



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

Appeal Number: AA/12830/2015

**THE IMMIGRATION ACTS**

**Heard at Bradford  
On 17 May 2017**

**Decision & Reasons Promulgated  
On 24 May 2017**

**Before**

**UPPER TRIBUNAL JUDGE CLIVE LANE**

**Between**

**NEDUMARAN SITHAMPARAPPILLAI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Jegarajah, instructed by Jeya & Co.

For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant, Nedumaran Sithamparappillai, was born on 27 October 1988 and is a male citizen of Sri Lanka. The appellant applied for asylum in the United Kingdom but his application was refused and a decision was also taken to remove him on 9 October 2015. The appellant appealed to

the First- tier Tribunal (Judge Fox) which, in a decision promulgated on 20 June 2016, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. After receiving the very helpful oral submissions of both Ms Jegarajah, for the appellant, and Mr Diwnycz, for the respondent, I indicated in open court that I intended to set aside Judge Fox’s decision and to return the matter to the First-tier Tribunal for the decision to be remade. I shall now briefly give my reasons for doing so.
3. This appellant has a lengthy history of involvement with the LTTE. In her refusal letter dated 9 October 2015, the Secretary of State indicated that she accepted certain aspects of the appellant’s account of past events in Sri Lanka. Those aspects claimed accepted by the Secretary of State are helpfully summarised by Ms Jegarajah in her grounds of appeal at [6] (i-xii). In general, the Secretary of State accepted the appellant’s claimed involvement with the LTTE prior to 2011. At [38] she notes that,

“You [the appellant] claim that you were released from detention [by the Sri Lankan authorities] on 16 June 2011 after your father bribed a man named Suranga who worked in the jail to release you. On the basis of the information previously cited regarding corruption in Sri Lanka, this aspect of your claim is considered reasonably likely.”

It is true to say that in the subsequent paragraphs [39 – 42] the Secretary of State’s acceptance of the appellant’s claim is qualified to the extent of being withdrawn; at [42], the respondent writes, “it is not accepted you were arrested and detained in March 2011 this aspect of your claim is therefore rejected”. The appellant’s claimed arrest and detention in March 2011 and subsequent release are therefore, disputed. However, at [33], the refusal letter states, “on the basis of this information and in light of all other available evidence, your claim that you were arrested and detained by the Sri Lankan authorities from May 2009 to September 2010 is accepted”.

4. Judge Fox appears to have misunderstood the contents of the refusal letter. In his decision at [30], he states,

“The appellant has failed to discharge the burden on him. My starting point is that the respondent accepts the appellant’s claim till 2009. I therefore focus upon events of 2011 which give rise to the appellant’s current fear of the authorities due to his alleged release from detention with the investigations which remain outstanding.”

5. Judge Fox was correct to indicate that the 2011 arrest/release from detention were disputed by the Secretary of State but he is incorrect in stating that the chronological starting point for his assessment credibility should be 2009; as indicated above, the Secretary of State accepted the appellant’s account of events up to and including 4 September 2010.

6. Furthermore, looking at the appellant's account of past events, it appears that on 4 September 2010 the appellant claims that his father bribed an army commander who placed the appellant on an MOD clearance list which he was not entitled to do. The conditions were that he remain at a particular address and register with the army and report.
7. The fact that the Secretary of State accepts that part of the account is of some significance. In the grounds at [9], the appellant states as follows:

“The A was interviewed three times. He declared himself to be a member [of the LTTE] but downplayed his role in medical assistance. It was suspected that he was a combatant he made no admissions to that effect. He was not meant to be released and had not received any formal clearance by the MOD to be placed on the list of those who could take their exams because they were of lesser interest. He has a prominent entrance and exit bullet wound. It is impossible to see how the FTTJ could determine the question of risk by considering the events of 2011 onwards in isolation from the highly significant pre-history. In addition it is unlawful for the FTTJ to deem the claims of 2011 lacking in credibility without placing it in the context of the entirety of the claim.”

8. I consider that to be a fair criticism of Judge Fox's methodology. There is nothing in Judge Fox's analysis to indicate that he took into account, when assessing credibility of events after 2011, the fact that the appellant had been involved with the LTTE and had been arrested and detained by the authorities, claims accepted as fact by the Secretary of State. I agree with Ms Jegarajah's submission that the analysis of the judge at [31] *et seq* appears to have been conducted in something of an evidential vacuum; the analysis is isolated from and has not been analysed in the context of the previous (accepted) account of the appellant. This raises a number of problems. First, the judge has not considered whether the appellant's circumstances now, conditioned by events occurring in Sri Lanka prior to 2010, is such that he is likely to face the real risk of persecution and ill-treatment upon return to Sri Lanka. Secondly, before concluding at [75] that the appellant is not a witness of truth, the judge has failed to grapple with the fact that, in his account of events prior to September 2010, the appellant has been accepted by the Secretary of State as having told the truth. The judge was, of course, not bound to find the later parts of the account which the Secretary of State disputes to be truthful but he should at least have conducted his analysis against the background of the appellant's known involvement with the LTTE and detention by the Sri Lanka authorities. Instead, he ignored the accepted part of the evidence and has considered the credibility of the later part only. I am not satisfied that the judge has considered the evidence as a totality before reaching his findings.
9. In the circumstances, I set aside the decision of the First-tier Tribunal. None of the findings of fact shall stand for the avoidance of any doubt, those parts of the appellant's account which the Secretary of State accepts which she details in her letter of 9 October 2015 are not in

dispute. A fact-finding exercise will be required and that is best conducted by the First-tier Tribunal to which this appeal is now returned.

**Notice of Decision**

The decision of the First-tier Tribunal promulgated on 20 June 2015 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge Fox) for that Tribunal to remake the decision.

No anonymity direction is made.

Signed

Date 23 May 2017

Upper Tribunal Judge Clive Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 23 May 2017

Upper Tribunal Judge Clive Lane