



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/09880/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 10 November 2017  
Extempore**

**Promulgated  
On 16 November 2017**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**ARMM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr N Aghayere, Counsel instructed by Lawland Solicitors  
For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Secretary of State appeals with permission against the decision of Judge S J Clarke promulgated on 12 June 2017 in which she allowed the appeal of Mr ARMM in respect of whom an anonymity order is made. For the sake of convenience I refer to him as the appellant as he was below.
2. The appellant is a citizen of Sri Lanka whose case is that he is at risk on return on account of being perceived to have assisted or continuing to assist the LTTE and that there is a warrant out for his arrest such that he faces arrest and ill-treatment on return. It is also his case that he has

been subjected to serious ill-treatment in the past including beatings and sexual assault.

3. The judge did not hear evidence from the appellant who was not present at the hearing. Judge Clarke did however, despite the existence of an application for an adjournment made by the appellant, proceed to determine the case in the appellant's absence and made positive findings in respect of those matters which the Secretary of State considered undermined the appellant's credibility and indicated that he was not at risk on return.
4. The Secretary of State sought permission on the basis that the decision of the judge was in effect perverse and irrational in that the judge had, as Mr Wilding submitted, failed to appreciate properly her role in determining the appeal.
5. I am satisfied that the decision in this case made by Judge Clarke was perverse and irrational for the reasons to which I now turn. While there may be circumstances in which it would be open to a judge in the face of, for example uncontroverted facts and a relevant country guidance decision to allow an appeal, that is not the case here. The judge does not appear to have appreciated that it was for the appellant to prove his case and in a number of positions appears to have reached conclusions favourable to the appellant in the absence of evidence.
6. At paragraph 10 the judge noted an apparent inconsistency but disregarded it on the basis that the appellant may well not have appeared in court himself. That is a conclusion which, contrary to Mr Aghayere's submission, was reached on the basis of no evidence. There was in this case no witness statement from the appellant and the grounds were at best generic.
7. Further, at paragraphs [11] and [13] the judge sets out differences in the evidence given by the appellant but again does not properly explain why in the absence of any evidence from the appellant she reached the conclusions made resolving the discrepancies in the appellant's favour. Similarly, at paragraph [14], the judge speculated as to apparent differences in the evidence. This was as the Presenting Officer Mr Briant had, as recorded at paragraph [13], identified as a significant inconsistency.
8. It is not, in these circumstances, in the absence of evidence from the appellant, for a judge simply to say "the impression I form when reading the interview record is that the appellant gave a hurried synopsis of his case in answer to question 16". Similarly, it was not open to the judge to attach weight to a medical report which she accepted was not in conformity with the Istanbul Protocol and where at paragraph 16 she appears to have considered, again, on an evidential basis, which is far from clear that the fact that the appellant played cricket was a possible alternative cause for the injuries set out in the medical report.

9. Finally, at paragraph 18, the judge states, "I conclude that the appellant is a credible witness, I have given by reasons for accepting his account". Given that the appellant had not actually been a witness at all I am at a loss to understand how the judge could rationally come to a conclusion that the appellant was credible witness.
10. For these reasons I am satisfied that the decision of the First-tier Tribunal was perverse and irrational, the judge having failed properly to appreciate her role or that the burden of proof was on the appellant and having failed to give proper and rational reasons for concluding matters of fact on the appellant's favour.
11. For these reasons the decision involved the making of an error of law and I set it aside. In the circumstances the only course of action which I consider is open is for me to remit the decision to the First-tier Tribunal for a fresh decision on all issues, the matter to be considered by a judge other than Judge S J Clarke.

#### SUMMARY OF CONCLUSIONS

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the decision to the First-tier Tribunal for a fresh decision on all issues.
3. I maintain the anonymity order made by the First-tier Tribunal

Signed

Date: 16 November 2011



Upper Tribunal Judge Rintoul