



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
PA/12694/2016

Appeal Number:

**THE IMMIGRATION ACTS**

Heard at Field House  
On 8 June 2017

Decision & Reasons Promulgated  
On 18 July 2017

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**MR T J  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms. S. Jegarajah, counsel instructed by Greater  
London Solicitors

For the Respondent: Mr E. Tufan, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a national of Sri Lanka, of Tamil origin, born on

23 February 1983. He arrived in the United Kingdom on 10 October 2008 and claimed asylum on 13 October 2008, on which day he underwent a screening interview. His asylum application was refused and his appeal against that decision was dismissed with the result that he became appeal rights exhausted on 16 August 2010. The Appellant remained in the United Kingdom and made further representations in support of a fresh claim on 18 February 2016 and 25 February 2016, which were refused by the Respondent in a decision dated 7 November 2016, against which he appealed.

2. The appeal came before First tier Tribunal Judge Walters for hearing on 19 December 2016. He noted that a report from a Clinical Psychologist dated 14 December 2016 opined that the Appellant was not fit to instruct legal representatives and that, although no application had been made to the Court, his brother was effectively acting as his litigation friend. The Judge proceeded to hear submissions from the parties and in a decision promulgated on 16 January 2017 he dismissed the appeal.

3. An application for permission to appeal to the Upper Tribunal was made in time, which asserted that the Judge erred materially in law:

(i) in making perverse credibility findings at [44] with regard to mistakes in the Appellant's screening interview, given that the interpreter was Malaysian and bearing in mind the expert evidence of Dr Halari confirming that the Appellant was not fit to give evidence or instruct representatives;

(ii) the Judge failed to make any or any additional findings in respect of evidence provided by the Appellant's Sri Lankan authorities, which related to an outstanding arrest warrant *cf. PJ (Sri Lanka)* [2014] EWCA Civ 1011 per Fulford LJ at [41]

(iii) in his findings at [76] regarding the medical evidence of Dr Arnold as to the Appellant's scarring.

4. In a decision dated 18 April 2017, Judge of the First tier Tribunal Baker granted permission to appeal on the basis that:

(i) it is arguable that the judge materially erred as he did not identify why he placed no reliance on the scarring alleged to have been caused by cigarette burns from the police on the appellant's hands, which was stated by Dr Arnold to be diagnostic of torture;

(ii) the new evidence of the arrest warrant was addressed at [30] in respect of background evidence only and there was an absence of findings by the Judge specifically as to the weight to be attached to the warrant and the evidence of the attorney;

(iii) in that the adverse credibility points made between the contradictions between the screening interview and evidence to the judge in the form of the current witness statement may arguably be flawed in light of the psychiatric evidence as to the worsening mental health condition of the Appellant.

5. A rule 24 response lodged by the Respondent dated 10 May 2017 opposed the appeal on the basis that the Judge conducted a thorough and comprehensive analysis of the medical report; that there were multiple serious issues with the Appellant's evidence and the Judge's approach to the arrest warrant was appropriate in the context of his overall credibility findings.

### *Hearing*

6. At the hearing before me, Ms Jegarajah submitted that in respect of the 2010 decision by the First tier Tribunal the Appellant had been found not to be credible but no medical evidence had been submitted at that time except for a GP letter and this was a matter commented on by Kate Markus QC sitting as a Deputy High Court Judge in granting permission to apply for judicial review in respect of the fresh claim. The Appellant had new solicitors for his fresh claim, who wrote to the Sri Lankan attorney, Mr Karikalan, asking him to get the court file. There is a letter of instruction by his new solicitors and the relevant extract from *PJ* was cited, the significance of which is that it was a lawyer to lawyer communication and thus completely uninfected by the family or third parties. In light of this evidence and the medical evidence the Respondent settled the application for judicial review and the Appellant had an in-country right of appeal. The additional evidence before the Tribunal was an addendum report from Dr Halari, in light of the asylum interview. All of this was submitted with the aim of showing that the credibility assessment should be re-assessed. Whilst the Judge could of course have regard to 2010 findings he needed to look at the new evidence and that evidence could not be adduced earlier as the Appellant did not have insight into his medical condition and this impacted on his ability to give instructions and provide a comprehensive case.

7. Ms Jegarajah sought to rely upon [14] of the Joint Presidential Guidance Note No.2 of 2010 in respect of child, vulnerable adult and sensitive appellants. She submitted that the Judge in this case has rejected the reports from Dr Halari and that constituted a material error in relation to that guidance, in that once you classify someone as a vulnerable witness, there is a different approach to credibility and it is necessary to consider the degree to which the mental health problems account for that. She submitted that it was still necessary to apply the guidance even though the Appellant did not give evidence because credibility has to be assessed in light of what has been said in interview and that the guidance came into being a result of the Equalities Act because a person with a mental health

disorder would otherwise be discriminated against.

8. Mr Tufan submitted on behalf of the Respondent that the Judge does not specifically state whether the evidence from the Sri Lankan lawyer can be accepted but he does make adverse credibility findings against the Appellant based on what he stated earlier. He submitted that there was enough there by implication to justify his findings. In respect of the medical reports, the Judge has gone into them and given reasons for not placing weight on those documents thus the issue is whether those reasons are rational, which is a high test and his submission is that the Judge has looked at them rationally and his conclusions were open to him. He submitted that it was not clear at what stage the Appellant's condition became worse and thus at what stage he became a vulnerable witness. Mr Tufan concluded that there was no material error in the Judge's decision.

9. Ms Jegarajah in response drew my attention to page 123 of the judicial review bundle and also page 109 which are the lawyer to lawyer letters. She submitted that the Judge did not address the fact that Mr Karikalan was instructed by a UK lawyer, which is important as it shows that it was not tainted by eg family members. If Mr Karikalan is a lawyer and is able to apply to the Court, given that it is clear from the COIS report that an accused cannot obtain a copy of his own documents and there has to be a formal application to the Registrar who will reproduce as a certified copy and it is thus a very specific process, the question is whether Mr Karikalan is a lawyer, did he make an application, did he produce those records? If he did, unless the Judge is saying he is not this person, then the copy of the Court file and the fact that an arrest warrant has been issued are genuine.

10. Ms Jegarajah also sought to rely on [51] of the grounds of appeal which cite *PJ* [2014] EWCA Civ 1011 per Fulford LJ at [41] where he held: *"once it was established that the documents in question originated from a Sri Lankan court, a sufficient justification was required for the conclusion that the appellant does not have a well-founded fear of persecution."*

11. Ms Jegarajah drew my attention to [55] of the decision of the First tier Tribunal Judge and his conclusion that the court record is silent as to whether or not the Appellant attended the hearing on 1.12.06. She submitted that the Judge may have been confused about that as the Court records are US style ie the month precedes the day and it is clear from page 116 of the judicial review bundle that the Appellant was present on 1.12.06 and 15.12.06 and that the Court order was to keep him for investigations to conclude: page 117. It is also clear from page 115 that although the Court was the Magistrates court in Trincomalee, the Appellant was being kept at

Boossa camp which is high security.

12. Ms Jegarajah submitted that both reports from Dr Halari set out a detailed narrative and Appendix 2 to the report shows in the supplementary report she had his medical reports and is being prescribed medication. This coincides with his brother's evidence that he realized the Appellant was not doing anything about his case and that he went to see his GP at the end of 2015. It is consistent not inconsistent that he was seen by medical experts after he went to GP. The first Dr Halari report was sent to the GP and that prompted everything that followed.

### *Decision on error of law*

13. I informed the parties that I was satisfied that there was a material error in the decision of First tier Tribunal Walters, for the reasons set out in the second and third grounds and the submissions of Ms Jegarajah, in particular, the manner in which the Judge had analysed and reached conclusions in respect of the evidence obtained from Mr Karikalan, an Attorney in Sri Lanka and the medical evidence. I indicated that I would proceed to re-make the decision, having established that both parties were in a position to make submissions on the substantive issues.

### *Submissions*

14. I heard first from Mr Tufan who stated that his submissions would rely on the reasons for refusal letter and the Judge's reasoning but if I concluded that the contents of the court file were genuine and the consequence of lawyer to lawyer communication and that there is an arrest warrant, then the Appellant would be on a stop list and would be at risk pursuant to the CG decision in *Gj* (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). Mr Tufan submitted that the Appellant's scars alone would not put him at risk and that he was a low level person.

15. Ms Jegarajah submitted that in respect of the purported discrepancies, most of these are in the Screening Interview and this is biodata. Ms Jegarajah drew my attention to the judicial review bundle and page 217 for the substantive asylum interview at which time the Appellant was represented by different solicitors. She stated that the Appellant is from Point Pedro in the North and at page 222 there are 13 photos of the Appellant showing injuries, which were taken after his arrival in the UK. At page 229 the Appellant describes how he becomes involved with the LTTE and at pages 230-231 he talks about the end period when he was forced to go on to the front line. At page 234 he is being asked to go to India by boat from the North, which leads to him staying in a relative's

house and not registering [page 235 Q40]. At page 237 Q44 he states that the reason why he was of suspicion in the first place was because he had scarring on his elbow and this can only appear on those who have taken training and it is the end of the war. Ms Jegarajah submitted that this was the trigger and the whole reason he is placed in detention and tortured is to secure an admission from him that he is an LTTE member. He refuses to sign. There are cigarette burns on his left hand: page 239 and Q51 his nail was removed. In response to Q60 page 242 the Appellant finally signs because he has been tortured to secure that confession and see Q64 page 243. The Appellant is released on bail: Q69 and Q81 at page 248 and Mr Karihalan is his lawyer. There is reference to his home area at page 256. At page 258 in response to Q. 127 he states that he delivered weapons to the LTTE.

16. Ms Jegarajah drew attention to the fact that the current COIS report does state that those who handled weapons are of significant profile: page 7 at [2.4.12] which is based on the fact that the Home Office had a fact finding mission in June 2016. The Appellant admitted his involvement; he has delivered weapons; he has made an admission of involvement with the LTTE and was transferred to a high security prison ie. Boussa. The Appendices to *GJ* and the summary of the evidence of Rohan Gunratna, who is the Government of Sri Lanka intelligence expert, says that LTTE members were either rehabilitated or prosecuted. The Appellant was not rehabilitated he was held in a prison and only those believed to have serious involvement with the LTTE are held in prison. The Appellant has given his account in his interview and it is all consistent.

17. Ms Jegarajah submitted that this is a straightforward case seen in the context of 2008 and 2009 and the structures in place and that the Appellant falls into paragraph 356(7) of *GJ* ie. there is an arrest warrant and thus the appeal should be allowed. She also submitted that Dr Arnold makes specific reference to scarring on the elbows; that he is an expert and says it is there and it is consistent. She also sought to rely on the passage on weapons in the COIS at page 7 and the fact that the Home Office find this gives significant profile and the section on returnees, given that the Government of Sri Lanka are interested in historical membership of the LTTE and being out of Sri Lanka a long time is a trigger; returnees are questioned and they would take into account the Appellant's presentation which if questioned may well be seen as suspicious.

18. I reserved my decision, which I now give with my reasons.

#### *Decision and reasons*

19. The appeal essentially turns on whether or not the documents

obtained by the Appellant's solicitors in the United Kingdom from Mr Karikalan, his Attorney in Sri Lanka, are genuine. The correspondence between the parties is included in the bundle in support of the judicial review application regarding the Appellant's fresh claim. The letter from Greater London solicitors dated 12 November 2015 at page 123 is by way of a follow-up to a telephone conversation with Mr Karikalan and requests further information about the Appellant's case, in particular his arrest on 30 November 2006 and bail on 10 July 2008 in respect of which he was represented by Mr Karikalan. The letter requests that Mr Karikalan obtain the Appellant's file from court and provide them with a certified copy. Mr Karikalan's response is at page 109 of the bundle and is dated 4 December 2015. He confirms that he represented the Appellant at his bail hearing at Trincomalee Magistrates Court on 10 July 2008 and attaches a complete certified copy of the Appellant's Court file with an English translation.

20. The contents of the Court file comprise: (i) information to the Magistrate, which is essentially the charge of aiding and abetting terrorism activities and being a member of the LTTE and further details provided by the police dated 1.12.06; (ii) an Order from the Magistrate dated 1.12.06 to detain the Appellant in custody at the police station until 5.12.06; (iii) a further Order from the Magistrate dated 15.12.06 ordering that the Appellant be detained at Trincomalee prison until enquiries are completed; (iv) an Order from the Magistrate dated 10.7.08 granting bail to 20.11.08 and (v) and Order dated 20.11.08 ordering an arrest warrant due to the Appellant's failure to appear. There is also a copy of the arrest warrant signed by the magistrate dated 20.11.08

21. I have carefully considered the lawyer to lawyer correspondence and the certified copy of the Court file. I take judicial notice of the fact that Mr Karikalan is included in the list of lawyers registered with the Bar Association of Sri Lanka and that the details included therein are identical to those on his letter at page 109 of the bundle. In light of the fact that no challenge was brought to this evidence, which is consistent with the Appellant's account as set out in interview and that Mr Karikalan is clearly a practising Attorney who represented the Appellant at his bail hearing on 10 July 2008, I accept that the documents submitted from the Appellant's court file are genuine.

22. Paragraph 356(7)(d) of the CG decision in *GJ and Others* (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) provides:

**“(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:**

**(d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant."**

23. In light of the judgment of Lord Justice Fulford in *PJ* [2014] EWCA Civ 1011 at [41] [10 above refers] and given Mr Tufan's frank acceptance [14 above] that if the documents and arrest warrant are genuine the Appellant will be on a stop list and thus fall into a category of person found by the Upper Tribunal to be at risk in *GJ*, I allow the appeal with reference to paragraph 356(7)(d) on the basis that the Appellant has a well-founded fear of persecution if returned to Sri Lanka. The medical evidence and scarring report simply confirm that the Appellant is a victim of torture following his detention from 1.12.06 to 10.7.08.

*Decision*

24. The appeal is allowed on refugee protection grounds.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman  
2017

17 July

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Rebecca Chapman

Date 17 July 2017

Deputy Upper Tribunal Judge Chapman