



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

**Appeal Number: UI-2022-002641  
On appeal from PA/50850/2021  
[IA/01808/2021]**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 6<sup>th</sup> October 2022**

**Decision & Reasons Promulgated  
On the 02 November 2022**

**Before**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**SJ  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms F Allen, Counsel, instructed by AASK Solicitors

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

**DECISION AND REASONS**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.**

1. This is an appeal against the decision of First-tier Tribunal Judge Gribble dated 23<sup>rd</sup> April 2022 dismissing the appellant's appeal against the respondent's decision of 2<sup>nd</sup> August 2017 refusing the appellant's claim for international protection.
2. The appellant is a national of Sri Lanka. He arrived in the UK in June 2011 with leave to enter as a student valid from 30<sup>th</sup> May 2011 to 6<sup>th</sup> October 2012. The appellant remained in the UK after his leave expired. On 10<sup>th</sup> October 2016 he claimed asylum after being arrested for immigration offences. The background to the claim for international protection is set out in paragraphs [2] to [5] of the decision of the First-tier Tribunal. Judge Gribble noted, at [14], that the appellant is said to have developed mental health problems and has been taking medication prescribed by his GP. He was seen by Dr Ryan Smith, a Psychiatrist. The report of Dr Ryan Smith is again referred to in paragraphs [18] to [21] of the decision.
3. The appellant attended the hearing of the appeal and gave evidence via video link. The evidence is set out at paragraphs [28] to [33] of the decision. The Judge's findings and conclusions are set out at paragraphs [38] to [59]. The Judge stated, at [38], that the appellant is a vulnerable witness, and the relevant Presidential guidance was applicable. The judge however was not satisfied that the appellant's account of events in Sri Lanka is credible. The Judge considered the medical report of Dr Smith and said that there are several difficulties with the report, which mean the weight she can place on it as supporting the account the appellant gives of events in Sri Lanka, is limited. She referred to the decision of the Upper Tribunal in HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC) and said, at [41] that it appears Dr Smith has not been sent any documents and the Tribunal has not been provided with the limited GP records seen, or the letter of instruction. Judge Gribble noted that critically, Dr Smith has not seen the respondent's decision and that omission is critical and unexplained. She said that renders the weight she can place on Dr Smith's view that the appellant

has been subject to torture in Sri Lanka, very limited. Judge Gribble said, at [43], that Dr Smith has relied entirely on the appellant's self-report. The judge also refers to internal inconsistencies in the appellant's account and inconsistencies with what the appellant said to Dr Smith. At paragraph [50], Judge Gribble said:

"I can place very little weight on the medical report for the reasons set out above and impress upon those representing the appellant that they have wholly failed to comply with PD 10, which in my view is a serious matter. Dr Smith has not had anywhere near the information he should have to formulate a rounded view."

4. Having said that about the expert evidence, Judge Gribble went on to reject the appellant's claim that he was involved in LTTE politics in Sri Lanka. She did not accept he was engaged in helping the LTTE in Sri Lanka and found he was not arrested, detained and tortured. She said the appellant has fabricated this account of his arrest to support his claim to remain in the UK. She found the appellant came to the UK as an economic migrant with no intention of studying. The appellant's sur place activities and the risk upon return are addressed at paragraphs [52] to [58] of the decision.
5. The appellant advances three grounds of appeal that relate to the judge's consideration and analysis of the evidence before the Tribunal. The first concerns the weight attached to the report of Dr Smith. The second concerns the judge's findings as to the credibility of the appellant and the third concerns the adequacy of the reasons given by the judge for her conclusions in respect of the appellant's sur place activities and the risk upon return arising from them. Permission to appeal was granted by First-tier Tribunal Judge Scott on 26<sup>th</sup> May 2022.
6. Mr Walker, quite properly in my judgement, accepts Judge Gribble erred in her overall assessment of the credibility of the appellant, and in particular her analysis of the report of Dr Smith and the risk upon return as a result of the appellant's sur place activities. He submits that contrary to what is said in the decision, the appellant had provided a

copy of the letter of instruction and the appellant's GP and medical records were before the First-tier Tier Tribunal. He accepts Judge Gribble does not appear to refer to that evidence and the criticism made by the Judge regarding the absence of that evidence is unfounded. He accepts that the judge's analysis of the report of Dr Smith and the weight to be attached that evidence impacts upon the judge's consideration of the credibility of the appellant as a whole, and the decision must therefore be set aside with no findings preserved.

7. As to disposal, it is common ground between the parties that in view of the nature of the errors of law, the appeal should be remitted to the FtT for determination afresh. I accept that the decision of the FtT is infected by an error of law and that the appropriate course is for the decision of First-tier Tribunal Judge Gribble to be set aside. As to disposal, I agree that the appropriate course is for the matter to be remitted to the FtT for hearing *de novo* with no findings preserved. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25<sup>th</sup> September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.
8. The parties will be advised of the date of the First-tier Tribunal hearing in due course.

### **Notice of Decision**

9. The appeal is allowed, and the decision of FtT Judge Gribble dated 23<sup>rd</sup> April 2022 is set aside.
10. The appeal is remitted to the FtT for a fresh hearing of the appeal with no findings preserved.
11. I make an anonymity direction.

Signed  
2022

**V. Mandalia**

Date:

6<sup>th</sup>

October

**Upper Tribunal Judge Mandalia**