



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06820/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 10 February 2016

Decision and Reasons Promulgated  
On 22 February 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SS  
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy (Counsel) instructed by S Satha & Co, solicitors  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity order under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, precluding publication of any information regarding the proceedings which would be likely to lead members of the public to identify the appellant. I make the order to preserve the anonymity direction made by the First tier Tribunal.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Devittie promulgated on 20 November 2015, which dismissed the Appellant's appeal.

## Background

3. The Appellant was born on 22 August 1966 and is a national of Sri Lanka.
4. On 27 March 2015 the Secretary of State refused the Appellant's application for asylum.

## The Judge's Decision

5. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Devittie ("the Judge") dismissed the appeal against the Respondent's decision.
6. Grounds of appeal were lodged and on 15 December 2015 Judge Chambers gave permission to appeal stating *inter alia*

*"4. The Judge did not believe the Appellant had been involved in any of the claimed LTTE activity (paragraph 9) but did not give reasons why the account was rejected. That failure constitutes an error of law."*

## The Hearing

7(a) Mr Paramjorthy, counsel for the appellant, adopted the terms of the grounds of appeal and told me that this case concerned two issues. The first focused on [6(ii)] where it is argued that the appellant's apparently poor performance at asylum interview is the Judge's sole reason for rejecting the appellant's claim. Mr Paramjorthy told me that the Judge has given little scrutiny to either the witness statement or the appellant's oral evidence. As a result, he argued that the pivotal aspect of the appellant's claim for international protection has been given only superficial treatment. He told me that at [6(ii)] the Judge simply sets out a précis of what is contained in the asylum interview record.

(b) The second issue that is argued is contained at [7] of the decision, where Mr Paramjorthy told me that the Judge considers medical evidence & finds that it creates an inconsistency in the evidence, when the Judge should have considered the principles in Tanveer Ahmed and found that the medical evidence was demonstrative of an injury rather than a factor which undermined the appellants evidence. He told me that, for the avoidance of doubt, the challenge was that the Judge's findings there are irrational.

8. Ms Everett, for the respondent, told me that the decision does not contain any errors, material or otherwise, and that the Judge sets out cogent reasons for rejecting the appellant's account. She told me that the Judge sets out his reasons for coming to the view that the appellant is neither a credible nor a reliable witness, and that the findings made by the Judge are well within the range of findings available to the Judge. She took me to [10] of the decision, and told me that there the Judge considered the appellant's case at its highest; then the Judge took guidance from the case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319

(IAC), and (it was argued) then correctly found that the appellant did not fall into the risk categories identified there.

### Analysis

9. At [6] the Judge sets out in detail the factors which he finds undermine the appellant's overall credibility. Counsel for the appellant focuses on [6(ii)], but that subparagraph must be read in the context of [6] as a whole. It is not true that the Judge found that the appellant's poor performance at asylum interview alone was determinative of this appeal. The Judge considered the appellant's immigration history and his delay in claiming asylum as factors which damaged the appellant's credibility (which, of course, he must do in terms of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004).

10. At [6(ii)] the Judge sets out comprehensive reasons for finding that the appellant does not give a coherent account at asylum interview. No challenge is taken to the Judge's findings in relation to the asylum interview, and the content of the asylum interview is clearly a relevant consideration in assessing credibility. Neither the appellant nor his representatives sought to amend the record of asylum interview, and no challenge is taken by the appellant to the record of asylum interview in his witness statement dated 13 October 2015.

11. In reality, the challenge which is set out at paragraph 2 of the grounds of appeal amounts to little more than a disagreement with findings of fact which were within the range of findings available to the Judge. The appellant's witness statement specifically adopts the terms of the asylum interview (at paragraph 2) for the details of the appellant's claim. The only elaboration of the claim is contained in eight lines of the witness statement, where no real detail is added to the appellant's account of what happened to him in Sri Lanka. The remainder of the appellant's account dwells on the appellant's activities in the UK.

12. It is not, therefore, surprising that at [6] and [7] the Judge takes account of the appellant's asylum interview, because that is exactly what the appellant asked the Judge to do in the witness statement which he adopted as his evidence in chief.

13. It is argued that the Judge's findings at [7] are irrational. There is no merit in that submission. The Judge finds that the medical records produced creates an inconsistency in the appellant's account rather than provide support for the appellant's account. The Judge does not suggest that the medical record is a fabrication, but specifically finds that there is an inconsistency which undermines the credibility of the appellant's claim. That is a finding which is manifestly open to the Judge to make.

14. At paragraph 49 of MA (Somalia) [2010] UKSC 49, it was said that "*Where a tribunal has referred to considering all the evidence, a reviewing body should be very slow to conclude that that tribunal overlooked some factor, simply because the factor is not explicitly referred to in the determination concerned*". McCombe LJ in VW(Sri Lanka) C5/2012/3037 said "*Regrettably, there is an increasing tendency in immigration cases, when a First-tier Tribunal Judge has given a judgment explaining why he has reached a*

*particular decision, of seeking to burrow out industriously areas of evidence that have been less fully dealt with than others and then to use this as a basis for saying the judge's decision is legally flawed because it did not deal with a particular matter more fully. In my judgment, with respect, that is no basis on which to sustain a proper challenge to a judge's finding of fact"*

15. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

16. The Judge carefully considered each strand of evidence placed before him. He carefully records the submissions that were made and then, after correctly directing himself in law, makes reasoned findings of fact before reaching conclusions which were manifestly open to the Judge to reach.

17. I find that the Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed and based on cogent reasoning. The decision does not contain a material error of law.

## CONCLUSION

**18. No errors of law have been established. The Judge's decision stands.**

## DECISION

**19. The appeal is dismissed. The decision of the First-tier Tribunal stands.**

Signed

Date: 15 February 2016

Deputy Upper Tribunal Judge Doyle