



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03389/2019 (V)

**THE IMMIGRATION ACTS**

Heard at Field House (by SKYPE)  
On 17 June 2020  
Dictated: 18 June 2020

Decision & Reasons Promulgated  
On 28 July 2020

Before

UPPER TRIBUNAL JUDGE O'CONNOR

Between

LV  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Anonymity Direction**

I make an order under r.14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant. No report of these proceedings shall directly or indirectly identify the appellant. This direction applies to both the appellant and to the respondent and all other persons. Failure to comply with this direction could lead to contempt of court proceedings. Liberty to apply.

**Representation:**

For the Appellant: Ms B Asanovic, instructed by MTC & Co Solicitors  
For the Respondent: Mr S Kotas, Senior Presenting Officer

**DECISION AND REASONS**

## **Introduction**

1. The appellant is a citizen of Sri Lanka, born in 1984. He appealed to the First-tier Tribunal against a decision of the Secretary of State, dated 3 April 2019, refusing his application for international protection. The First-tier Tribunal, in a decision promulgated on 20 May 2019, dismissed this appeal.
2. By way of a decision of the 27 August 2019, First-tier Tribunal Judge Bristow granted permission to appeal to the Upper Tribunal. The appeal subsequently came before Upper Tribunal Judge Lane at a hearing of 3 October 2019 who, in a decision promulgated on 10 October 2019, dismissed the appeal. The appellant was neither present nor represented at the hearing of 3 October. In a decision of the 2 March 2020, Upper Tribunal Judge Lane set aside his earlier decision pursuant to rule 43 of the Tribunal (Upper Tribunal) Rules 2008, having accepted that neither the appellant nor his legal representatives had received the Notice of Hearing for the 3 October 2019.
3. Upper Tribunal Judge Lane further directed that the appeal be listed for a fresh hearing before another judge of the Upper Tribunal, thus the matter now comes before me.
4. At the outset of the hearing I established that both parties were content for the matter to be heard via the medium of Skype. The parties further confirmed at the end of the hearing that neither had been hampered by the hearing taking place via this medium.

## **Appellant's protection claim**

5. It is prudent to set out the basis of the appellant's protection claim in some detail, in order to provide context for what follows. In this regard, I can do no better than recite the following summary, taken from the First-tier Tribunal's decision:
  - "17. The Appellant states that he was born in Palayangodo, Sri Lanka. He is from a Sinhalese, a Buddhist family. He states he has two brothers and two sisters. His father is deceased. His mother remains in Sri Lanka.
  18. The Appellant states that he attended Sri Sumangala Boys School and completed his education up to A level. Following completing his education he worked for a company called Tradesmann SL Limited from 2005 to 2010. He joined as a clerk and was thereafter promoted to the position of administrative executive.
  19. The Appellant states that he came to the United Kingdom with his wife on 11 July 2010 as a dependant on her student visa. On 26 June 2014 the Appellant states that he and his wife returned to Sri Lanka to visit his mother and his wife's parents. They stayed for the most part at his mother's home.
  20. The Appellant states that three days after his arrival in Sri Lanka on the night of 29 June 2014 he had gone out for dinner with friends. His wife was staying at her own family's home that night. He returned home and it was only himself and his mother that were in the house. He states at 1.30 am in

the morning on 30 June 2014 he was woken up with someone knocking at the door. His mother opened the door to find approximately five men dressed in plain clothes who identified themselves as police. The Appellant was asked to answer questions and was invited to go with the men to the nearest police station. Nor further explanations were forthcoming.

21. The Appellant states he was taken by the men in a jeep. A blindfold was put over his eyes. He states the journey lasted around 2-2½ hours. He was led into a building. His fingerprints were taken, and he was photographed. He states he was then blindfolded again for a second time and led to another room. When the blindfold was removed on that occasion he appeared to be within a cell like room. He was questioned there. He was shown a photograph and recognised the individual as someone he knew as Suresh Kumar. The Appellant indicated that he did know the person. In the photograph Suresh was dressed in an LTTE uniform. The Appellant states he had now known of this man's involvement in the LTTE. He had known Suresh because he used to work in the same company as the Appellant. He worked in a sales role.
22. The Appellant states that he had rented a room in his mother's home to Suresh. He had lived in the Appellant's family home from February 2008 until September 2008. He had left suddenly both from the Appellant's home and from the company they had worked for. This background explanation was provided to those who were interviewing the Appellant. The Appellant states he was questioned further, and his interviewers began shouting at him and hitting him.
23. The Appellant states that he was interrogated over the next 20 days. He was questioned approximately twice a day. He states that when questioned there were between 3-6 men in the room. As part of the torture, the Appellant states he was urinated upon, sexually assaulted and raped.
24. The Appellant states that on the day he was able to escape he was told to sign four blank pieces of paper. He states he did so and was then blindfolded and taken outside to a vehicle and driven for 2-3 hours and left by the side of the road. He claims that the first voice he heard was his wife's uncle who removed his blindfold. He States his wife's uncle had organised his release by paying a bribe of 20 lakh rupees. His wife's uncle is a wealthy man who owns a hotel and who has connections with politicians. The Appellant states that he was reunited with his wife's uncle of 20 July 2014.
25. The Appellant states he was thereafter reunited with his wife and stayed at her uncle's hotel overnight. He states that in the morning his wife's uncle took them to the airport accompanied by a Buddhist monk. The Buddhist monk was able to ensure that they were able to leave the country safely without being stopped. The Appellant states that he was advised that it would not be safe for him to return to Sri Lanka. He returned back in the United Kingdom on 22 July 2014.
26. The Appellant's asylum claim is based upon his imputed political opinion. He has a convention reason for his asylum claim.

27. In the alternative, the Appellant relies upon his Article 2 and 3 rights under the European Convention on Human Rights.
28. The Appellant also relies upon his Article 8 rights under the European Convention on Human Rights."

### **First-tier Tribunal's decision**

6. Underpinning the First-tier Tribunal's decision to dismiss the appeal on protection grounds is its conclusion that the appellant did not provide a credible account of the events which led to him leaving Sri Lanka.
7. The First-tier Tribunal sets out its rationale within paragraphs 36 to 51 of its decision, which broadly fall into four categories:
  - (i) First, inconsistencies as between the evidence given by the appellant and that given by his wife, which were not satisfactorily explained (see, for example, paragraph 38 of the First-tier Tribunal's decision);
  - (ii) Second, internally inconsistencies within the appellant's evidence (see, for example, paragraphs 39, 41, 42 and 49 of the First-tier Tribunal's decision);
  - (iii) Third, numerous aspects of the appellant's account were found not to be plausible (see, for example, paragraphs 40, 43, 46 and 50); and,
  - (iv) Finally, the absence of corroborative evidence in circumstances where it was reasonable to obtain such evidence (see, for example, paragraphs 44 and 45 of the First-tier Tribunal's decision).

### **Grounds of appeal**

8. I next turn to the grounds of challenge to the First-tier Tribunal's decision, which are summarised in the following terms in the application for permission to appeal:
  - "3. Permission is sought on the grounds that the Judge made the following material errors of law:
    - i) Failing to consider country guidance and objective evidence relating to the Appellant's ability to exit Sri Lanka legally;
    - ii) Placing too much weight on a discrepancy in the Appellant's Screening Interview;
    - iii) Failing to consider the *Joint Presidential Guidance No. 2 of 2010: Child, vulnerable adult and sensitive appellant guidance* when determining the Appellant's credibility."

### **Decision and reasons**

#### **Ground (i)**

9. The first ground of challenge focuses on paragraph 46 of the First-tier Tribunal's decision, which reads:

“46. The Appellant and his wife were able to leave Sri Lanka again in July 2014 on their own passports without being stopped. It is not claimed that the Appellant’s wife’s uncle used any influence to ensure that this happened. The basis upon which it is stated that this was achieved was due to the fact that the Appellant and his wife were accompanied by a Buddhist monk. I do not accept that given the background claims made by or on behalf of the Appellant that he would have been so easily able to leave Sri Lanka through a main airport in the way which he suggests. This undermines the background claims.”

10. Ms Asanovic submitted that such rationale is fundamentally flawed as being either inconsistent with the conclusions in country guidance decision of GJ [2013] UKUT 319 or for lack of reasons explaining why the guidance given in GJ is not of application.
11. In response, Mr Kotas asserted that the First-tier Tribunal’s reasoning process was clear. The appellant had never stated that bribery or influence had been used to enable his unhindered travel through Colombo Airport and, as a consequence, the guidance given in GJ was not applicable.
12. I prefer the submissions of Ms Asanovic and conclude that the First-tier Tribunal erred in law in the approach taken in paragraph 46 of its decision.
13. It is important, first, to set paragraph 46 in the context of both the appellant’s, and the background, evidence. Taking the appellant’s evidence first, at paragraph 24 of its decision the First-tier Tribunal summarises such evidence thus: *“The Appellant states he was thereafter reunited with his wife and stayed at her uncle’s hotel overnight. He states that in the morning his wife’s uncle took them to the airport accompanied by a Buddhist monk. The Buddhist monk was able to ensure that they were able to leave the country safely without being stopped.”* It is, also, noteworthy that in answer to Question 159 at his asylum interview the appellant stated: *“I am sure my uncle and the monk organised my safe exit”*.
14. Turning then to the background evidence. Mrs Asanovic draws support for her submissions from the following passages in GJ:
  146. “Approximately thirty of Mr Punethanayagam’s 3,000 clients had contacted him after having left Sri Lanka when of adverse interest, using bribery. He did not say when that had occurred. Information from Mr Punethanayagam’s client database about the use of bribery was as follows:
    - “26. ... The paramilitary groups, working alongside the SLA, assist the escape of detainees in order to extort money. In my practice, I have come across several cases where the families use bribery as a last resort to secure the release of a detainee with the assistance of members of the security forces or paramilitary groups.
    27. The bribery is very common in the IDP camps as well as the detention centers from which even known LTTE leaders have managed to escape on payment of bribes. Hence it cannot be argued that only people of low interest to the authorities are able to secure their release through a bribe. In my opinion, it is plausible that the detainee was

released following the payment of a bribe, even if of significant adverse interest to the authorities. It is unlikely that the person who accepts the bribe would access the detainee's record and change them as released or no longer wanted. Hence such cases would normally be recorded as escaped from detention in the database of the Police. Subsequently an absconder action will be commenced and the detainee's details would be passed to the National Intelligence Bureau.

28. It is possible to leave the country using bribery with the help of an agent. The security officers and immigration officers at the international airport are no exception to the widespread bribery and corruption in Sri Lanka. It is always possible for a person to use influence or bribery to get through the airport without being detained as an LTTE suspect. I have been contacted by approximately 30 clients who managed to flee the country via the international airport whilst in the adverse interest of the authorities and I provided evidence in their asylum cases in the UK, Canada, France, Norway and Australia. Therefore leaving through the airport either with his/her own passport or false identity does not necessarily indicate a lack of interest on the part of the authorities."

...

275. Mr Anton Punethanayagam's evidence is that of a practitioner who has dealt with 3000 cases of detainees, in Colombo and Vavuniya. His evidence on the process of bribery was particularly useful. We did not have the opportunity of hearing him give oral evidence, and some of his evidence goes beyond what he can be taken to know himself but where his evidence concerns the criminal processes in Sri Lanka, we consider that it is useful and reliable. We take particular account of his view that the seriousness of any charges against an individual are not determinative of whether a bribe can be paid, and that it is possible to leave through the airport even when a person is being actively sought." (emphasis added)

15. The significant feature to be drawn from the above cited passages is that an unhindered exit through Colombo airport can be secured even for those who are of interest to the Sri Lankan authorities. The First-tier Tribunal did not draw attention to any other background information which cast doubt on the ongoing applicability of the above cited passages.
16. As already identified, the First-tier Tribunal concluded that the appellant, if of interest to the Sri Lankan authorities as claimed, could not have exited Sri Lanka unhindered through Colombo airport in the manner alleged. Plainly, given the conclusions in GJ and the appellant's evidence, such a finding requires cogent reasoning. As Mr Kotas identified, the First-tier Tribunal conclusion is founded on the fact that the appellant did not assert that his wife's uncle had used any influence to ensure an unhindered exit.
17. In my view this reasoning process falls far short of explaining why the appellant's account of being able to exit Sri Lanka unhindered was thought to be implausible in

light of the terms of his evidence and the evidence set out in GJ. On the face of it, the appellant's account accords entirely with the conclusions in GJ and is certainly not inconsistent with those findings. Contrary to the finding of the First-tier Tribunal, it is difficult to understand what the appellant could have meant by his evidence, other than that influence (or bribery) was used to secure his exit from the country.

18. In these circumstances, I find that the First-tier erred in treating as a matter adverse to the appellant's credibility the fact that he was "*so easily able to leave Sri Lanka through the main airport in the way that he suggest[ed]*".

Ground (ii)

19. The second ground of challenge is directed to the conclusions found in paragraph 40 of the First-tier Tribunal's decision, which reads:

"40. I have had regard to the terms of the Appellant's screening interview. The disclosures made at such time do not require to be detailed but should provide a platform for the Appellant's subsequent evidence. The Appellant's detailed claim as developed now is that he was shown a photograph of his former work colleague Suresh wearing clearly an LTTE uniform. Accordingly, on the basis of his main evidence, the Appellant's interviewers clearly knew that Suresh was a member of the LTTE. Despite this interestingly the Appellant at the time of his screening interview indicated that he was interrogated and that those questioning him "... wanted to know if he belonged to the LTTE". There would be no need for his questioners to ask if Suresh was a member of the LTTE given the photograph which the Appellant says was produced to him. This undermines the Appellant's credibility."

20. Ms Asanovic submitted that judges of the First-tier Tribunal must have regard to the fact that there is room for mistakes and misunderstandings in a screening interview, something the instant Tribunal did not have in mind. She also observes that the alleged inconsistency was not put to the appellant during the course of his substantive interview, nor was it a point taken by the Secretary of State. Both of these submissions are indisputably correct.
21. Mr Kotas asserted in response that the First-tier Tribunal was alive to the circumstances under which the screening interview took place, and that it was entitled to conclude as it did.
22. It is useful, at this stage, to set out what is said to be the offending answers given by the appellant during the course of his screening and substantive interviews:

At question 4.1 of the screening interview the appellant was asked: "*Please BRIEFLY explain ALL of the reasons why you cannot return to your home country.*" (emphasis in original)

In answer the appellant stated: "*I am scared for my life from maybe CID because they are the people who came to my house and arrested me and they questioned me*"

*about a guy that was working in my company and who was boarding in my house. That guy is from Jaffna and they wanted to know if he belongs to the LTTE."*

During his substantive asylum interview:

*The appellant was asked, at question 57: "Can you talk me through what happened on the day that you were kidnapped?"*

*He replied, inter alia: "...They mentioned a Tamil name and asked me what involvement I have with that person. I have never heard of that name, I have no idea. They showed me a photograph but that person I recognised him. I used to know him as Suresh Kumar. That is what I used to know him as. Then I told them how I knew this guy, Suresh. ... In the picture he was wearing an LTTE uniform. How I knew him, he used to work with the same company I used to. He joined there in 2008. ..."*

23. The only rationale that can be drawn from paragraph 40 of the First-tier Tribunal's decision is that it found it to be inherently implausible that a Sri Lankan army interviewer would ask the appellant whether Suresh was an LTTE member in circumstances where the interviewer already held a picture of a person believed to be Suresh wearing an LTTE uniform.
24. In my view, the First-tier Tribunal erred by unlawfully closing its mind to the possibility of their being a rational explanation as to why the Sri Lankan authorities might ask the appellant whether Suresh was involved with the LTTE despite having a photograph of him in an LTTE uniform.
25. One possible explanation is that the Sri Lankan army interviewer asked the appellant whether Suresh was in the LTTE, in advance of showing him the photograph, in order to ascertain whether the appellant was a person who would willingly share information. It is a perfectly plausible inference that the appellant's response to this initial line of questioning would inform the questions and questioning technique used thereafter. Whilst postulating such a possible explanation is necessarily speculative, because one can never know what is in the mind of a Sri Lankan army interviewer, it demonstrates the inherent danger of founding conclusions on speculation and, in particular, on speculation about circumstances which are about as far removed from day to day life in the UK as it is possible to imagine.
26. For these reasons, I also find that the First-tier Tribunal erred in its approach, and conclusion, in paragraph 40 of its decision.

#### Setting aside the First-tier Tribunal's decision

27. I have concluded above that it has been established that the First-tier Tribunal erred in its approach and conclusions, both in paragraph 40 and 46 of its decision. I need not consider the third ground raised in the appellant's challenge because I am satisfied that the aforementioned errors are such that the First-tier Tribunal's decision must be set aside.



28. In coming to this conclusion, I have borne in mind that an Appellate Court should be very cautious in overturning findings of fact made by a first instant judge. This is because first instant judges have seen witnesses and considered the whole sea of evidence (see for example Terzaghi [2019] EWCA Civ 2017 at [45]). I have also taken cognisance of the fact that the errors identified above relate only to two of a multitude of reasons given by the First-tier Tribunal for its conclusion that the appellant had failed to provide a credible account of the events which led him to flee Sri Lanka.
29. However, the First-tier Tribunal does not ascribe any particular weight to the individual reasons given for its overarching credibility finding. The errors identified above each relate to events which cannot be described as peripheral to the appellant's account; indeed, the events at the detention facility are core to the risk the appellant claimed he will be faced with upon return. In light of this, and reading the decision as a whole, I am unable to say that had the aforementioned errors not been made by the First-tier Tribunal it would in any event have rejected the truth of the appellant's evidence. For this reason, I conclude that the decision of the First-tier Tribunal must be set aside in its entirety.
30. Although I make no particular finding on ground (iii), because it is not necessary for me to do so, I do observe that there was evidence before the First-tier Tribunal supporting the fact that the appellant should be treated as a vulnerable witness and, consequently, the Tribunal ought to have, but did not, turn its mind to the *Joint Presidential Guidance No. 2 of 2010*.
31. The decision on appeal must be re-made afresh. No findings of fact are preserved. In such circumstances, I conclude that it is appropriate for this appeal to be remitted to the First-tier Tribunal to be determined by a judge other than Judge Mill.

### **Notice of Decision**

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be determined afresh.

Signed  
*Mark O'Connor*  
Upper Tribunal Judge O'Connor

Date 17 July 2020