



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

Appeal Number: PA/01909/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 December 2021**

**Decision & Reasons Promulgated  
On 13 January 2022**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**JM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Anzani, Counsel, instructed by Nag Law Solicitors  
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

**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.

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 21 April 2021 of First-tier Tribunal Judge Richardson which refused the appellant's protection and human rights claims.

### Background

2. The appellant is a citizen of Sri Lanka, born in 1986. He is now 35 years old.
3. The appellant came to the United Kingdom on 31 January 2012 as the dependant of his wife. The couple had leave to remain until 3 September 2015. After their leave expired the appellant claimed asylum on 2 March 2016.
4. On 18 September 2016 the appellant and his wife had a son, E.
5. The respondent refused the asylum claim on 20 February 2019. The appellant appealed against that decision to the First-tier Tribunal.

### First-tier Tribunal Decision

6. The core of the appellant's claim for protection was that, as a result of a friendship with a Tamil who was involved with the LTTE, the appellant began to support the Tamil cause. The appellant agreed to assist his friend by carrying documents through security checkpoints as he would be under less suspicion as a Sinhalese. The appellant maintained that he and his friend were detained in September 2008. The appellant was kept in detention for two months and severely mistreated. His friend disappeared. The appellant supported his friend's parents in making a report about what had happened to the Lessons Learned and Reconciliation Commission (LLRC) in 2011. In November 2011 the authorities went to the home of the appellant's parents and indicated that if he did not retract the statement given to the LLRC he would face difficulties. The appellant went into hiding and used an agent to leave the country. In 2015 his family in Sri Lanka were shown an arrest warrant and informed that a court case had been opened against the appellant.
7. The First-tier Tribunal did not find the appellant to be a credible witness, giving a number of reasons for this conclusion in paragraphs 35 to 58 of the decision. In paragraph 39 the judge did not find it credible that the appellant would take the risk of assisting his Tamil friend by transporting documents. In paragraph 41 the judge did not find it credible that after two months of severe mistreatment the appellant did not seek any medical treatment on release and provided no medical evidence on his mistreatment. In paragraph 45 the judge found that the appellant's claim of having made a report to the LLRC was undermined by the fact that he did not do so until July 2011 when his detention occurred in 2008.
8. In paragraphs 51 to 55 of the decision Judge Richardson set out why he did not accept that an arrest warrant had been issued or that there was a court case against the appellant. The evidence before the First-tier Tribunal

was that a Sri Lankan lawyer, Mr Rathwatte had obtained copies of the court documents and attested that they were genuine. In response, the respondent provided a document verification report (DVR) dated 8 July 2019 which stated that the appellant's documents were not on the court file. This DVR, however, indicated that the wrong reference number had been used by those inspecting the court file. The appellant provided a further verification letter dated 26 February 2020 from a second a Sri Lankan lawyer, Mr Paranamana stating that he had seen the documents relied upon by the appellant on the court file. On the day of the hearing before the First-tier Tribunal, the respondent provided a second DVR dated 22 July 2020 which referred to the correct court file number shown on the appellant's documents but stating that "There were no records found pertaining to Court number 01." In paragraph 55 the First-tier Tribunal Judge placed weight on the two DVRs as showing that the appellant's documents were not genuine.

9. In paragraph 56 the First-tier Tribunal gave reasons for placing little weight on the psychiatric evidence as it suggested that the appellant's diagnosis of PTSD, depression and anxiety were not due solely to his experiences in Sri Lanka but also to difficulties with his accommodation in the UK, coming from an abusive background and the uncertainty of his immigration position.
10. In paragraphs 59 to 62 the First-tier Tribunal judge considered the appellant's Article 3 and Article 8 ECHR claims. He found that the Article 3 medical claim was not made out and, giving brief reasons, found in paragraph 62 that the Article 8 ECHR claim should be dismissed.

### Discussion

11. The parties were in agreement before me that all grounds were arguable where the decision granting permission to appeal dated 28 May 2021 did not, either in the body of the decision or in the formal notification of permission being granted, indicate that permission was granted on limited grounds; Safi and Others (permission to appeal decisions) [2018] UKUT 00388 (IAC) applied.
12. Ms Cunha also helpfully indicated at the outset of the hearing that the respondent accepted that the First-tier Tribunal materially erred in the Article 8 ECHR appeal in failing to consider the evidence concerning the developmental difficulties of the appellant's child. She also conceded a material error in the decision on the Article 3 ECHR medical claim as the evidence concerning the appellant's diagnosis of PTSD had not been correctly assessed in that regard, even if it had not been found to support the asylum claim. Ms Cunha accepted that these parts of the decision should be set aside to be remade afresh.
13. The respondent defended the remaining grounds which challenged the credibility findings set out above. The appellant's strongest challenge was brought against the findings of the First-tier Tribunal on the court

documents relied upon by the appellant, in particular the weight placed on the respondent's DVRs. I found that there was merit in this ground. The judge placed weight on the respondent having conducted two checks on the court records; see paragraph 55. There is no indication, however, of why the judge considered that the first DVR which appeared to show that the wrong court file had been checked should carry any weight. Further, the assessment in paragraphs 51 to 56 does not indicate whether the verification reports from Mr Rathwatte and Mr Paranamana were taken into account or why they carried no weight. Also, the judge does not indicate what he made of the second DVR where it did not state merely that the appellant's documents were not those in the court file consulted but that there were "no records for "Court number 01", which was, at the least, ambiguous and accompanied by an absence of detail as to how the checks were made. Where these potentially material aspects of the evidence on the DVRs and court documents are not addressed in the reasoning, it was my judgment that the conclusion that weight attracted to the DVRs was not sustainable.

14. As this error concerned evidence that had the potential to be determinative of the protection claim and formed part of the holistic credibility assessment, I concluded that the credibility findings on the protection claim would also have to be set aside to be remade afresh.
15. Where that was so it was not necessary to address the other challenges to the credibility findings.
16. All material parts of the decision are set aside and must be remade de novo. It is therefore appropriate for the remaking to take place in the First-tier Tribunal.

## **Decision**

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.

The remaking will take place in the First-tier Tribunal.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 23 December 2021