



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)**

**APPEAL NUMBER: AA/01616/2014**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On: 23 July 2015**

**Decision and Reasons Promulgated  
On: 11 August 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MAILER**

**Between**

**MR SINTHUJAN THANABALASINGAM  
NO ANONYMITY DIRECTION MADE**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Ms B Jones, counsel (instructed by S Satha and Co)**

**For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The appellant is a national of Sri Lanka, born on 6 January 1987. His appeal against the respondent's decision dated 21 February 2014 to refuse to grant him asylum and to remove him from the UK was dismissed by the First-tier Tribunal Judge in a decision promulgated on 13 May 2015. The Judge found that the appellant's claim for international protection lacked credibility and had been fabricated around known facts to match the risk categories within case law. His claim that there is an arrest warrant for him and that he has suffered arrest and detention in the past has been supported by documents which he stated had been provided by his father.
2. By reason of discrepancies, however, the Judge did not accept as credible either the information on the documents relied upon or the appellant's account. Nor was there

any reasonable explanation for his failure to claim asylum instead of remaining in the UK from August 2010 until December 2013 with a Tier 4 visa and applying for an extension, when he now claims that he was unfit to study because of mental problems arising from ill treatment in Sri Lanka [70].

3. Moreover, the fact that he had cuff marks on his wrists and other scars is not determinative of the fact that these were sustained in the way that he claimed. The fact that Dr Goldwyn did not consider or explore with him the infliction of injury by proxy is a gap in her report [72].
4. Nor did the appellant fall into a risk category identified in the country guidance case of GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 319 (IAC). There was no real risk that he would be on a stop list or that he is the subject of a Court order or arrest warrant [73]. There was no risk that he would be on a watch list or monitored on return [75]. The attendance at demonstrations in the diaspora alone is not sufficient to create a real risk that he would attract adverse attention on return.
5. His Article 8 (private life) appeal was also dismissed.
6. On 12 June 2015, First-tier Tribunal Judge Reid granted the appellant permission to appeal to the Upper Tribunal: It is arguable that the Judge's conclusions on the documentary evidence and on the appellant's credibility lacked reasoning and omitted consideration of various material matters.
7. Ms Jones, who had not represented the appellant before the First-tier Tribunal, relied on the detailed grounds of appeal prepared by counsel who had represented him there.
8. Ms Jones referred to paragraph 52 where the Judge found that the appellant's account of keeping in touch with his parents in Sri Lanka was inconsistent with the fact that his parents are kept under surveillance.
9. However, his account was not that his family were kept under surveillance but that the authorities had monitored the house on one occasion. Accordingly, his having maintained contact with them was not inconsistent as he had never contended that the family were under surveillance as such.
10. In that respect, counsel who represented him before the First-tier Tribunal stated in the permission application that his record of proceedings demonstrated that the appellant made it clear that the authorities were outside of his house on one particular occasion, not that the authorities had placed the appellant's family under surveillance.
11. Ms Jones amplified that submission and referred to the appellant's witness statement (paragraph 25) which did not mention general surveillance. The house was visited on one occasion.
12. The Judge had referred to the fact that the appellant had remained in the UK for a period of over three years before making his claim, not keeping an appointment to claim asylum, but finally making it on 23 January 2014. Ms Jones submitted that the appellant had sought to deal with the contention in paragraph 28 of his witness

statement, but that the Judge had not engaged with that at all. No reasoned explanation was given.

13. She submitted that the Judge's handling of the medical evidence amounted to a material error of law. The Judge found that the clinical findings of Dr Goldwyn were undermined by the fact that she had not commented on the appellant's delay in claiming asylum.
14. It is contended that that delay had no relevance to the findings of the independent medical expert, who had to consider clinical causation and consistency of the scarring in accordance with the Istanbul Protocol. Failure to comment on the delay has not been shown to have undermined the clinical corroborative value of that medical report, including the mental health issues.
15. At paragraph 53 of the determination, the Judge found that the weight to be attached to Dr Goldwyn's report was undermined by the fact that the appellant did not in his witness statement explain that he suffered from ongoing symptoms consistent with PTSD. He stated that he had had headaches and that his depression started ten months before. It is submitted that this was irrational.
16. At paragraph 57 of the determination, the Judge found that the report of Dr Persaud was poor and superficial and was predicated upon an acceptance and a recital of the appellant's account. It is however contended in the grounds that Dr Persaud made it clear that he had reached his conclusions based on a clinical examination of the appellant and the sources that he examined were referred to. The doctor had to take the history from the appellant and make relevant clinical findings. No particularity was given as to why the report was poor or why she considered his analysis of the documentation he had before him was simply based upon an account of what the appellant told him.
17. Ms Jones further submitted that the Judge's finding that the appellant would not be targeted if returned was not properly reasoned. She stated at paragraph 59 that younger persons do tend to attract more adverse attention but that the claimed risk profile of the appellant's father, if credible, could reasonably have expected to have brought him to the adverse interest of the authorities. Accordingly, she found that the appellant's family, including the appellant, his father and siblings, were not a risk factor on return.
18. However, the Judge did not consider or engage with paragraphs 26-27 of the appellant's witness statement. His sister was released pursuant to a bribe. His brothers have both disappeared. The fact that the father alone has been of no interest does not mean that the appellant's other family members, including the appellant, would not be of such interest.
19. The seventh ground of appeal attacked the Judge's finding that Dr Goldwyn's report was undermined by the fact that she had failed to consider SIBP. During the submissions before the First-tier Tribunal, counsel had submitted that a doctor could not consider SIBP, nor could the Tribunal, unless "presenting features" exist. Neither the respondent nor the Tribunal had particularised the existence of any such feature.

20. Nor did the Judge provide any reasoning for the finding that the appellant had not satisfactorily explained the alleged discrepancies raised by the respondent in the decision letter regarding his assistance to the LTTE, namely, by facilitating communication.
21. Ms Jones further submitted that the Judge did not attach any weight to the documents produced by the appellant because of discrepancies in the dates highlighted in the reasons for refusal [61]. Those discrepancies were said to go to the core of the account, constituting matters which the appellant could reasonably have been expected to have recall or say that he could not recall when he was interviewed.
22. However, she submitted that the appellant in his witness statement did not merely state that he was confused in the detailed witness statement but provided explanations for the alleged discrepancy. No reasoning has been provided for rejecting his account.
23. More significantly, there has been no assessment of the verification letter from Mr Iman which itself constitutes a material error of law. In that respect, the document referred to as "the receipt of arrest" had been independently verified by Mr Iman, an attorney in Pakistan. The Judge did not engage with that evidence set out in the respondent's bundle at D1-D2. That evidence Ms Jones contended was relevant to any assessment of credibility.
24. At D1 there is a document headed "Ministry of Defence, Public Security, Law and Order." A "Receipt on Arrest" form at the identified police station setting out the name of the arrestee (the appellant) stating his address and the date and time of that arrest was also provided. The reason for the arrest was stated to be 'for helping communication facilities with terrorists'. The arresting officer's name and police station are also set out.
25. Ms Jones also referred to the court records produced in the respondent's bundle at E1-E2. This shows that the appellant was produced as a suspect and was arrested on suspicion under the Terrorist Act. This is in the magistrate's court, Colombo. It is stated in the Court record that the appellant was arrested at an operation conducted by the army on 6 August 2009. Permission was sought to detain him for interrogation. That was granted and his detention was ordered until 20 November 2009. The date of that order was 10 August 2009.
26. On 20 November 2009, both the complainant and the appellant were produced at Court. Permission was again sought to detain him as inquiries had not been completed. He was ordered to be detained until 15 February 2010.
27. On 15 February 2010 he was bailed on condition that he signed in at the Colombo Terrorist Investigating Unit every Sunday. He was released on bail in the amount of Rs.100,000. Sureties were accepted.
28. Ms Jones submitted that all these documents were verified by the attorney, Mr Iman. However, the Judge did not mention the fact of their independent verification by the attorney at all.

29. She further submitted that the First-tier Tribunal's adverse credibility findings regarding alleged discrepancies were based on what was stated in the reasons for refusal letter. However, no independent reasoning was given as to why she favoured the respondent's interpretation of his account and not the appellant's own explanation as to the alleged discrepancies. The Judge had found that the appellant had been able to state the reasons set out for his arrest when he attended the interview. He did not repeat the contents of the receipt of arrest and added information not included in that receipt. Those were said to be discrepancies which undermined the weight to be attached to those documents.
30. However, so far as those discrepancies are concerned, no regard was had to the fact that at the date of interview the appellant was in a state of confusion and panicked, having regard to his vulnerability which he claimed to have suffered following torture. No allowance or consideration was given to that when by considering the evidence as a whole.
31. Nor did the Judge pay proper regard to the letter written to the appellant from a relative. In accordance with the country guidance case, it is made clear that those with LTTE family affiliations or other affiliations may be at risk on return to Sri Lanka. The Judge has misinterpreted the country guidance.
32. She submitted that the Judge did not adequately engage with paragraphs 308 of GJ (Sri Lanka), *supra*, which noted that returnees can be expected to be asked about any previous LTTE affiliation or any family links to the LTTE. The Judge did not engage with the fact that the appellant is likely to be asked questions in this regard. The Judge had accepted that the appellant was involved in sur place activity [67].
33. Nor did the Judge properly consider Appendix C in GJ (Sri Lanka), *supra*, which was concerned with the questions that the appellant might be asked on his forced return to Sri Lanka. Those questions asked and the answers that would be provided by him demonstrate that he will be deemed to be of sufficient threat to the Sri Lankan authorities' conception of a "unitary state" and will be perceived to be involved in significant post war separatism when considered against the background of his own LTTE profile.
34. This compounds the Judge's errors of law in relation to the medical evidence which undermined her assessment of the appellant's credibility and consequently the risk on return.
35. Ms Jones referred to paragraph 14 of Appendix C of GJ. When interviewed at the airport, passengers were required to supply the address where they intended to live in Sri Lanka. The evidence was that quite a few cases showed that the police or army had gone to confirm that address. The addresses are now checked within seven days following arrival.
36. The evidence presented confirmed that an international agency had told a Mr Lewis, who submitted a statement before the Tribunal in GJ, that the questions included whether the returnee had any links to the LTTE and what they had done abroad.
37. It is also submitted that the Judge failed adequately to consider paragraph 50 of the decision of MB (Sri Lanka) [2014] EWCA Civ 829. There, Lord Justice Underhill

emphasised that an appellant need not be involved in post war separatism in a significant manner to be at risk on return to Sri Lanka. The First-tier Judge found that the appellant would not be at risk as he had not played a significant role in post-conflict separatism within the diaspora and would thus not be considered to be a threat to the integrity of Sri Lanka.

38. Ms Jones submitted that counsel had in his skeleton argument before the First-tier Tribunal had referred the Judge to paragraph 50 of MB, namely, that even apart from cases falling under heads (b) – (d) in paragraph 356(7) of GJ there may, although untypically, be other cases where the evidence shows particular grounds for concluding that the government might regard the appellant as posing a current threat to the integrity of Sri Lanka as a single state, even in the absence of evidence that he or she has been involved in diaspora activism. She submitted that the failure by the Judge adequately to consider paragraph 50 of MB is a material error of law.
39. On behalf of the respondent, Mr Tufan relied on various authorities including Gheisari v SSHD [2004] EWCA Civ 1854 (Court of Appeal). At paragraph 14, Lord Justice Sedley stated that he came to the view after much hesitation that the passage which saved the adjudicator's decision from a deficiency of reasons is the single passage quoted from the judgment ending "his evidence lacks the ring of truth." That went beyond simply echoing the secretary of state's incredulity. This expressed the adjudicator's own evaluation of the veracity of the account given. Slender though it is, it represents his independent judgment on the critical matter upon which the issue of risk to the appellant hinged, namely whether he had been arrested, ill treated and liberated as claimed. It would have been far better if the adjudicator had addressed his mind to giving proper and more detailed reasons in relation to the issue that lay at the heart of the case, but the reasons are in that case "just sufficient" [17] (per Lord Justice Thomas).
40. Mr Tufan submitted that at its highest, the appellant did not come into the current categories of persons at real risk of serious harm on return to Sri Lanka as set out in paragraph 7 of the head note in GJ. Headnote 7(a) relates to those who are perceived to have a significant role in relation to post conflict Tamil separation within the diaspora. That did not apply to the appellant. Nor did headnote 8, which refers to the authorities in Sri Lanka making an approach based on sophisticated intelligence. Accordingly, he submitted that any alleged errors of law would not be material.
41. He also relied on the Rule 24 reply. There were inconsistencies between the appellant's oral evidence and the documentary evidence he sought to rely on from Sri Lanka relating to his arrest and court records. The whole basis of his claim was therefore undermined. The expert and medical reports were predicated upon false accounts that the appellant had given.
42. Mr Tufan relied on JL (Medical Reports – Credibility) China [2013] UKUT 145. The writers of medical reports for use in such appeals should ensure if possible before forming their opinions, that they study any assessments already made of the appellant's credibility by the immigration authorities and/or a Tribunal Judge. The more a diagnosis is dependent upon assuming that the account given by the appellant was to be believed, the less likely it is that significant weight will be attached to it.

43. The authors of such reports need to understand that what is expected of them is a critical and objective analysis of the injuries and/or symptoms displayed.
44. He submitted that the more recent decision in KV clarified what doctors are expected to do. That decision, however, was only promulgated after the publication of the report. The doctor should have considered SIBP. Even if they found the findings relating to scars to be highly consistent, there may well be other reasons explaining their presence.
45. Mr Tufan did however very fairly accept that there had been no mention by the Judge of the evidence produced by the attorney, Mr Iman.
46. In reply, Ms Jones submitted that the appellant's evidence relating to the arrest warrant was that this would place him at risk. There was no reason to suppose that these were not genuine documents. They had been verified by Mr Iman. They constituted central documents in any consideration of credibility. It was the solicitors who approached Mr Iman asking him to "do the job." The veracity of those documents was crucial. The appellant might be telling the truth. The arrest warrant would constitute a significant risk for him in accordance with paragraph 7(d) of GJ, *supra*.

#### Assessment

47. I have had regard to Mr Tufan's robust submission to the effect that the Judge was entitled to come to the conclusion that he was not credible. I have also had regard to his reliance on cases such as JL relating to the alleged deficiencies of the medical reports in this case. The weight to be attributed to various features of an appellant's evidence are matters for the Judge.
48. However, as very properly conceded by Mr Tufan, there was a receipt of arrest as well as Court documents relating to the appellant's detention, including the imposition of conditions of reporting, that were verified by Mr Iman, an attorney in Pakistan.
49. There was no suggestion that this verification was anything other than authentic. Nor is it contended that the documentation from Pakistan which is relied on is anything other than genuine. I have had regard to the original receipt of arrest and record of proceedings before the Colombo magistrate's court.
50. Mr Iman's letter sent to the appellant's solicitors dated 25 June 2014 notes that documents which he requested be verified, namely the receipt of arrest and the Colombo Magistrates' Court record, were verified by him. He visited the Colombo Chief Magistrates' Court and was provided with the opportunity of perusing the Court's records. The appellant's file contained a record of the Court proceedings. He stated that that case exists. The details are correct and match a copy of the Court's records sent to Mr Iman.
51. Mr Imam also attended the Colombo police station and was informed that an official copy of the arrest receipt bearing the same reference number supplied, was in fact held at Colombo police station in respect of the appellant.

52. The failure by the Judge to consider the potential significance of that evidence in the context of all the evidence, documentary and otherwise, which is relevant to a proper and fair assessment of the appellant's credibility, constituted a material misdirection.
53. I am unable to find as submitted by Mr Tufan that the result would necessarily have been the same. I have had regard to the degrees of risk identified in GJ, *supra*.
54. I have also referred to the subsequent decision of the Court of Appeal in MP. Paragraph 356(7)(a) of GJ does not prescribe that diaspora activism was the only basis on which a returning Tamil might be regarded as posing a threat to the integrity of Sri Lanka as a unitary state. There may be other cases where the evidence shows particular grounds for concluding that an applicant may pose a current threat to that integrity even in the absence of evidence that he was involved in diaspora activism.
55. In the circumstances, I find that the decision of the First-tier Tribunal involved the making of an error of law. I set aside the decision. It will have to be re-made. At the hearing, Ms Jones submitted that this was an appropriate case for remitting the whole of the appeal to the First-tier Tribunal as the appellant had not had a proper opportunity of having his case fully considered by the Tribunal. Mr Tufan did not submit otherwise.
56. I have had regard to the Practice Statements regarding the remitting of an appeal to the First-tier Tribunal. In giving effect to the approach, I am satisfied that the errors have deprived the appellant of a fair hearing and the opportunity for his case to be properly put and considered by the First-tier Tribunal.

### Decision

The decision of the First-tier Tribunal involved the making of an error of law. It is set aside and will be re-made. The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made.

No anonymity direction is made.

Signed  
Deputy Upper Tribunal Judge Mailer

Date 1/8/2015