



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

Appeal Number: PA/03546/2020  
UI-2022-001141

**THE IMMIGRATION ACTS**

**Heard at Field House  
On: 21 June 2022**

**Decision & Reasons Promulgated  
On: 12 August 2022**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA  
DEPUTY UPPER TRIBUNAL JUDGE JOLLIFFE**

**Between**

**IPDMS  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms K Tobin, counsel instructed by Krisinth Solicitors  
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal against the decision of First-tier Tribunal Judge Khosla, promulgated on 26 January 2022. Permission to appeal was granted by First-tier Tribunal Judge Monaghan on 12 April 2022.

**Anonymity**

2. Such a direction was made previously and is reiterated below because the appellant has been found to be a particularly vulnerable person owing to her mental health diagnoses.

## Background

3. The appellant is a national of India. She entered the United Kingdom with leave to enter as a student and extended her leave under the Rules until 13 April 2017 when an administrative review decision maintained an earlier decision to refuse her leave to remain under Tier 2. The appellant applied for asylum on 21 June 2017.
4. The basis of the appellant's protection claim can be summarised as follows. She was born in India and is of Tamil ethnicity and supported pro-Tamil organisations in India. This led to her being detained and ill-treated by the Indian police in 2010 when she returned to India to visit her mother. The appellant has also been involved in diaspora activities in the United Kingdom. She also suffers from serious mental health problems, including suicidal thoughts.
5. The Secretary of State refused the appellant's claim on 14 January 2020. Comment was made regarding inconsistencies, vagueness and an allegation that the appellant declined to explain her travel history within Europe when requested to do so by the Home Office. Consequently, the respondent did not accept that she had ever been detained or supported the LTTE, TGTE or Nam Thamilar Kacchi (NTK) as she claimed and therefore there was no real risk that she would face persecution in India. As for the appellant's Article 3 claim on mental health grounds, the respondent concluded that the evidence did not indicate that the appellant's condition was at such a critical stage that it would be inhumane to remove her, noting that medical treatment was available for mental health conditions in India.

## The decision of the First-tier Tribunal

6. At the hearing before the First-tier Tribunal, it was agreed that the appellant was a vulnerable witness. The appeal proceeded via video-link, with the appellant being the sole witness. The judge rejected the credibility of the entirety of the appellant's account of events in India owing to inconsistencies along with the fact that she had travelled to Sri Lanka in 2015, without incident. While it was accepted that the appellant was involved with the TGTE in the United Kingdom, the judge found there to be no evidence that the Indian authorities had any adverse interest in TGTE supporters.

## The grounds of appeal

7. The grounds of appeal are as follows. Firstly, that in concluding that the credibility of the appellant's account was damaged by a delay in claiming asylum, the judge took account of irrelevant considerations and did not engage with the appellant's explanation.
8. Secondly, the judge did not engage with the explanations put forward in relation to the inconsistencies in the appellant's claim of being detained and tortured and nor did he consider the submission that the appellant had memory problems due to her vulnerability.
9. Thirdly, the judge relied on an irrelevant consideration as to the whereabouts of the appellant's father, a matter which was irrelevant to the core of her claim.

10. Fourthly, the judge did not engage with the appellant's claim to have supported the LTTE which is a proscribed organisation in India nor with the background evidence as to the use of torture in Indian prisons.
11. Fifthly, the judge did not consider the medical evidence until after making negative credibility findings and that he did not consider whether the clinical findings were potentially corroborative of the appellant's account of being tortured.
12. Lastly, the judge erred in criticising the writers of the medical reports for not having assessed the credibility of the appellant's account.
13. Permission to appeal was granted on the basis sought. In addition, the judge granting permission added a further ground, as follows.

*'The Judge has arguably made an error of law in giving a Direction that the Appellant was to be treated as a vulnerable witness, but failing to set out what reasonable adjustments if any were offered during the Hearing or whether the question of reasonable adjustments was considered. This arguably amounts to an error of law where the Appellant has claimed to be a victim of rape, sexual abuse and torture and where, as here, there is medical evidence to support her claim that she is suffering from mental health problems.'*

14. The respondent's Rule 24 response, dated 27 April 2022, was received by the Upper Tribunal on 20 April 2022. The appellant did not receive a copy. It stated as follows.

*1. The respondent to this appeal is the Secretary of State for the Home Department. Documents relating to this appeal should be sent to the Secretary of State for the Home Department, at the above address.*

*2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.*

*3. The judge confirmed at para 30 that the appellant would be treated as a vulnerable witness and it is clear from para 88 that the judge explicitly took into account the submission that the appellant's evidence could have been affected by the mental health but gave sound reasons for rejecting it. The determination shows that the judge gave thorough and careful consideration to the appellant's account and sound reasons for finding it not credible.*

*4. Although the judge accepted that the appellant had had mental health issues they also noted the limited and out of date nature of the evidence on this point, that it had stated that her mother was a protective factor, even though the appellant's evidence was that she was no longer in contact and that the appellant was anxious concerning her immigration status. There is no error of law.*

#### The hearing

15. Ms Tobin and Ms Ahmed attended the hearing via video link, and we heard submissions from both. We took a detailed note of the submissions made, both

oral and written, and have taken them into consideration in reaching our decision.

16. At the end of the hearing, we decided that the decision of the First-tier Tribunal contained a material error of law which had led to unsafe conclusions. We set aside that decision with no findings preserved.
17. The matter was remitted to the First-tier Tribunal for a de novo hearing.

### Decision on error of law

18. Starting with the fifth ground, we find that the judge substantially and materially erred in failing to take account of the evidence relating to the appellant's mental health when assessing the credibility of her account, applying *Mibanga* [2005] EWCA Civ 367, with reference to {24} of that judgement where the following was said:

*'a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto...What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.'*

19. Ms Ahmed relied on the decision in *QC (verification of documents; Mibanga duty) China* [2021] UKUT 00033 (IAC). The relevant parts of the headnote are set out here.

#### ***The Mibanga duty***

*(2) Credibility is not necessarily an essential component of a successful claim to be in need of international protection. Where credibility has a role to play, its relevance to the overall outcome will vary, depending on the nature of the case. What that relevance is to a particular claim needs to be established with some care by the judicial fact-finder. It is only once this is done that the practical application of the "Mibanga duty" to consider credibility "in the round" can be understood (Francois Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367). The significance of a piece of evidence that emanates from a third party source may well depend upon what is at stake in terms of the individual's credibility.*

*(3) What the case law reveals is that the judicial fact-finder has a duty to make his or her decision by reference to all the relevant evidence and needs to show in their decision that they have done so. The actual way in which the fact-finder goes about this task is a matter for them. As has been pointed out, one has to start somewhere. At the end of the day, what matters is whether the decision contains legally adequate reasons for the outcome. The greater the apparent cogency and relevance of a particular piece of evidence, the greater is the need for the judicial fact-finder to show that they have had due regard to that evidence; and, if the fact-finder's overall conclusion is contrary to the apparent thrust of that evidence, the greater is the need to explain why that evidence has not brought about a different outcome.*

20. The First-tier Tribunal fell into the error described in the above extract of *Mibanga* and it is a material error. At [30] of the reasons section of the decision, the judge accepted that the appellant was a vulnerable witness, at [83-107] the judge undertook a thorough examination of the appellant's account and gave a series of detailed reasons for reaching the conclusion, at [107] that '*the Appellant has demonstrated that her claim is not credible,*' and, '*I have rejected the central aspect of the Appellant's claim.*'
21. It was only at [108] that the judge addressed their mind to the medical evidence. The judge had this to say about the Salvation Army report, "*the author appears to have accepted, without equivocation, the Appellant's account of her detention and torture by members of Q-branch, an account which for the reasons I have set out above is wholly lacking in credibility.*" We therefore accept the submission made that the judge had already assessed the appellant's credibility before looking at the medical evidence as opposed to looking at all the evidence in the round, prior to coming to a global conclusion on credibility.
22. In addition, the judge failed to have due regard to the medical evidence or adequately explain why it was not considered in assessing credibility. At [88], the judge states, without giving reasons, that he rejects the submission that vulnerability and forgetfulness might be a factor which affected the consistency of the appellant's claim. Before the judge were records from the appellant's general practitioner which contained her mental health diagnoses of PTSD and moderate depression, evidence that she had been attending weekly counselling sessions for seven months and evidence from a psychiatrist from the London Borough of Redbridge. The medical evidence was cogent and relevant, and indeed, the judge accepted that the appellant suffered from PTSD. Therefore, the judge ought to have had due regard to the medical evidence at all stages of the consideration of this appeal, applying QC. This error alone suffices to render the decision in question unsafe, however we will comment on some other aspects of the grounds below.
23. The second ground addresses an alleged failure by the judge to consider whether the inconsistencies in the appellant's account stemmed from her mental health problems. This is linked to the fifth ground, in that the judge's failure to approach matters in the round meant that there was a lack of consideration as to whether her vulnerability affected the consistency of her answers as well as a failure to consider whether the PTSD diagnosis, which the judge accepted, went towards the substance of her claim.
24. An examination of the judge's credibility findings reveals a lack of accuracy regarding the alleged inconsistencies. A matter which goes to the core of the appellant's claim that she was detained and ill-treated by the Sri Lankan authorities, was found to be a 'fabrication' because the judge understood the appellant to have given varying accounts of whether her mother collected her from the prison. At [88] the judge reached the following conclusion,

*'I find that there can be no confusion in the Appellant's initial account that her mother collected her from her place of detention. That information was voluntarily given by the Appellant and in unequivocal terms.'*
25. It is clear from a cursory reading of the Asylum Interview Record (questions 60-63) that the appellant at no stage unequivocally stated that her mother collected her from the prison. The issue was subject to clarification by the interviewing

officer and the appellant's clear account was that it was the agent who took her from the prison.

26. That the judge based his credibility findings on a non-existent inconsistency is a concern, particularly when his adverse findings were made prior to considering the medical evidence. The judge relied significantly on his findings regarding this alleged inconsistency. Indeed at [89] he states that his finding in [88] that the appellant's account is 'unreliable' was 'reinforced' by a further matter. It follows that had the judge not been mistaken in his findings at [88] regarding a core issue, he may have taken a different approach to the remaining credibility issues, which concern more peripheral matters.
27. Accordingly, the decision of the First-tier Tribunal contained material errors of law and is set aside. The credibility findings were unsafe and consequently, there are no preserved findings.
28. The panel considered whether to retain the matter for remaking in the Upper Tribunal. We were mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010. We also took into consideration the nature and extent of the findings to be made as well as that the appellant has yet to have an adequate consideration of her protection appeal at the First-tier Tribunal and we concluded that it would be unfair to deprive her of such consideration.

## **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

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

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Khosla.**

## **Direction Regarding Anonymity**

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.

Signed: T Kamara

Date: 28 June 2022

Upper Tribunal Judge Kamara