alternative causes of your injuries despite acknowledging they are a possibility. Therefore, no weight is placed upon it when considering this aspect of your claim."

16. There is included in the RFRL by way of a footnote a reference to the National Health Service website in respect of ingrown toenails and, a relevant document was produced at the appeal hearing which confirms that indeed it is the practice to remove the whole nail in certain circumstances - which runs contrary to the apparent statement in Professor Lingam's report.
17. The Judge, as indicated above, makes reference to the fact and contents of the Respondent's observations in respect of the medical report at paragraphs 25-27 of his decision. The Judge's next reference to the medical evidence is at paragraph 40, which in its entirety is in the following terms:

"I find that Section 8 does seriously undermine the credibility of the Appellant in this regard and that coupled with the other discrepancies in his evidence as well as the absence of any cogent medical evidence relating to the torture he says he received undermines his credibility."
18. I accept that the Judge's reasoning in respect of the medical report falls below the standard of reasoning that one might reasonably expect of an experienced First-tier Tribunal Judge. Beyond the identification of the Respondent's view of the report the Judge makes no further comment except to state his finding that there is not any cogent medical evidence relating to torture.
19. However, in context, it seems sufficiently clear that the Judge's finding is essentially based on the reasons advanced by the Respondent. In any event I have seen nothing in the Skeleton Argument presented to the First-tier Tribunal or in the submissions recorded by the Judge as having been made, and Mr Slatter has not drawn my attention to anything specific, that would justify placing any more weight on the medical report such that it could be characterised as providing 'cogent evidence of torture'.
20. Further criticism might also be made of the Judge in that at paragraph 40 the juxtaposition of the reference to the medical evidence and the phrase "*undermines his credibility*" gives an appearance that the failure of the medical evidence to establish torture undermined the Appellant's credibility, rather than it being merely a neutral factor. On balance, I do not think that is what the Judge meant: it is the Section 8 considerations and other discrepancies in the account that undermine credibility, which is not ameliorated by the production of cogent medical evidence relating to torture.
21. Be that as it may, in my judgement the Judge has at paragraphs 38, 39 and the first parts of paragraph 40 made a number of adequate findings and observations in respect of credibility justifying reaching an overall adverse view, such that any possible error with regard to characterising the medical report as undermining the Appellant's credibility when looked at 'in the round' is not ultimately material.

22. The third aspect of the challenge identified in the grant of permission to appeal is in respect of supposed insufficient engagement with 'country guidance' cases. There are two elements to this submission: the first that country guidance cases should be taken into account as a background context assisting evaluation of the veracity of an account; and the second that they are relevant to an assessment of risk. Necessarily, on the facts of this particular case, in regard to the second such consideration, the assessment of risk is really premised on the Appellant's account being accepted - as was acknowledged by Mr Slatter. In the event that his account is not accepted, then there is no materiality to a failure to attempt to analyse his claim against any risk factors that might be identified by way of country guidance.
23. So far as the first element is concerned - country information by way of setting a context for an evaluation of the individual account - it seems clear to me that the First-tier Tribunal Judge did have regard to the country information. He states at paragraph 36 certain matters that he has drawn from the "*background objective information*", and at paragraph 37 he also makes reference to the COIR Report of March 2012. Whilst the use of the phrase 'objective information' in the context of country information is to be discouraged, it is nonetheless plain that the Judge has had regard to background information, and in those circumstances - and absence the identification by the Appellant's representatives of anything specifically germane in country guidance cases that has been disregarded - I find that there is no substance to this ground of challenge.
24. One final matter is in relation to a newspaper report that the Appellant produced in support of his application. An original copy of the newspaper was provided and is on file together with a translation which appears at page D1 of the Respondent's bundle before the First-tier Tribunal. It is an article headed "*In search of a suspect of supporting LTTE by the Intelligence Department*", and suggests that the Appellant is being sought in connection with an attack on the Katunayakaya International Airport.
25. The Judge made reference to this document variously at paragraphs 32, 37 and 42 of the decision. At paragraph 32 he observed that the Respondent considered that such articles could be fabricated and the Judge also comments "*whilst the newspaper article does appear genuine there is no proof to say that it was not a story that was inserted for the payment of money or some other consideration*". It is not entirely clear in context whether the Judge is, at paragraph 32, there setting out a submission made by the Respondent or making his own independent observation. Be that as it may, the Judge clearly took forward the fact of the existence of the document to his 'in the round' consideration of the Appellant's account. As I have already said he refers again to the newspaper article at paragraph 37, and at paragraph 42 he says this: "*In summary I do not find any credibility in the Appellant's account whatsoever notwithstanding the newspaper report that he is somebody who was sought in relation to a terrorist incident*". In my judgment that is an assessment entirely consistent with the principles in **Tanveer Ahmed**

whereby the Judge has had regard to the weight to be attached to the supporting documentary evidence by reference to all of the evidence 'in the round'. In those circumstances I do not consider that there is any material error of law in this regard either.

26. I reject the Appellant's challenge to the decision of the First-tier Tribunal.

**Notice of Decision**

27. The decision of the First-tier Tribunal Judge does not contain any material errors of law and stands.

28. The appeal is dismissed.

29. No anonymity direction is sought or made.

*The above represents a corrected transcript of an ex-tempore decision given at the hearing on 25 February 2015.*

Signed

Date: **3 March 2015**

**Deputy Upper Tribunal Judge I A Lewis**