



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/13700/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 13 November 2017**

**On 27 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**RS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Bronwen Jones, Counsel instructed by A&P Solicitors  
For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal dismissing his appeal against the refusal of his protection claim. The First-tier Tribunal made an anonymity direction of the appellant, and I consider that it is appropriate for the direction to be maintained at these proceedings in the Upper Tribunal.

**The Asylum Claim**

2. The appellant is a national of Sri Lanka, whose date of birth is [ ] 1991. He claimed asylum on 28 May 2016, and his asylum claim was refused on 25 November 2016.
3. As summarised in the refusal letter, his claim was that he had voluntarily joined the LTTE in 2006 because all of his relatives were already in the LTTE. He fought for the LTTE in uniform in 2007, 2008 and 2009. He rose through the ranks to become in charge of Vadamarachi East District, and he had 49 fighters under him. In battle, he sustained an injury to his leg when a shell fell on him. In his screening interview, he said that this incident happened on 7 July 2007. At the asylum interview, he said that this had happened on 7 February 2009, and he gave an alternative cause of his leg injury, which was that he was hit by a sniper fire.
4. In his screening interview, he said that he had been arrested in 2009. In his asylum interview, he said he had been arrested for his involvement in the LTTE by the CID in November 2015 and April 2016. On the occasion of his first arrest, he was held for 5 days at Kodikaman Civil Camp. Officers asked him about his involvement in the LTTE, and he denied any involvement, stating that it was his brother who had been involved with the LTTE. He was beaten, but he suffered no injuries. As he had no previous involvement with the LTTE, he was released but was required to report. At the screening interview, he said that he was required to report every Sunday at 8 o'clock. In his asylum interview, he said that he was ordered to report on the fifth of every month.
5. In April 2016, he was arrested again at his restaurant by army intelligence. He recognised one of the arresting officers as Rathees, with whom he had trained in the LTTE. He was taken to Kodilkaman Civil Camp, where he was detained for a total of 6 days. He was beaten, and on this occasion sustained a blood clot on his chest. His father secured his release by paying a bribe. He left Sri Lanka on his own Sri Lankan passport and ID card.
6. Within the last 2 months, army intelligence had gone to his house looking for him, and had arrested his brother.

### **The Reasons for Refusal**

7. The respondent rejected the appellant's claim to have been arrested and detained by army intelligence services in Sri Lanka, due to internal inconsistencies in the account, and also because his account of having exited the country without any problems directly contradicted his account of having escaped from detention, having regard to objective information taken from a FCO letter dated 7 July 2014 on the topic of airport immigration control procedure.
8. In any event, taking his claim at its highest, there was no reason to believe that he would be considered a threat to the integrity of Sri Lanka as a single state because he had, or was perceived to have, a significant role in

relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka. On his own case, he did not claim to have had any involvement with the LTTE from 2009 (post-war) either in the UK or Sri Lanka, and he had not taken part in any diaspora activities whatsoever in the UK. Accordingly, it was not accepted that the Sir Lankan authorities had any serious interest in him.

### **The Hearing Before, and the Decision of, the First-tier Tribunal**

9. The appellant's appeal came before Judge GA Black sitting at Taylor House on 6 June 2017. Both parties were legally represented. Mr Muquit of Counsel appeared on behalf of the appellant.
10. The Judge received oral evidence from the appellant, who said that he had attended rallies in the UK organised by the TGTE in support of a Tamil state. The Judge also received evidence from a supporting witness, Mr [S], who had been granted asylum.
11. The documentary evidence before the Judge included a scarring report from Dr Martin, the thrust of which the Judge summarised at paragraph [13] of her subsequent decision. The Judge set out her findings of fact and reasons at paragraphs [19] onwards. The Judge made findings on the evidence of the appellant (paragraphs 19-22), the expert evidence of Dr Martin (paragraph 23), the supporting evidence from Mr [S] (paragraph 24), and the Judge reached *inter alia* the following conclusions in paragraphs [25] and [26]: the account given by the appellant in the substantive interview had been exaggerated and embellished to bolster his claim, particularly by stating that he was arrested and tortured in 2016; he had since attended TGTE demonstrations, but this was also an attempt to bolster his claim and to meet the concerns raised by the respondent in the refusal letter; and there was no reliable evidence to show why the appellant would not have come to the attention of the authorities between 2009 and 2016 if he was someone of interest to them.
12. At paragraph [27], the Judge made the following findings of fact:
  - (a) the appellant was a Tamil who may have had some involvement with the LTTE many years ago and his activities ceased in 2009;
  - (b) the appellant was not a high-ranking or active member of the LTTE;
  - (c) the appellant was not arrested, detained, or ill-treated in 2016;
  - (d) the appellant was not a person, nor would he be perceived as a person, with any significant role in relation to post-conflict Tamil separatism;
  - (e) the appellant had scars on his left thigh, which may have been caused by high-velocity fragments/projectile or by a blow from a blunt instrument, or by accidental injury or infection.
13. At paragraph [28], the Judge held that even if the appellant had had some

LTTE history and had been injured during the conflict, she could find no reliable evidence that he was a high-profile member of the LTTE, or that he continued to be involved in the LTTE and was committed to pursuing its aims to de-stabilise the current Government. She found no credible evidence of any recent adverse interest in him, and she found that he was not arrested and ill-treated in 2016, and that he would not be suspected of working for Tamil separatism.

14. The Judge concluded at paragraph [29] that the appellant had failed to discharge the burden of proof that he faced a real risk of persecution or ill-treatment on return to Sri Lanka.

### **The Application for Permission to Appeal**

15. Charlotte Bayati of Counsel settled the appellant's application for permission to appeal to the Upper Tribunal. In Paragraphs 5-10, she advanced six grounds of appeal, three of which related to asserted factual errors made by the Judge. Of the remainder, Ground 1 (Paragraph 5) was that the Judge had accepted that the appellant was a vulnerable witness, but had failed to take this account when assessing credibility; Ground 2 (Paragraph 6) was that her finding that the appellant had lied in his screening interview was Wednesbury unreasonable; and Ground 5 (Paragraph 9) was that she had failed to take proper account Dr Martin's scarring report.

### **The Reasons for the Initial Refusal of Permission**

16. On 14 July 2017, First-tier Tribunal Judge Grant-Hutchison refused permission to appeal for the following reasons:

“The Judge has considered all the evidence, including the medical report, and has made appropriate findings which were open to her to make, including also having had the benefit of oral evidence on the day of the hearing. It was open to the Judge to consider what weight she felt it appropriate to place on all the evidence before her. Even if there were factual inconsistencies, they are immaterial as the Judge has given adequate reasons for her decision.”

### **The Reasons for the Eventual Grant of Permission**

17. On 12 September 2017, Upper Tribunal Judge Perkins granted permission as follows:

- “1. I give permission on each ground, but I am particularly concerned by ground 9 which contends that the Judge undervalued the medical evidence.
2. The appellant is reminded that he must show that any error is material. Past problems with the authorities do not necessarily equate with there being a present risk.”

### **The Hearing in the Upper Tribunal**

18. At the hearing before me to determine whether an error of law was made out, Ms Jones developed the arguments advanced in the renewed application for permission to appeal to the Upper Tribunal. On behalf of the Secretary of State, Ms Pal adhered to the Rule 24 respondent opposing the appeal which had been settled by a colleague in the Specialist Appeals Team, and which adopted similar reasoning to that contained in the First-tier Tribunal's refusal of permission to appeal.

## **Discussion**

19. It is convenient to deal first with the ground which most troubled Judge Perkins, which was that advanced in paragraph 9 with respect to the Judge's treatment of the expert evidence of Dr Martin.

### *Ground 5 (Paragraph 9)*

20. As previously noted, the Judge summarised the thrust of Dr Martin's report at paragraph [13] of her decision. It is not suggested that her summary of his findings is inaccurate. Dr Martin found that the appellant had one scar to his head, which was consistent with deliberate assault (attributed to a gun butt assault in 2016); or which could have been caused by accidental injury or a self-inflicted injury. He opined that two scars (scars 5 and 6) were typical of injury from a high-velocity projectile, and three further scars (scars 3, 4 and 7) were consistent with injuries caused by shrapnel from a shell-bomb in 2009. He considered other causes, including that it was possible that the injuries could have been caused by another injury by a firearm or by high-velocity fragment in the explosion during the Sri Lankan armed conflict, but were unlikely to have been caused accidentally. He opined that the appearance of all the scars was consistent with injuries being more than two years old.
21. At paragraph [23], the Judge held that Dr Martin's conclusions potentially corroborated the appellant's account, but she had considered them within the sum of the evidence. She held that the appellant had scars which were consistent with them being sustained in battle from gun-shot and shrapnel, but it was also possible that the injuries had occurred within the Sri Lankan conflict "*not on the battlefield as a combatant*". The scar to the head was consistent with injury by gun butt, but – the Judge observed – Dr Martin also accepted that it could have been caused from a fall or fight. The appellant stated that he was hit in the chest with a gun butt, whereas the scarring report attributed them to a beating. The report referred to a gun butt injury to the head, whereas the appellant spoke of scars to his head from shrapnel: "*These inconsistencies led me to have doubts as to the credibility of the claim.*"
22. The complaint in paragraph 9 is that the Judge misdirected herself in paragraph [23] when discussing scars 5 and 6. It is argued that she failed to take into account that Dr Martin opined that scars 5 and 6 were typical of an injury caused by trauma due to a high-velocity projectile.

23. This complaint has no merit. The Judge earlier correctly directed herself as to Dr Martin's finding on the causation of scars 5 and 6. At paragraph [23], she was addressing a different point, namely the circumstances in which scars 5 and 6 had been inflicted. It was open to her to find, by reference to Dr Martin's report, that they could have been inflicted on the appellant as a civilian, rather than as a combatant on the battlefield. Dr Martin did not opine that the scars were more likely to have been caused by a bullet from a firearm than they were by a high velocity fragment from an exploding shell. Both mechanisms of injury were equally likely, according to his report.

*Ground 1 (Paragraph 5)*

24. The complaint in paragraph 5 is that, having found the appellant to be a vulnerable witness, the Judge failed to take this into account when assessing credibility. She failed to consider whether the discrepancies in his account may have been because he was a vulnerable witness.
25. This ground of appeal is based upon a false factual premise. The Judge did not accept that the appellant was a vulnerable witness. She noted an argument by Mr Muquit that the appellant should be treated as a vulnerable witness. But she did not make a finding that he was a vulnerable witness.
26. Having reviewed the documents, I note that Mr Muquit advanced this submission in his skeleton argument, but he does not appear to have advanced it when opening the case. The first line of the Judge's record of proceedings states that the appellant was well and able to give evidence. Mr Muquit also confirmed to her that there were no Article 3 medical issues.
27. Not only was there no medical evidence before the Judge to suggest that the appellant was suffering from PTSD or any other mental health condition which might have impaired his memory, the appellant himself did not claim in his witness statement that the inconsistencies in his account relied upon in the refusal letter were attributable to him being a vulnerable witness.
28. In the circumstances, the Judge did not err in law in not expressly asking herself the question whether the discrepancies in his account were attributable to him being a vulnerable witness.

*Ground 2 (Paragraph 6)*

29. The complaint in paragraph 6 is that the Judge's finding at paragraph [19] that the appellant had lied at his screening interview - in his failure to mention or refer to the LTTE - was Wednesbury unreasonable.
30. Again, the complaint is based upon a false factual premise. It is wrongly assumed that the Judge made this finding simply on the basis of comparing what the appellant said in his screening interview with what the

appellant said in his substantive asylum interview. In fact, the Judge's record of proceedings shows that the finding is based upon evidence that was elicited from the appellant by his Counsel in examination in chief.

31. In response to questions from his Counsel, the appellant volunteered that he did not tell the truth in the screening interview. He told them he was not with the LTTE, even though he was. His explanation for lying about not being with the LTTE was that he did not know what would happen to him if he said he was with the LTTE.

### *Ground 3 (Paragraph 7)*

32. The complaint in paragraph 7 is that the Judge made a factual error in paragraph [19], in stating that the appellant's account of his membership of the LTTE was not a consistent account. It is pleaded that the appellant made it clear that he had joined the LTTE in 2006, but he did not start fighting until 2008, as he was too young to fight in 2007.
33. This complaint has no merit, as the appellant initially represented that he began fighting for the LTTE in 2006, which is not consistent with the background evidence that the LTTE had a policy whereby those under the age of 17 were not involved in fighting. After this inconsistency had been identified in the refusal letter, the appellant changed his evidence. The Judge was not thereby de-barred from making an adverse credibility finding on the basis of what the appellant had originally said.

### *Ground 4 (Paragraph 8)*

34. The complaint in paragraph 8 is that the Judge did not take into account the appellant's evidence that there had been no major demonstrations between the time of his arrival in the UK and the time of his interview, but that he had since had the time to become involved in diaspora activity. I consider that this is an egregious example of a mere expression of disagreement with a finding of fact which was clearly open to the Judge.
35. At paragraph [26] of her decision, the Judge held as follows:

“Whilst I accept that the appellant has been shown in photographs attending a TGTE rally in London, I find that this evidence failed to show that he was an activist and supporter of the TGTE. In evidence, he was unable to state what the words were on the placards he was holding, which suggests that he was not an active supporter of the cause. I find no reliable evidence for the claim that the appellant's activities, which would at most amount to attendance at one or two rallies, would come to the attention of the authorities.”
36. In the light of what the Judge has said at paragraph [26], she has plainly given adequate reasons for finding that his attendance at TGTE

demonstrations since the asylum interview were an attempt to bolster his asylum claim, and that he was not in fact a genuine and active supporter of the TGTE cause; and, in any event, his limited diaspora activities were not such as to have brought him to the adverse attention of the Sri Lankan authorities.

*Ground 6 (Paragraph 10)*

37. The complaint in paragraph 10 is that the Judge's assessment of the supporting evidence of Mr [S] was fundamentally flawed. This was because she said that he had no first-hand knowledge of the appellant's involvement with the LTTE, but this was factually incorrect.

38. The Judge's finding at paragraph [24] was as follows:

"I place little weight on the evidence from the appellant's witness. The evidence given was in the main information from other sources and the witness had no direct knowledge of the appellant's involvement in the LTTE or of his arrest. I accept the evidence that the appellant was wounded and that the witness took his family to visit him, but considered in the round this does not corroborate his claim as there may have been other circumstances in which the appellant was injured."

39. The grounds of appeal cross-refer to paragraph 5 of Mr [S]'s witness statement where he said as follows: *"I first was [S] after he joined the LTTE was in April 2009 when I took his mother and sister to him as he was severely injured and his mother was informed by the LTTE to take care of him."*

40. Mr [S] thus only claimed to have first-hand knowledge of the appellant's involvement in the LTTE in the circumstances set out in paragraph 5 of his witness statement. The Judge accepted this aspect of his account. The legitimate point that she made in paragraph [23] was that he did not have first-hand knowledge of the circumstances in which he had sustained his injury, namely whether it had been sustained as an LTTE combatant or as a civilian. Accordingly, the Judge's treatment of Mr [S]'s evidence does not disclose a factual error - still less an error of law.

**Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

**Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

**Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to**



**comply with this direction could lead to contempt of court proceedings.**

Signed

Date 24 November 2017

Judge Monson  
Deputy Upper Tribunal Judge