



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

Appeal Number: PA/00980/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 22 February 2018**

**Decision & Reasons  
Promulgated  
On 6 March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**AA (SRI LANKA)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Bandegani, Counsel instructed by Loshana & Co Ltd  
For the Respondent: Mr Walker, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Herbert sitting at Taylor House on 26 July 2017) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a political refugee.

## **The Reasons for the Grant of Permission to Appeal**

2. Permission to appeal was initially refused by First-tier Tribunal Page on 30 November 2017 for the following reasons:

“The Judge has reached conclusions that are properly open to the Judge to reach on the evidence at paragraphs 22-24 after considering all of the evidence. The Judge did not find it credible that the appellant was at risk in Sri Lanka as the result of canvassing and campaigning on behalf of his father, when his father was an electoral candidate in the district council in 2013 but had retired peacefully without any threats or violence ever being directed at him. The Judge concluded that if the appellant’s father was not at risk, then the appellant would not be at risk. Upon that finding the asylum could only be dismissed. The grounds of appeal ran to nearly 4 pages of disagreement with what the Judge concluded dressed up as legal argument to assert that different conclusions should have been reached. It was not an error of law to find the appellant’s claim lacking in credibility.”

3. Following a renewed application for permission to appeal to the Upper Tribunal, Upper Tribunal Judge King gave his reasons for granting permission to appeal on 21 December 2017:

“The determination is very short and arguably has conflated [the] issues.

Was the appellant the subject of arrest and torture in 2013 and if so is he at risk now?

The point made as to the father in the determination seems at first sight to be a good one but does not refer to a letter from the father of 26 July 2017 which says to the contrary. The father’s evidence itself may need to be evaluated. The certification from the District Secretariat [potentially confirms] what he had to say.”

## **The Hearing in the Upper Tribunal**

4. At the hearing before me to determine whether an error of law was made out, Mr Bandegani, who did not appear below, developed three arguments. The first and principal one was that, on the risk on return, the Judge had not considered the ramifications of the appellant being accepted to be a low level supporter of the TGTE since being in the UK. At paragraph 30 of the refusal decision, it was accepted that the appellant was a low level supporter of the TGTE. This is one of the groups which is still proscribed by the Sri Lankan Government.
5. Paragraph 6.2.2 of the Home Office’s Country Policy and Information Note on Sri Lanka: Tamil Separatism, dated June 2017, cited a letter from the British High Commission in Colombo which said that membership of, or affiliation to, the de-proscribed groups was no longer regarded by the Government of Sri Lanka as terrorism or terrorist activity. The members of those groups, whether active or lay, had no reason to fear persecution as a consequence of their affiliation to the de-proscribed groups from the Government of Sri Lanka.

6. Mr Bandegani submitted that by implication the appellant's affiliation to the TGTE, a proscribed Tamil group, would be regarded by the Government of Sri Lanka as terrorism or terrorist activity, and this would have material bearing on the risk faced by the appellant on return. However, the Judge had not taken this risk factor into account.
7. Secondly, on the issue of past persecution, the Judge had failed to consider that the scarring report of Dr Lingam was clinically corroborative of the appellant's scarring having been caused in the circumstances described by him.
8. Thirdly, Mr Bandegani submitted that the Judge had misunderstood the appellant's case. On analysis there was no contradiction between the appellant's account of his own experiences in Sri Lanka and his account of what had happened to his father. The distinguishing feature was that the false case brought against the appellant had taken on a life of its own.
9. After hearing Mr Bandegani's submissions, Mr Walker conceded that the decision was legally flawed and unsafe, and he agreed with Mr Bandegani that it should be set aside in its entirety and remitted to the First-tier Tribunal for a fresh hearing.

## **Discussion**

10. The stance taken by Mr Walker is not determinative of the question of whether an error of law is made out. However, I consider that the concession was one that was reasonably open to him.
11. I do not consider that there is any merit in the argument that Judge Herbert fundamentally misunderstood the appellant's case. Judge King agreed that Judge Herbert's main reason for rejecting the core claim was a good one, at least at first sight.
12. However, I accept that the other two arguments advanced by Mr Bandegani have merit, and I consider that they are sufficient to establish that the decision is flawed due to inadequate reasoning.
13. Judge Herbert characterised the medical evidence as being equivocal. He held that the three scars observed by Dr Lingam were only "*consistent*" with his claimed history of being tortured and then hospitalised for three days. However, Mr Walker accepted that the clinical finding of Dr Lingam was that the scars were "*highly consistent*" with the mechanism of injury described by the appellant. Accordingly, the scarring report had greater independent probative value than was assigned to it by Judge Herbert.
14. At paragraph [24], the Judge drew an adverse credibility inference from the fact that there were a number of internal discrepancies in the appellant's account, including the fact that he initially said he was detained for seven days, and he then said that he had been detained for 14 days. However, Dr Dhumad had provided a psychiatric report in which he opined that the appellant was suffering from PTSD, and that he might

as a result come across as vague and inconsistent in his recall of some of the events, which is a common presentation in those suffering from PTSD. The Judge made no reference to Dr Dhumad's evidence in his findings of fact, and so he does not appear to have taken into account that the discrepancies in the account may be attributable to the appellant's PTSD.

15. On the issue of risk on return, the Judge did not refer at any point to the concession of fact made in the refusal letter that the appellant had shown himself to be a low-level supporter of the TGTE. The failure by the Judge to address the ramifications of this concession as part of his assessment of risk amounts to an error of law.

### **Notice of Decision**

The decision of the First-tier Tribunal contained an error of law, and accordingly the decision must be set aside and re-made.

### **Directions**

**This appeal is remitted to the First-tier Tribunal at Taylor House for a fresh hearing, with none of the findings of fact made by the previous Tribunal being preserved.**

**My time estimate for the fresh hearing is three hours.**

**A Tamil Interpreter will be required.**

Signed

Date 27 February 2018

Judge Monson  
Deputy Upper Tribunal Judge