



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

Appeal Number: PA/01179/2020 (V)

**THE IMMIGRATION ACTS**

**Heard remotely at Field House  
On 21<sup>st</sup> January 2022**

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> February 2022**

**Before**

**UPPER TRIBUNAL JUDGE FRANCES**

**Between**

**L D  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Anzani, instructed by Duncan Ellis Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Microsoft Teams (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that I was referred to are in the bundles on the court file, the contents of which I have recorded. The order made is described at the end of these reasons.

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka born in 1988. He appeals against the decision of First-tier Tribunal Judge Aldridge, promulgated on 2 June 2021,

dismissing his appeal against the refusal of his protection claim on asylum, humanitarian protection and human rights grounds.

2. The appellant came to the UK as a student in 2011 and remained in the UK after his leave expired in January 2013. He claimed asylum on 5 February 2014 after Immigration Officers discovered him working illegally. His application was refused and his appeal was dismissed by First-tier Tribunal Judge Dickson on 24 September 2015.
3. The appellant made further submission in September 2019 which were refused for the reasons given in the refusal letter dated 30 January 2020. The appellant's appeal came before First-tier Tribunal Judge Verghis on 9 March 2020. The appellant was represented by Mr Lingajorthy. The respondent did not attend and the appellant was not cross-examined. Judge Verghis dismissed the appellant's appeal on 2 April 2020.
4. Permission to appeal was granted by Upper Tribunal Judge Sheridan on the following grounds:

“It was arguably irrational to find damaging to the appellant's credibility that no mention was made in the SEF of his feet being beaten (see paragraph 59 of the decision) when in the SEF the interviewer told the appellant that he did not need to know how the appellant was tortured and would not be asking him about it.”

5. At the appeal before Upper Tribunal Judge Stephen Smith, the respondent conceded the error described in the grant of permission and the matter was remitted to the First-tier Tribunal for hearing *de novo*. Judge Stephen Smith stated, “It was not reasonably open to the judge to hold against the appellant the fact that he did not mention the foot-based torture allegations during his asylum interview, given the interviewing officer specifically said that questions on that issue would not be asked.” The decision of Judge Verghis was set aside in its entirety with no preserved findings.
6. The appeal came before Judge Aldridge on 12 May 2021 and the appellant was again represented by Mr Lingajorthy. The respondent attended and the appellant was cross-examined. Judge Aldridge applied the joint presidential guidance note on vulnerable witnesses and recorded the appellant's oral evidence at [17] to [21]. The respondent submitted, *inter alia*, that the appellant's failure to mention the injury to his feet damaged his credibility. Mr Lingajorthy did not address this issue.
7. Judge Aldridge properly applied Devaseelan and considered the decision of Judge Dickson dated September 2015. He attached little weight to the expert report of Dr Lawrence and he did not find the appellant to be a credible witness. He considered photographs of the appellant attending demonstrations openly carrying banners and the Tamil flag. Judge Aldridge found the appellant had not demonstrated a sustained commitment to the [TGTE] such that he would be identified as someone who would be of

interests to the authorities on return. The judge concluded the appellant would not be viewed as a threat to the unitary state of Sri Lanka on account of his sur place activities and he did not fall into the risk categories identified in GJ & Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319.

8. Permission to appeal against the decision of Judge Aldridge was sought of four grounds:
  - (i) The judge's finding at [35] was unreasonable and erroneous. Having been told by the interviewing officer that he did not need to divulge how he was tortured, it was unreasonable to hold against the appellant his failure to mention being beaten on the soles of his feet [falanga]. The judge failed to take into account the guidance on vulnerable witnesses.
  - (ii) The judge's assessment of the medical evidence was flawed and greater weight should have been attached to Dr Lawrence's report.
  - (iii) The assessment of risk on return was devoid of any consideration of the returns process relating to those travelling on an emergency travel document [ETD] or temporary travel documents [TTD].
  - (iv) The judge failed to engage with the principles in HJ (Iran) [2010] UKSC 31.
  
9. Permission to appeal was granted by First-Tier Tribunal Judge Parkes on the ground the judge arguably erred in law in relying on a previously rejected line of argument which may undermine his other findings and/or reasons.

## **Conclusions and reasons**

### **Ground 1**

10. Ms Anzani submitted the judge erred in law in relying on a matter previously litigated. In his SEF, the appellant was told he would not be asked about the nature of his torture. It was therefore unreasonable for the judge to criticise the appellant for failing to mention the injuries to his feet. The method of torture and the nature of the appellant's injuries were inextricably linked. The judge's adverse credibility finding at [35] was unreasonable given the decision of First-tier Tribunal Judge Verghis was set aside on the same point. Upper Tribunal Judge Stephen Smith found that it was not reasonably open to Judge Verghis to rely on the appellant's failure to mention falanga. The appellant's answer to question 88 of the AIR had to be viewed in the context of questions 82 and 84. It was clear the appellant was struggling to give an account of his torture and his failure to give a full account of his injuries was reasonable given he suffered from PTSD and was a vulnerable witness. The judge's findings at [35] were unfair and unreasonable.

11. Mr Whitwell relied on the rule 24 response and submitted, given the appellant's previous protection claim was dismissed, the earlier findings were the judge's starting point following Devaseelan. The judge in this appeal was in a different position to Judge Verghis because there was a presenting officer at the hearing and she cross-examined the appellant on this point at [18]. She specifically asked why the appellant had not mentioned being beaten on his feet in his SEF and relied on the appellant's answers in her submissions at [23]. It was the respondent's case that it was not credible the appellant failed to mention this serious injury when specifically asked about it in his SEF in 2015. The judge was therefore seized of the matter and had to deal with the dispute between the parties. At question 88 of the SEF, the appellant was asked about his injuries not the method of torture. There was a material conflict of fact which the judge had to grapple with given the appeal was remitted *de novo* with no preserved findings. The judge considered the appellant's vulnerability in concluding the appellant's credibility was undermined by his failure to mention injuries to his feet.
12. The questions and answers in the appellant's SEF are critical to the assessment of ground 1. They are as follows:
- 75. Were you ever forced to work by your captors?  
No they didn't give me any jobs. But I cannot say as there are two women here how I was tortured.
  - 76. I do not need to know how you were tortured. I won't be asking those questions.
  - 77. What questions were you asked while you were being tortured?  
The asked me if I was reviving the LTTE in Hatton.
  - ...
  - 82. Roughly how many times were you interrogated and tortured?  
I cannot tell you how many times I was tortured.
  - 83. Was it daily, weekly?  
Sometimes there won't be any beatings for 2 days but then if drunk they will suddenly beat me. They will tie me up and put me on the table and put a hook on my back. They will tie my hands at the back of me. I hadn't (sic) have to bend my knees and they put me on table. They have tubes wrapped in cloth and hit me on the head and back.
  - 84. Were you beaten on a weekly basis?  
In the 10 places I was detained the tortures would be different you cannot say how they would torture in each place.
  - 85. Explain it to me in each place?  
What I mentioned would happen each place.
  - 86. What I meath (sic)?  
In a week about 3-4 times I would be beaten.
  - 87. In which facility?  
In the 10 places I did not know where I was staying.
  - 88. Did you sustain any injuries?

I have some on my finger nails they pricked me with needles. I had sustained some injuries in my back but have healed. In my knee I when I carry any weight I hear a cracking noise.

89. Do you suffer from any long term medical conditions as a result?  
After I came out I just wanted to preserve my life but I could not move properly. I didn't get a medical report. When I got here I got some ointment and on knee and fingernails from the pharmacy.

90. Repeat q?

I have problems with my knee, it doesn't affect me in a great deal as I couldn't carry things.

91. I find it hard to believe that you were held for 2 years, beaten 2 or 3 times a week and have not sustained any serious health conditions?

When they beat you they make sure you do not sustain external injuries it's all internal injuries. When they beat you with a wooden pole they wrap it in a cloth so you do not sustain any external injuries.

13. Dr Lawrence stated at page 11 and 12 of his report that:

He told me he was beaten with a wooden baton on his knees;  
He was kicked with booted feet;

He described falanga very accurately ie; he was beaten on the soles of his feet with a rubber stick for a few days, after which he could not walk for three months.

At page 13 Dr states:

He told me that his knees were scarred and that the (sic) crackle now when he bends them - he demonstrated this to me; I recommend a scar report.

14. Dr Lawrence also reported that when describing the sexual abuse he suffered, the appellant was very distressed, highly anxious and he went pale. The appellant stated he was abused by two or three men at a time, every three or four days. There may have been one of the interrogators present each time, but there were many other people. This happened every time he moved.

15. Judge Aldridge recorded the appellant's oral evidence at [18]:

"Mrs Nolan then turned to his asylum interview and asked why he had not mentioned being beaten on his feet in the interview. The appellant explained that the interviewing officer had not required him to explain the detail of his torture. This point was pursued further by Mrs Nolan that the appellant had described other elements but not the beating of feet and why this was so. The appellant replied that he could not remember every detail of his torture. The appellant explained that after the beating of his feet he was unable to walk for 2-3 months. It

was put to him that he did not mention this significant injury when asked in his asylum interview to describe his injuries. The appellant stated that there were issues with the interviewing officers being one of (sic) male and one female and that he doesn't know how to answer these questions because the torture was a significant part of his life and that he had not intended to avoid the question and nor did he not wish to mention it."

16. Judge Aldridge recorded the respondent's submissions by Mrs Nolan at [23]:

"Mrs Nolan argued that the appellant is not a credible witness. That he never mentioned in his asylum interview the injury to his feet which was the most serious injury in detention. That, whilst not asked to describe how he was tortured, he was asked about how many times he was interrogated and tortured and he described injuries to his back, fingernails and knees. It is simply not credible that he did not mention the injury to his feet. His credibility is damaged."

17. At [35], Judge Aldridge made the following findings:

"The previous determination must be, as mentioned above, my starting point. I have considered the appellant's screening interview, asylum interview and witness statements. The appellant claimed that he is Tamil and from Sri Lanka. This is not disputed. However, I do not find that there was any element of evidence presented that encouraged me to depart from the findings of the previous determination that the appellant was not an active member or supporter of the LTTE which brought him to the attention of the authorities. Turning to new points of evidence that have been asserted by the appellant, I find that the appellant has not demonstrated credibility in respect of his claimed two years in custody. In particular, at no point after being specifically asked at question 88 of his substantive interview, to describe the injuries that he suffered whilst in captivity, did he mention that he had injuries to his feet that meant he could not walk for two-three months. Whilst it is apparent the appellant was not asked to describe details of torture, he was asked to describe injuries and he recalled injuries to his fingers, back and knees, but not this most significant of injuries. I find this does damage his credibility."

18. I am not persuaded by Ms Anzani's submission that when question 88 is put into context with the other questions in interview, it is unreasonable to rely on the appellant's failure to mention injuries to his feet. When the totality of the appellant's evidence on this point is considered, it was open to the judge to find that this failure to mention a significant injury damaged the appellant's credibility.

19. In addition, the judge's starting point was the previous decision in which the appellant's account of detention and torture was not believed. The appellant relied on further evidence and introduced an additional element of his torture claim, falanga, which was not previously relied on. It was incumbent on the judge to deal with this point and he was not prevented from doing so because of the decision of Upper Tribunal Judge Stephen Smith. The hearing was remitted *de novo* and this point was addressed in cross-examination by the respondent and was part of the respondent's case. The appellant had an opportunity to explain and the judge gave adequate reasons for rejecting his explanation.
20. Judge Aldridge gave other reasons at [36] and [37] for why the appellant's account lacked credibility. The judge took into account the appellant's vulnerability in assessing the appellant's credibility in the round. The judge's finding that the appellant was not a credible witness was open to him on the evidence before him. There was no error of law as alleged in ground 1.

## Ground 2

21. Ms Anzani submitted the judge erred in law in failing to make a finding on whether the appellant has PTSD and his treatment of the expert evidence was incompatible with R (AM (Angola) v SSHD [2012] EWCA Civ 521. Dr Lawrence's opinion was independent and he did not take the appellant's account at face value. The judge should have given the report greater weight and made a clear finding on PTSD.
22. Mr Whitwell submitted the judge gave adequate reasons for the weight he attached to Dr Lawrence's report. The previous decision and GP records were not before Dr Lawrence and appellant's account was inconsistent with his claimed sur place activities. The judge accepted the appellant suffered from PTSD at [38] but did not accept the opinion as to cause. The judge accorded weight to the report, but not significant weight. There was no error of law in the judge's assessment of the expert evidence.
23. I find that Judge Aldridge gave adequate reasons for attaching little weight to the expert report of Dr Lawrence at [40] to [43] in the assessment of the appellant's credibility. The judge found at [41] that the diagnosis of severe depression and PTSD suggested the appellant had been subjected to a traumatic incident and he applied the presidential guidance note on vulnerable witnesses. There was no material misdirection in law as alleged in ground 2.

## Ground 3

24. Ms Anzani submitted the appellant would be returned to Sri Lanka on an ETD or TTD and he would disclose his activities in the UK and connections to the TGTE. The appellant's sur place activities would become known and

the judge's decision was inconsistent with new country guidance in KK and RS (sur place activities: risk) Sri Lanka CG [2021] UKUT 130 (IAC).

25. Mr Whitwell submitted the appellant had failed to provide evidence from the TGTE and he played no significant role in the demonstrations. On the evidence before the judge, applying the country guidance in GJ, the appellant would not be of interest to the authorities on return on account of his low level sur place activities. KK and RS was not before the judge and he could not be criticised for not taking it into account.
26. It is apparent when the decision is read a whole that Judge Aldridge does not accept the appellant's claimed support for the TGTE is genuine. The appellant's low level involvement attending demonstrations in the UK was insufficient to bring him to the attention of the authorities. The judge's finding that the appellant did not come within the risk categories of GJ was open to him on the evidence before him.
27. The decision of KK and RS was promulgated on 27 May 2021 and Judge Aldridge's decision is dated 28 May 2021. The hearing took place on 12 May 2021 and was argued by both parties on the basis of the country guidance in GJ. There was no error of law in the judge's application of GJ. The judge did not accept the appellant was of interest to the authorities prior to coming to the UK and he concluded, "I do not find there is a reasonable chance the appellant's sur place activities would also have been noted and the information would have been forwarded to the Sri Lankan border guards."
28. In any event, given the judge's sustainable factual findings, applying the current country guidance, the appellant would not be at risk on return. He is not on a stop or watch list and his limited activities in the UK were unlikely to result in him being detained on arrival even if he travelled on an ETD or TDD. There was no error of law as alleged in ground 3.

#### Ground 4

29. Ms Anzani submitted the judge failed to engage with HJ (Iran) at [45] to [52], having accepted the appellant attended demonstrations and was photographed holding a pro-Tamil banner and flag. The judge found the appellant's limited activities would not place him at risk. He did not reject the appellant's account and therefore erred in law in failing to consider whether the appellant would engage in political activities on return.
30. Mr Whitwell submitted the judge considered whether the appellant's sur place activities were an attempt to bolster his asylum claim at [49] and concluded at [52] that the appellant's profile would not warrant attention from the authorities and the appellant would not be politically active on return. This was sufficient following HJ (Iran).



31. In response, Ms Anzani disagreed with Mr Whitwell's submission on [49] and submitted the respondent had failed to deal with KK and RS. The new country guidance called into question the judge's findings about the appellant's TGTE diaspora activities. The photographs of the appellant would put him at risk. The appellant did not have to have a significant role to be of interest to the authorities. The appeal should be remitted for a *de novo* re-hearing. Ms Anzani confirmed there was no challenge to Articles 3 and 8, but these matters would also have to be reconsidered, for example in considering very significant obstacles to re-integration.
32. I am not persuaded the photographs of the appellant carrying a banner and a Tamil flag at demonstrations in the UK are sufficient to put him at risk on return following KK and RS. Any failure to refer to HJ (Iran) was not material. It is apparent from the decision that the judge did not accept the appellant's support for the TGTE in the UK was as a result of genuinely held political beliefs or that the appellant would be politically active on return to Sri Lanka.

### Summary

33. Accordingly, I find there was no material error of law in the judge's decision promulgated on 2 June 2021. I dismiss the appellant's appeal.

### **Notice of Decision**

#### **Appeal dismissed**

#### **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.**

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 25 January 2022

**TO THE RESPONDENT**

## **FEE AWARD**

As I have dismissed the appeal, I make no fee award.

**J Frances**

Signed  
Upper Tribunal Judge Frances

Date: 25 January 2022

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## **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

**5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.**

**6. The date when the decision is "sent" is that appearing on the covering letter or covering email.**