



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/09991/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On April 24, 2015**

**Determination Promulgated
On May 6, 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR MOHAMED SHIAH SEYED MOHAMED
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Spurling, Counsel, instructed by Nag Law Solicitors

For the Respondent: Mr Parkinson (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The First-tier Tribunal did not make an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 and I see no reason to alter that order.
2. The Appellant is a citizen of Sri Lanka. The appellant claimed to have entered the United Kingdom on a French passport on September 11, 2013 and on September 13, 2013 he requested

an appointment with the Asylum Screening Unit. He claimed asylum at a pre-arranged appointment on October 9, 2013 and he was served with form IS151A as an illegal entrant. The respondent refused his asylum claim on November 1, 2013 and at the same time took a decision to remove him as an illegal entrant.

3. The appellant appealed this decision on November 5, 2013, under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. The appeal came before Judge of the First-tier Tribunal Handley (hereinafter referred to as the "FtTJ") on August 6, 2014 and in a decision promulgated on September 11, 2014 he refused the appeal on all grounds.
5. The appellant lodged grounds of appeal on September 22, 2014 submitting the FtTJ had erred materially in law. Judge of the First-tier Tribunal Davies refused permission to appeal on September 29, 2014 and the appellant renewed his grounds of appeal to the Upper Tribunal on October 16, 2014. Upper Tribunal Judge Allen gave permission to appeal. The respondent filed a Rule 24 response on February 2, 2015 arguing there was no material error.
6. The matter came before me on the above date and the parties were represented as set out above. The appellant was in attendance.

SUBMISSIONS ON ERROR IN LAW

7. Mr Spurling adopted his grounds of appeal although he accepted that some of the grounds, on their own, were stronger than others but he invited me to have regard to the totality of the grounds. He submitted:
 - a. Ground One of the grounds of appeal was particularly strong because the FtTJ had failed to explain why the appeal was rejected and made numerous findings on plausibility. The Courts frown on plausibility findings especially when they are made without having regard to the background evidence. The FtTJ's findings on credibility in relation to risk were contrary to the guidance in GJ and others (post civil ware returnees) Sri Lanka CG [2013] UKUT 00319 and what is contained in the country evidence.
 - b. Grounds Two and Four were connected to each other and linked to the first ground. The Tribunal had adjourned the matter in January 2014 for the respondent to verify the court file. The respondent had

chosen not to which was her right but to then find documents were obtainable easily was a material error. More weight should have been attached to the evidence submitted on the appellant's behalf.

- c. Ground Three centred on the FtTJ's treatment of the medical evidence. There was evidence of trauma within the asylum interview, which was evidenced by the medical report. The report was from a reputable organisation and whilst the Tribunal was not bound by its conclusions it should have given it more serious consideration.
 - d. With regard to Grounds Four and Five he submitted arrest warrants in Sri Lanka placed a person at risk according to the decision of GJ and others and the FtTJ failed to have regard to this evidence.
8. Mr Parkinson rejected the grounds and submitted the FtTJ had made sustainable findings based on his finding he did not believe the appellant and he gave numerous reasons for his finding:
- a. There was no merit to Ground One because the FtTJ rejected his claim that LTTE members' details would not have been stored on his computer and he gave reasons for it. It was open to him to make the findings he did in paragraph [35] and conclude that such behaviour was simply not plausible. The appellant was never tendered for cross-examination and the FtTJ had to deal with the appeal solely on the documents that had been submitted and his findings on the appellant's claim about him reporting to the police were open to him. The FtTJ considered the appellant's claims and was entitled to find his claim that he returned to Sri Lanka, after all his problems, lacked credibility. The fact the Upper Tribunal had concluded it was safe for people to return to Sri Lanka did not mean the FtTJ was not entitled to reject his claim that he had chosen to return. The FtTJ found the appellant's account lacked credibility and Ground One has no merit.
 - b. With regard to Ground Two Mr Parkinson submitted that if the authorities had a real interest in him then no court would have released him as he claimed. The FtTJ was entitled to conclude the authorities had no interest in him.
 - c. Turning to Ground Three the FtTJ considered the medical evidence and the adverse findings he made were open to him.
 - d. As regards Ground Four the respondent did not have to verify any document and the FtTJ found in paragraphs

[42] and [43] there were discrepancies in the appellant's account and his findings were open to him. The FtTJ rejected the authenticity of the arrest warrant and by inference he did not accept the court file and considered the appellant's claim in the round. The fact an attorney claimed a document was genuine did not mean the FtTJ had to accept that evidence as he was entitled to consider the claim in the round and reject the claim as long as he gave his reasons.

- e. Ground Five-the FtTJ concluded the appellant did not tell the truth and that he was not at risk. In those circumstances the appellant would not fall within any risk category.

9. Mr Spurling responded:

- a. The medical evidence should have been given more weight that the FtTJ afforded it. The report went beyond saying the appellant had scars and post traumatic stress disorder as the author of the report discussed his personal circumstances and the effect ill-treatment would have on him.
- b. It was perfectly plausible that the appellant returned to Sri Lanka because the Tribunal in GJ and others said those who were at low risk (as the respondent believes) could return and that was what he did.
- c. There was no discrepancy over appellant's account about his arrest warrant because he corrected the different account given in his screening interview when he attended for his asylum interview. The FtTJ failed to attach sufficient weight to all of the documents.

10. I raised with Mr Parkinson whether the numerous plausibility findings could stand taking into account the Court of Appeal's view on such findings and Mr Parkinson submitted that in this determination plausible meant credible and the FtTJ had made those findings and gave reasons for them. Mr Spurling rejected this argument and stated the FtTJ's plausibility findings were open to challenge as plausible was not the same as credible, which was what the respondent was arguing. It was permissible to make plausibility findings as long as those findings were based on the evidence and the FtTJ erred by making plausibility findings without reference to any evidence.

11. I reserved my decision.

FINDINGS ON ERROR OF LAW

12. Permission to appeal was granted by Upper Tribunal Allen when he found that it was just arguable the determination was inadequately reasoned (Ground One) and there was some force in Ground Four namely the FtTJ had failed to make any findings or inadequate findings on the court file evidence. He did not rule out the other two grounds.
13. Ground One concerns the issue of plausibility findings. The Courts (Tribunal and Court of Appeal) have considered plausibility findings. In MM (DRC) [2005] UKIAT 00019 the Tribunal said that the assessment of credibility may involve an assessment of the plausibility, or apparent reasonableness or truthfulness of what was being said. This could involve a judgement on the likelihood of something having happened, based on evidence or inferences. Background evidence could assist with that process, revealing the likelihood of what was said having occurred. Background evidence could reveal that adverse inferences, which were apparently reasonable when based on an understanding of life in this country, were less reasonable when the circumstances of life in the country of origin were exposed. Plausibility was an aspect in the process of arriving at a decision, which might vary from case to case, and not a separate stage in it. A story could be implausible yet credible, or plausible yet properly not believed. Plausibility is not a term of art. It is simply that the inherent likelihood or apparent reasonableness of a claim is an aspect of its credibility and an aspect which may well be related to background material which may assist when judging it. The Tribunal went on to say that “the more improbable the story, the more cogent the evidence necessary to support it, even to the lower standard of proof.” In relation to the contention that there was an alternative satisfactory explanation for matters found to be implausible by the Adjudicator, the Tribunal said that it was for the claimant to put forward all relevant evidence and to recognise and explain any inconsistencies and improbabilities and a conclusion was not necessarily erroneous because it did not contemplate possibilities that were not raised for the Adjudicator’s consideration. In HA v SSHD [2007] CSIH 65 the Court of Sessions said that a bare assertion of incredibility or implausibility may amount to an error of law. An Immigration Judge said that it was unlikely that the father of a girl with whom an Afghan appellant was having an affair would treat the Appellant’s brother in law as badly as he was said to have done. This was said to be an error of law because the IJ gave no reason for finding this implausible.
14. Mr Spurling’s submission is that the FtTJ made plausibility findings but failed to have regard to the country and other evidence when making such a finding and in those circumstances he erred in law.

15. Mr Spurling drew my attention to paragraphs [34] to [36] and [40] and submitted that the FtTJ's findings on plausibility were unsustainable. Mr Parkinson submitted that he did give reasons and therefore his findings on plausibility are both sustainable and do not amount to an error in law.
16. At paragraph [35] the FtTJ referred to the appellant's claim that he had been detained in Sri Lanka in 2008 because he claimed his principal had stored files on his computer that led to the appellant being arrested. The FtTJ found this to be implausible but in doing so he gave his reasons as:
 - a. It seemed strange that he would have allowed his principal to store files on his computer in spite of the fact those files identified people who had been sent abroad.
 - b. It was implausible at all that the appellant's principal would have shared any files with a third party because this would increase the chances of detection of both the principal and the people who had gone abroad.
 - c. He claimed he had been detained for three months and regularly ill-treated but despite the incriminating evidence being found on his computer and therefore linking him to the LTTE he was nevertheless released on bail by the court.
 - d. Even if the above was credible and plausible he continued to report as directed at which time he was further ill-treated and he then reported to the authorities on the next occasion and faced the same ill-treatment.
 - e. The number of injuries seen on him was wholly inconsistent with the level of assault.
 - f. Having fled the country it was implausible he would voluntarily return in 2013 given the interest he claimed the authorities had in him.
17. With regard to the storage of his files on his computer Mr Spurling's submissions amount to an alternative finding but the finding the FtTJ made in paragraph [35] was one that was open to him. The FtTJ gave reasons for finding the appellant would not have stored the files on his computer and I accept that those findings were open to him. He could have made the findings suggested by Mr Spurling but he did not and that does not amount to an error in law.
18. The FtTJ's plausibility findings on the injuries were one that was open to him. The appellant's claim was of constant beatings both during his three-month detention and when he reported on bail.

This was not a case where the FtTJ found there were no injuries but it was a case where the FtTJ found the level of his scars was inconsistent with what he claimed had happened to him. That conclusion was open to the FtTJ.

19. Mr Spurling argued the FtTJ failed to have regard to the background evidence when considering firstly whether the appellant would have been released; secondly, whether he would have been ill-treated as he claimed and thirdly, whether he would have returned to Sri Lanka in 2013. He submitted the FtTJ erred by concluding the appellant's account was implausible.
20. In paragraph [35] of his determination the FtTJ concluded that the fact the appellant had been released demonstrated the authorities no longer had any interest in him. At paragraph [36] he considered his claim about what happened to persons on bail and he found his account implausible. The FtTJ considered his claims and rejected them and I am satisfied that this was a conclusion he was entitled to reach. This was not a conclusion that was based on the country evidence but it did not need to be. The FtTJ assessed the claims made and the medical evidence and concluded that his account was inconsistent with his injuries. Having made that finding he considered his claim about being assaulted each time he answered his bail and he concluded he would not have answered his bail repeatedly knowing what would happen. I do not find he made his findings without reasons. The findings he reached were based on his assessment of that part of his evidence and he did not ignore the background evidence but simply concluded that the appellant's account, for the reasons given, lacked plausibility.
21. Following the guidance given on the approach to plausibility I am satisfied those findings were open to him.
22. The final aspect of Ground One related to his return to Sri Lanka in 2013. The FtTJ had made findings about his case but his assessment of a possible return and the risks involved had to take the appellant's case at its highest. He took into account that he left the country and then voluntarily returned in 2013. At paragraph [40] the FtTJ considered his return and rejected the submission made today that he returned because he felt it was safe to return. Taking his claim at its highest the FtTJ had to consider whether a person who had been abused and had jumped bail would have returned. Mr Spurling submitted the FtTJ's approach contradicted the guidance in the country guidance case that the situation had improved. However, whilst the situation had improved this would not have affected the appellant if his account had been accepted because on his account he was directly linked to the LTTE and data about people who had fled the country and he had absconded from his court

bail. The FtTJ was entitled to find it was implausible the appellant would have returned and he gave his reasons.

23. I therefore reject Ground One of the grounds of appeal.
24. Mr Spurling submitted that the FtTJ erred by failing to distinguish between release by the court and release by the police. Mr Parkinson countered this submission arguing that if the authorities had a significant interest in him then he would not have been released. In considering this submission the FtTJ had to have had regard to the appellant's whole claim. In Sri Lanka the police detained people who it was believed were of interest to the authorities. The FtTJ rejects this claim but then goes on to find that taking the appellant's case at its highest he was released because he was no longer of interest. Mr Spurling submits the FtTJ has combined the police and the authorities as one and by doing so he erred. I am not persuaded the FtTJ did. He noted the police raided his work and arrested him. At the time the police enforced the will of the governing body and persons who were acting contrary to the government's interests were detained and physically abused. The FtTJ did not confuse their roles but concluded either his account lacked credibility or even if he was of interest at the time he had been released because he was deemed to be of no further interest. I reject Mr Spurling's submission that the FtTJ made flawed findings in this regard.
25. The third challenge related to the FtTJ's treatment of the medical evidence e. I listened carefully to both submissions of this area of challenge and I have considered both the medical evidence and the FtTJ's determination. A medical report can provide evidence to back up an account of torture and to provide an insight into a person's personality. The appellant was interviewed and provided a detailed account of what he said happened. Mr Spurling submits the FtTJ failed to have regard to the appellant's psychiatric condition and if he had done so then he would not have been so negative about the appellant.
26. The FtTJ considered the medical evidence in paragraph [38], [45] to [49]. The FtTJ acknowledged that the appellant may have been able to give a more detailed account to the doctor because of the doctor's approach but concluded the appellant should have been able to give a more detailed account of what happened. In paragraph [46] he pointed out discrepancies and considered the medical report in the round and had regard to his own account when assessing how he received his physical injuries.
27. The real challenge to the medical evidence is based on the FtTJ's approach in paragraph [47] of his determination. However, the FtTJ is clearly aware of the doctor's opinion but for the reasons he gave in his determination he found the issues highlighted

outweighed the doctor's concerns. Paragraph [47] has to be read as a whole. At paragraph [48] the FtTJ considered the appellant's medical situation and made findings that were open to him. He gave reasons for rejecting the submission that PTSD explained the inconsistencies. The FtTJ sets out in paragraph [48] why he rejected the medical evidence and his conclusion in paragraph [49] was open to him.

28. The final ground of appeal related to his failure to consider the court file. The FtTJ considered this area of his claim in paragraph [43] of his determination. Mr Parkinson accepted the FtTJ did not make findings on the court file or have regard to the evidence from the Sri Lankan attorney. The FtTJ rejected the core of his account and rejected his claim about the warrant for his arrest. Mr Parkinson's submission is that the FtTJ was entitled to find fraudulent documents were available and to attach no weight to them.
29. Documents have to be considered in the round. The FtTJ did consider the facts and he rejected the claim. He made a number of credibility findings and effectively he was left with a report from an attorney instructed by the appellant's representatives balanced against his adverse findings on the appellant's account and the fact fraudulent documents were widely available in Sri Lanka. Even if he should have made a finding on the documents I am satisfied this was not material because his finding clearly would have been a rejection of those documents. The FtTJ says as much in paragraph [43] and Mr Spurling's submissions on this point are merely a disagreement with his approach. The respondent did not check the documents in dispute and if the negative findings about the appellant's case had not been made then the report would have taken on more significance but it is clear from the determination that the appellant's claim was rejected and in the circumstances I find no material error occurred in respect of Ground Four.
30. The final ground related to the FtTJ's approach to the advice in GJ. In light of his findings there is no error as the FtTJ considered his position based on his conclusions.
31. I find there has been no error in law.

DECISION

32. There was no material error. I uphold the determination and dismiss the appeal.

Signed:

Dated: **April 24, 2015**

Deputy Upper Tribunal Judge Alis

**TO THE RESPONDENT
FEE AWARD**

The appeal was dismissed and I make no fee award.

Signed:

Dated: **April 24, 2015**

Deputy Upper Tribunal Judge Alis