



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

Appeal Number: AA/01066/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 18 December 2014**

**Determination**

**Promulgated**

**On 9 January 2015**

**Before**

**THE HONOURABLE MRS JUSTICE CARR  
DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**ARULAMBALAM KATHIRESAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Lewis, Counsel, instructed by Theva Solicitors  
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal brought by the Appellant against the First-tier Tribunal Judge's determination dated 19 June 2014 where he dismissed an appeal against the Secretary of State's decision to remove him as an illegal entrant and a person subject to administrative removal under section 10

of the Immigration and asylum Act 1999. Before us, as he was below, the appellant has been represented by Mr Patrick Lewis. We record at the outset our grateful assistance for his helpful oral and written submissions.

2. The appellant is a national of Sri Lanka born on 28 May 1965 and therefore is now some 49 years old. He claimed to be a refugee whose removal from the United Kingdom would breach the United Kingdom's obligations under the Refugee or Person in Need of International Protection Qualifications Regulations 2006. Alternatively he claimed to be entitled to be granted to humanitarian protection in accordance with paragraph 339C of the Statement of Changes in Immigration Rules HC 395 (as amended). Additionally it was said that his removal from the United Kingdom would breach the United Kingdom's obligations under the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms (with particular reference to Articles 2 and 3).
3. The Secretary of State issued her refusal decision in a lengthy and reasoned letter dated 4 February 2014. In essence she found that the appellant did not qualify for asylum nor the grant of humanitarian protection. Nor would Convention rights be breached if he was returned to Sri Lanka. She did not consider his account of his arrest and his detention in Sri Lanka to be credible. She considered the risk on his return and the country guidance case of **GJ and Others (Post civil war returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** ("GJ"). The appellant was not within a risk category nor was he on a stop list engaging any of the identified risk factors.

### **The hearing and determination**

4. The appellant did not give evidence below. This is said to be because of the unchallenged psychiatric evidence before the Tribunal to the effect that there would be a risk of further deterioration in his mental health due to intense anxiety and fear when exposed to reminders of traumatic events.
5. In a careful and lengthy judgment the First-tier Tribunal Judge in his judgment went through the following steps. He set out the burden and standard of proof. He moved on to summarise the appellant's claim as set out in his asylum screening interview of 22 July 2009, his asylum interview record of 25 May 2011 and his statement. As recorded in the Reasons for Refusal Letter the broad background was that the appellant is a Hindu. He was a fisherman. He married on 8 March 2001 and last saw his wife in December 2008. They have a daughter together who was born in August 2006. His claim is to the effect that the government in Sri Lanka suspects him of working for the LTTE. He has been arrested three times, in 1997, 2008 and 2009. In 1997 he was working in an LTTE controlled area. He stayed longer than usual. He was arrested with his brother, detained and taken to prison. He began assisting the LTTE in 2006. He had been carrying ammunition on the boat when an engine broke and he was

stopped by a navy ship. He was detained again and questioned. He left Sri Lanka for Greece. He did not know exactly when, but was arrested in Greece. Indeed his entire group was arrested. Fingerprints were taken and he was returned then to Sri Lanka.

6. He was next detained on 19 January 2009. The CID investigated. They handcuffed, blindfolded him and placed him in a van. He was detained, on one version of events, for ten days and severely tortured. He was asked about being a member of the LTTE, something which he initially denied but then went on to confess. He said variously he was then detained for some two months. His uncle, he says, arranged for his release.
7. On 1 April 2009 he was handed over to his uncle who had paid 4 lakhs for his escape to the CID and 1 lakh to another group. He then stayed with a family on a coconut farm for some three months before leaving Sri Lanka for the United Kingdom.
8. The First-tier Tribunal Judge went on to set out the appellant's immigration history, including the fact that he was encountered by Kent Police on 26 July 2009 having been found under a lorry. He was served notice of a person liable to removal and considered an illegal entrant under Section 33(1) of the Immigration Act 1971 (as amended). His fingerprint results showed that he had previously been in Greece. Removal directions were set for Greece but cancelled after a judicial review claim was lodged.
9. The First-tier Tribunal Judge went on to record the respondent's reasons for refusal and then also to set out the grounds underlying the appeal before her.
10. Having set out the material background, the First-tier Tribunal Judge went on to make detailed findings of credibility and fact. We refer in particular to paragraphs 21 through to paragraph 32 of the determination.
11. Under Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 she was obliged to take into account as damaging the claimant's credibility any behaviour to which that section applied. On the appellant's own evidence he had travelled both to Greece and to France but had failed to take advantage of a reasonable opportunity to make an asylum or human rights claim. Thus the judge found that his credibility was damaged under Section 8(4) of the Act. To this, whilst initially there was a challenge, there is before us now no challenge.
12. The First-tier Tribunal Judge went on to find that the appellant's credibility was further undermined by inconsistencies and implausibilities in his account which were cumulatively significant. She did not find as credible his account as to the fear of what might await him in Sri Lanka or as to the threats leading to his travel. The inconsistencies are set out in paragraphs 24 and 25 in particular of her judgment. We note that no challenge is

made at all to the judge's reasoning as to or reliance on the inconsistencies identified in paragraphs 24 and 25.

13. The First-tier Tribunal Judge went on to deal with the available report on scarring, holding that the mere existence of scars did not indicate that the injuries had been sustained in the manner alleged. Given the prior lack of credibility on the part of the appellant, the report was of no assistance. Again there is no challenge to this approach taken by the First-tier Tribunal Judge.
14. The First-tier Tribunal Judge then went on to acknowledge that there was objective evidence that in certain circumstances release on the payment of bribes in Sri Lanka was possible. However, on the facts here, such a version of events was not credible, not least since this was a second release of the appellant in circumstances where the appellant was not merely suspected of activity with LTTE. On his own version of events he had actually admitted such involvement and indeed signed a statement to that effect.
15. The First-tier Tribunal Judge then went on to deal in detail with the psychiatric report of Dr Dhumad relied upon by the appellant. She recorded the fact that the appellant had been examined by Dr Dhumad in June 2014, was found to be depressed, withdrawn and slow but having no evidence of thought disorder, delusions or hallucinations. The report concluded that there was clear evidence of post traumatic stress disorder symptoms, that the appellant was not able to recall some details due to poor concentration but there was no evidence of significant memory problems.
16. At paragraph 30 of the judgment the judge proceeded. Given the nature of this appeal we set it out in full :

“The psychiatric report paints a picture of the appellant who is suffering from PTSD and suicidal ideation if he were to be returned to Sri Lanka and also of an individual who is unfit to give evidence at any court hearing or indeed unfit to fly. However, I note in the appellant's own witness statement (paragraph 53) he states that after his release from detention in October 2009 he participated in political rallies held in London condemning the Sri Lankan government's human rights violations and its inhuman treatment of IDPs and continued to participate in protests and that during 2013, he made logistical arrangements for a number of rallies and events, held in London. He participated in Remembrance Day events and Heroes Day events, held annually in London. He also made logistical arrangements for these events (promoting the event, volunteer recruitment, setting up chairs and tables, providing refreshments, crowd control, parking and security and transport arrangements). I find that if the appellant was suffering from his PTSD which he purports to the extent that he has intrusive memories, nightmares and has avoidance of activities and

situations reminiscent to torture (paragraph 9, page 10 psychiatric report) to the extent that he stated that he had been avoiding going out and avoiding watching violent scenes on television as it made him anxious and frightened and that he had been scared of officers in uniform such as the police, ambulance and army that he looks around all the time because of his fear he has been followed up by the Sri Lankan intelligence, he has been feeling depressed, he has been in low mood, lacks enjoyment and feels lethargic and is hopeless and has poor concentration (page 10 psychiatric report) this is in direct contradiction to his organising events to highlight the continued abuses by the authorities in Sri Lanka against the Tamil separatist movement.”

17. She then went on to deal with the fact that the psychiatric report mentioned the appellant taking overdoses, having been admitted to hospital in March 2013. She highlighted the fact that the medical notes available for that attendance did not refer to any overdose at all. Moreover the medical records for that occasion recorded the fact that the appellant had apparently said he was not personally actively involved in fighting but had witnessed a lot of war experiences. No mention of severe torture or detention was recorded in the medical records for that occasion.
18. Having made all of these findings, the First-tier Tribunal Judge went on to conclude as follows:

“32. Due to the conflicts in the appellant’s accounts and what has been said to the various medical personnel from time to time and the appellant’s own statements as to his actions in the United Kingdom I place little or no weight upon the psychiatric report as corroborative evidence of his treatment in Sri Lanka. I note that the report from the South London and Maudsley NHS Trust under the heading “Impression” stated

‘This gentleman appears to be suffering from a depressive episode with PTSD type features triggered by ongoing uncertainty in his immigration status. He appeared to have suffered a dissociative episode yesterday which appears to have recovered from. There are no thoughts or plans to harm himself currently.’

Whilst I accept that the appellant may be anxious and concerned about his return to Sri Lanka as a failed asylum seeker I do not find on the evidence before me that there is anything to show that he has suffered the treatment he purports at the hands of the authorities in the past.”

19. In conclusion she found that the appellant had fabricated his story. Whilst he might be suffering certain psychological problems due to the thought of being returned, those problems were not linked to any ill-treatment that

he had suffered. Thus the appeal on asylum, humanitarian protection and human rights grounds failed.

This appeal

20. Before us Mr Lewis for the appellant raises three central grounds of appeal. Firstly, it is said that the judge materially erred in law in failing adequately to consider the psychiatric evidence of Dr Dhumad. It is said that the rejection of that evidence was a matter of speculation only. It was wrongly rejected for what were in essence no more than minor discrepancies. Moreover it is said that the inconsistencies found between the appellant's political activities and the psychiatric evidence advanced was something not explored the hearing. It is also said that the First-tier Tribunal Judge was wrong to conclude that the appellant did not mention severe torture in Sri Lanka nor the detentions he purportedly experienced. Again it is said that that error was material. It is also said that the errors made were highly relevant to the assessment of the appellant's case on Article 3. The appellant argued that his removal would amount to a breach of Article 3 on the basis of his risk of suicide (see **YNZ (Sri Lanka) v Secretary of State for the Home Department [2009] EWCA Civ 362**).
21. Secondly, it is said that the First-tier Tribunal Judge made a material error of law in failing to consider the risk facing the appellant arising from his diaspora activities in the United Kingdom. Reliance is placed on **GJ** and in particular on the risk category identified in paragraph 7A thereof:
- “(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:
- (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.”
22. What is said is that the First-tier Tribunal Judge did not reject the appellant's evidence in paragraph 53 to which we have already referred. On that basis she ought to have found that the appellant either was or would be perceived to be a threat to the integrity of Sri Lanka and fall within the risk category identified in **GJ**.
23. Thirdly, it is said that the First-tier Tribunal Judge made a material error of law in failing to have regard to the country guidance in **GJ** : in particular the finding at paragraph 28 was at odds with that guidance. In **GJ** it was accepted that it was possible to use bribery as a method of release and

that the seriousness of the charge would not be an impediment to any such activity.

24. For the Secretary of State in essence it is said that the First-tier Tribunal Judge directed herself appropriately. The dismissal and consideration of the psychiatric evidence was an exercise adequately carried out.

### Ruling

25. We remind ourselves at the outset that an appeal to this Tribunal lies only on the basis of a material error of law (see Section 11 of Tribunals, Courts and Enforcement Act 2007 and for example **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982**).
26. We turn to address the first ground of appeal, namely the allegation that the judge failed adequately to consider the psychiatric evidence. We reject this criticism. Firstly, the psychiatric report was based primarily on the appellant's factual account of events. Dr Dhumad was not in a position to make a credibility assessment. His report was based on what the appellant told him and little more, that itself being based on a single interview carried out on a single day in June.
27. The appellant's criticism also in our judgment underplays what the First-tier Tribunal Judge held at paragraph 30. Her reasoning was not mere speculation as to the therapeutic or non-therapeutic nature of protesting against oppressors, but involved reliance on activity that necessitated going out, something which the appellant was supposedly to avoid, that necessitated exposure to officers in uniform, something of which he was supposedly frightened, and was broadly inconsistent with feelings of lethargy, hopelessness poor concentration as set out in the psychiatric report. We can identify no material error of law.
28. Additionally the criticism in our judgment ignores the fact that in paragraph 32 of the determination the dismissal of any weight being placed on the psychiatric evidence was based on three specific planks: the conflicts in the appellant's accounts, conflicts as to what had been said to various medical personnel from time to time and the appellant's own statements as to his activity in the United Kingdom. This was sound reasoning with which we see no good reason to interfere.
29. As for mention of torture, all that the First-tier Tribunal Judge was doing in paragraph 31 was recording the fact that the appellant did not mention torture on admission to hospital in March 2013, rather than in any failure to mention torture elsewhere for example to Dr Dhumad.
30. We turn finally to the question of suicide risk and Article 3. There was some evidence of suicide risk (as the First-tier Tribunal Judge herself specifically identified). However, we note that the evidence of such risk was based essentially in the psychiatric report of Dr Dhumad. That view

and the evidence there was premised on what appears to have been a factual inaccuracy. It appears that Dr Dhumad was under the impression that there was an admission to hospital on 10 March 2014 following an overdose. It appears that the appellant in this regard gave Dr Dhumad both a discrepant account as to the nature of the incident and as to the date. The relevant hospital record referred only to a dissociative episode on 10 March 2013 (not 2014) leading to falling over in the street. Dr Ghosh, the psychiatrist examining the appellant on 10 March 2013, recorded that on that occasion the appellant had no thoughts or plans to harm himself currently.

31. In our judgment, on the question of suicide risk, the First-tier Tribunal Judge, having stated at paragraph 30 that she placed little or no weight on the psychiatric evidence, implicitly went on to reject the assertion of suicide. There was no risk of army torture, that being the risk and the threat against which the risk of suicide arose.
32. Turning to the second ground of appeal, namely the failure to consider the risk arising from diaspora activities in the UK, it is right to say that the judge did not deal with this risk in terms. However, we do not consider any error in this regard to be material. First, we do not accept that the fact that the First-tier Tribunal Judge relied on the existence of activities as outlined in paragraph 30 of the judgment as meaning that she was then obliged to conclude that the appellant's accounts of activities had to be accepted in every respect at face value. We have considered carefully paragraph 53 of the appellant's witness statement. The evidence there is general at its best. There is no particularisation of which rallies, what dates or what locations (apart from London being mentioned on one occasion). Nor is there any supporting evidence as to the precise nature of the appellant's involvement in the rallies and events to which he there refers.
33. This evidence suggests that the appellant's activities went beyond mere attendance. He was involved in some logistical arrangements, for example, setting up chairs and tables. In our judgment, taking this evidence at its highest and accepting it at face value, there is nothing to suggest that his activities come close to making him an activist working for separatism or an activist destabilising the unitary state, as opposed to somebody simply joining in protests against abuses and commemorating martyrs.
34. In short, we do not find that it can properly be argued, even accepting the appellant's own evidence, that he either played a significant role or could be perceived or would be perceived as playing a significant role in relation to post conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.
35. So for those reasons, whilst the judge did not consider this particular aspect in terms, we do not consider it to be a material failure.



36. The third ground of appeal, as we have identified, relates to the findings of the First-tier Tribunal Judge in relation to bribes. It is wrong to say the First-tier Tribunal failed to have regard to the country guidance in **GJ**. Whilst she did not expressly refer to that authority in the context of his findings, she did in terms refer to the fact that there was in existence objective material showing that in certain circumstances release on payment of a bribe could be facilitated (see paragraph 27 of the determination).
37. In our judgment she was fully entitled to find on the facts of this case that the appellant's version of events as to the payment of bribes to secure his release in circumstances where it was not just a question of him being on a wanted list, but in circumstances where he was being arrested for a second time and had admitted his past history and involvement, having signed a statement to that effect. The credibility of such an assertion, independent but taking into account the relevant country guidance, was something on which the judge was entitled to reach a conclusion.
38. For all these reasons, despite the able submissions of Mr Lewis, we dismiss the appeal.
39. The First-tier Tribunal Judge did not make an anonymity direction. We have not been asked to and in the absence of any explanation as to what good reasons there might be we do not make such a direction.
40. We should not conclude without commenting that there has been new material put before us which has not been relevant to our consideration in the light of our finding that there has been no material error of law. We wish to make it clear that we make no comment at all on the merits of any fresh claim that might be made in reliance on any such additional or fresh material.
41. But for the reasons we have given, (in the absence of any material error of law) the judgment below stands.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed

Date

The Honourable Mrs Justice Carr

### **TO THE RESPONDENT**

We have dismissed the appeal and therefore there can be no fee award.

Signed

Date

The Honourable Mrs Justice Carr