



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01071/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 22 May 2018  
Extempore

Decision & Reasons Promulgated  
On 01 June 2018

Before

THE HONOURABLE MR JUSTICE GARNHAM  
SITTING AS A JUDGE OF THE UPPER TRIBUNAL  
UPPER TRIBUNAL JUDGE RINTOUL

Between

R R  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms B Jones, instructed by  
For the Respondent: Mr S Kotas, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Price promulgated on 12 June 2017 dismissing his appeal against a decision of the Secretary of State made on 18 January 2017 to refuse his claim for protection on asylum and human rights grounds. The core of the appellant's claim is that he is an ethnic Tamil from Sri Lanka who comes from a family who has involvement with the LTTE in the past. It is also his case that he has himself been arrested, detained and tortured on at least two occasions before arrangements were made by his grandmother for him to come to the United Kingdom as a student. Having spent some time here he claimed asylum.

2. The details of the claim are set out in the decision of Judge Price. It is not suggested to us that his summary of either of the appellant or the respondent's case is defective, and on that basis we see no need to set it out further, given the findings which we now make.
3. The judge did not accept that the appellant had told the truth, did not accept that he had been the victim of torture in Sri Lanka, did not accept that there was a genuine fear of return to Sri Lanka because of his activities, nor did he accept that the appellant's mental health diagnosis was as a result of the reasons he has claimed. It was not accepted either that he was, in addition, at any adverse risk on account of activities he had undertaken in the United Kingdom, on behalf of Tamil diaspora groups.
4. We consider that there are three principal thrusts set out in the grounds of challenge to the decision of Judge Price: first, that the judge failed properly to have regard to the diaspora activity and made findings which were not consistent about that; second, that he failed properly to address the evidence of Dr Izquierdo-Martin addressing scarring; and third, that the judge failed to have any regard to the evidence set out in the letter from the appellant's grandmother which had been sent from Sri Lanka.
5. Whilst there are additional grounds relating to the failure properly to address the evidence of a friend, Mr R, who provided a witness statement, and also challenges to the assessment of the appellant's psychiatric set out in the report by Dr Dhumad, these are not matters which we need to consider are necessary to us to address for the reasons we now give.
6. We consider that whilst it might have been open to the judge to reject the evidence of the grandmother, he did not address the evidence set out in her letter at all other than to record at paragraph [20] its existence. Whilst we accept that a judge does not have to address every single piece of evidence put before him or her, we do not consider that that is something which could be said in this case given that on its face the letter confirms in all material respects the appellant's account and, importantly, confirms continued interest in him on the part of the Sri Lankan authorities. We consider that this is a significant defect in the decision.
7. Further, we consider that Dr Izquierdo-Martin sets out in significant detail at paragraph 5.5.2 of his report a catalogue of scars which he notes on the appellant's back and he gives reasons as to why these are typical of the type of treatment that the appellant alleges. It is important to note also in this case that Dr Izquierdo-Martin did consider the possibility of these occurring from other sources and effectively ruled them out as not being possible. We bear in mind that it is in this case that Dr Izquierdo-Martin does refer to these scars as being typical which, in context of the Istanbul Protocol is a significant finding and goes a considerable way to indicating that the appellant had indeed been a victim of torture, something which the judge at paragraph [65] rules out of consideration in its entirety.
8. Taken together we consider that two important issues which go to the credibility or otherwise of the appellant were not properly addressed by the judge. There was a failure properly to take into account or consider potentially relevant in material

evidence and failing properly to consider the findings of Dr Izquierdo-Martin, a failure properly to discount to say why they were not relevant and need not be taken into account as being important, significant evidence of past torture, both of those matters going to the credibility of the appellant as a whole.

9. We consider also that the judge failed properly to address the material relating to the evidence relating to post-flight activities within the diaspora on behalf of the Tamil rights. We consider that whilst it might have been correct to say that it was not entirely clear where or on which website the photographs appeared, there is no proper indication that they were not, by their nature, appearing on the internet and in Tami, and so the observation that there is no evidence as to their geographical reach is not sustainable, nor is that a basis on which it could be conclude that they would not fall into the hands of the Sri Lankan authorities.
10. We have considered, as Mr Kotas urged us to do, whether the errors are material in the light of **GJ**. We consider that they are material given that the thrust of **GJ** is as to the risks on return of people who had participated or had come to the adverse attention of the Sri Lankan authorities on account of pro-LTTE activities prior to the cessation of hostilities.
11. In this case the evidence, if correct, would relate to activities which had been conducted after **GJ** which would also relate to actions on the part of Sri Lankan authorities which would clearly post-date the ending of the civil war in 2009, and also in the case of the evidence of the grandmother would indicate a continuing interest on the part of the Sri Lankan authorities. We consider that these would need to be resolved and proper findings made, but it cannot in the circumstances be said that the error is immaterial.
12. For these reasons we find that the decision of the First-tier Tribunal involved the making of an error of law and we set it aside. We consider also that given that the errors identified undermine the core of the credibility finding such that it will be necessary for the entirety of the case to be remade, and for fresh findings of fact on all relevant issues to be made. On that basis the appropriate course of action is for the matter to be remitted to the First-tier Tribunal for a fresh decision on all issues.

### **Notice of decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.
2. We remit the appeal to the First-tier Tribunal for a fresh determination on all issues.
3. The appeal must not be heard by First-tier Tribunal Judge Price

**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 his 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

Date: 25 May 2018

A handwritten signature in black ink, appearing to read 'Jonathan Rintoul', written in a cursive style.

Upper Tribunal Judge Rintoul