



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

**APPEAL NUMBER: AA/07310/2014**

**THE IMMIGRATION ACTS**

**Heard at: Field House  
On 2 February 2016**

**Decision and Reasons Promulgated  
On 23 February 2016**

**Before**

**Deputy Upper Tribunal Judge Mailer**

**Between**

**[Y R]**

**~~NO ANONYMITY DIRECTION MADE~~**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Mr G Denholm, counsel (instructed by Kanaga Solicitors)**

**For the Respondent: Mr S Walker, Senior Home Office Presenting Officer**

**DETERMINATION AND REASONS**

1. The appellant is a national of Sri Lanka, born on 20 June 1988. He appeals with permission against the decision of the First-tier Tribunal Judge who in a decision promulgated on 2 October 2015, dismissed his asylum, humanitarian protection and human rights appeal.
2. The lengthy rounds of appeal set out in the permission application contend that the First-tier Tribunal materially erred in holding against the appellant the absence of any explanation for his failure to claim asylum in France when such an explanation had been provided; that the Judge erred by not assessing the corroborative evidence provided by the appellant's father and uncle and by failing to assess the full circumstances surrounding the appellant's departure from Sri Lanka in 2006,

accompanied, as he claims to have been, by a monk who handled the immigration authority.

3. It is also contended that the Judge erred in requiring corroborative evidence of the appellant's involvement in support of the LTTE in Malaysia in circumstances where those able to provide such evidence had allegedly been returned to Sri Lanka and in his conclusion that the letters from two individuals who worked for the TGTE were inconsistent.
4. In granting permission to appeal, Upper Tribunal Judge Blum found that all the grounds relied on by the appellant were "properly arguable."
5. I have had regard to the respondent's Rule 24 response, the contention being that the grounds amounted to a mere disagreement with the findings of the First-tier Tribunal.
6. At the hearing of the appeal the representatives identified two "main issues."
7. Mr Denholm, who did not prepare the grounds and who did not represent the appellant before the First-tier Tribunal, submitted that the Judge made no evaluation of the 'witness evidence' of the appellant's father and uncle. His father corroborated the attack on the appellant which occurred in Malaysia on 26 July 2012. In the course of the attack, he was accused of being an LTTE supporter and was asked why he was attending demonstrations against the Sri Lankan government. He was beaten and eventually lost consciousness, waking up in Chowkit Hospital. His hand was broken, requiring an operation.
8. His father had stated that he went to visit the appellant in hospital. His uncle also corroborated the appellant's account of having been detained and that he had been released on a bribe.
9. Mr Denholm submitted that the bundles before the Tribunal contained the witness statements in support. Indeed the Judge noted at [8(b)] that he had the appellant's witness statement together with affidavits submitted by his father and uncle.
10. He had however failed to consider or assess their evidence when making his findings.
11. Mr Denholm also submitted that it was irrational to reject the appellant's account of torture in detention on the basis of a statement that the appellant's uncle (in relation to whom there is no evidence of connections to the LTTE) was not tortured.
12. In that respect, the Judge stated at [30] that he accepted that in 2006, probably due to the association with his father and uncle, the appellant felt it was necessary to flee to Malaysia. He also considered it likely that he was involved at a low level of LTTE support in Sri Lanka at the time. He also accepted it was possible that the appellant was arrested and detained for his activities.
13. The Judge went on to note however that his uncle still lives in Sri Lanka despite his more serious support of the LTTE and there is no evidence of his having been tortured, despite the police being aware of his relationship with the appellant. The Judge then said in the same paragraph "consequently I do not accept the appellant's

version of the torture that he describes.” That Mr Denholm submitted constituted a non sequitur.

14. He submitted that the Judge “mixed up” what the appellant said in his interview about an uncle who had disappeared from Sri Lanka and who has not been seen or heard of since. At questions 79-88 of the interview, the appellant was questioned initially on when his father helped the LTTE. He stated that his father was an agent. He became an agent as his father's elder brother was in the LTTE. His name was given as “Sellathurai.” He had been a member of the LTTE and he introduced his father to the LTTE in 1988. His uncle joined the LTTE in 1983.
15. He was then asked (question 81) whether his uncle is still in Sri Lanka. He stated that after the war, “we do not know where he is at the moment.” They tried to locate him but have been unable to get any information.
16. However, there was a “second uncle” who in an affidavit stated that he had had no involvement with the LTTE. The second uncle had in fact produced a statement corroborating the appellant's account of having been detained and then released upon a bribe.
17. Accordingly the confusion between the two uncles resulted in a material error as the Judge wrongly assumed that the uncle still lived in Sri Lanka despite his more serious support of the LTTE. The uncle who had supported the LTTE had, as asserted by the appellant during his interview, disappeared from Sri Lanka and had not been heard of or seen since.
18. There are further grounds of appeal relied on including the failure by the Judge to appreciate the significance of the appellant's having worked in the UK for an organisation which had in fact been proscribed by the Sri Lankan state. That constituted a relevant consideration to be taken into account and assessed in line with the country guidance decision of GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319. He would be placed into a risk category as a person who is perceived as a threat to the integrity of Sri Lanka as a single state.
19. Although the respondent's position as set out in the Rule 24 response contended that there had been no material errors of law, Mr Walker conceded that there had in the circumstances been a material error on the basis of the two “main grounds” relied on by Mr Denholm.
20. In the circumstances the parties agreed that the decision should be set aside and remitted to the first-tier Tribunal for a fresh decision to be made. It was accepted that “wholesale findings” would have to be made after hearing the evidence.
21. I have had regard to the “main submissions” on behalf of the appellant. I find in the circumstances that the Judge failed to consider or assess the corroborating evidence of the appellant's father and uncle. Moreover, it is evident that the Judge wrongly stated at [30] that there had been no evidence of the appellant's uncle, who still lives in Sri Lanka, having been tortured. The evidence before the Tribunal given by the appellant during his interview was that there had been another uncle who had been involved with the LTTE and who had left Sri Lanka and had not been seen since.

However, the uncle, who provided a witness statement and who still lives in Sri Lanka had not supported the LTTE.

22. The Judge allowed his assessment of that evidence at [30] to lead to the conclusion - "consequently" - that he did not accept the appellant's version of the torture that he describes.
23. In the circumstances, I set aside the decision of the First-tier Tribunal. It is appropriate in these circumstances for the matter to be remitted to the First-tier Tribunal for a full determination of the appellant's appeal.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal, Birmingham, for hearing before a differently constituted Judge.

No anonymity direction is made.

Signed  
Deputy Upper Tribunal Judge Mailer

Date 19 February 2016