SELF-TYPED

**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/01262/2015

# THE IMMIGRATION ACTS

**Heard at Field House**
**On 10 November 2015**

**Decision & Reasons Promulgated**
**On 19 November 2015**

**Before**

**LORD TURNBULL**
**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**Y R P**
**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**
For the Appellant: Mr P. Turner, Counsel instructed by Greater London Solicitors
For the Respondent: Mr P. Nath, Specialist Appeals Team

## DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Hussain sitting at Hatton Cross on 20 May 2015) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee from Sri Lanka, or as otherwise requiring international or human rights protection, and against her concomitant decision to remove him as an illegal entrant (having gained entry by verbal deception) and/or as a person subject to administrative

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removal under Section 10 of the Immigration and Asylum Act 1999, his asylum claim having been refused. The First-tier Tribunal made an anonymity direction in favour of the appellant on account of his asylum claim, and for the same reason we consider that the appellant should be accorded anonymity for these proceedings in the Upper Tribunal.

**The Grant of Permission to Appeal**

2. On 20 August 2015 Upper Tribunal Judge Chalkley granted the appellant permission to appeal for the following reasons:

   1. The First Tier Tribunal Judge *may* have erred by failing to demonstrate that he has given careful consideration to the medical evidence and it is on that basis I grant permission. Whether that was material in all the circumstances will be for the Upper Tribunal to decide.

**The Rule 24 Response**

3. On 2 September 2015 Mr Bramble of the Specialist Appeals Team settled a Rule 24 response on behalf of the Secretary of State opposing the appellant's appeal:

   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. It will be argued that though the judge has had limited consideration of the medical evidence at paragraph 50, this cannot be deemed as material when balanced against the manner in which the judge has addressed all the competing factors and set out detailed conclusion/reasons for rejecting aspects of the appellant's evidence.

**The Factual Background**

4. The appellant is a national of Sri Lanka, whose date of birth is 2 August 1990. In January 2011 he applied to study at Bloomsbury Business School. His passport had been issued to him in Colombo on 8 November 2010. He was interviewed on skype, and the ECO was satisfied that he spoke English to level B1. A Tier 4 student visa was issued to the appellant on 9 February 2011, valid until 10 April 2012, and he arrived in the UK on 24 February 2011 where he was granted entry as a student.

5. On 21 May 2012 the Home Office considered curtailing his leave as the college had surrendered its licence in July 2011. But no action was taken as his leave had already expired. The appellant made an appointment with the ASU on 15 November 2013 (or on 15 November 2012- the internal record is discrepant), and he claimed asylum at the ASU on 16 December 2013.

6. At his screening interview, he was asked to explain briefly why he could not return to his home country. He said he had been arrested by the Sri Lankan army in 2008 and again on 19 October 2010. On the second occasion, he was detained for 14 days. He was tortured during this time. He had marks on his face, when they put a petrol bag on his face. He was accused of helping the LTTE. He was not a member but helped on national heroes day, preparing programmes for them.

7. The appellant was detained at Harmondsworth on 16 December 2013, and a doctor examined him and prepared a Rule 35 report. He claimed to have been hit on the head, his head was hit against walls and his genitals were beaten by a stick. His head was also put in a basket containing petrol. Since detention, he said he thought about events more and had difficulty sleeping, although this was not a problem before. The doctor said he could not validate any of the claims as there were no physical signs or evidence.

8. The appellant’s legal representatives arranged for him to be seen by Dr Rozmin Halari, Senior Clinical Psychologist, and the initial consultation took place on 22 December 2013. In her report of 24 December 2013, she said she had been asked to carry out an urgent assessment because he reported feeling very anxious and panicky when taken to the detention centre.

9. He told her that his uncle had supported the LTTE. He had worked for a NGO, which helped to transport goods for refugees and the LTTE. The army had arrested and questioned the driver of a vehicle transporting goods, and the driver had mentioned his uncle’s name. His uncle had escaped to France, where he was now settled. In 2010 his uncle had sent him a mobile phone as a gift. The appellant had gone to Colombo with his mum to collect it. On their return they were stopped at a checkpoint in Habarana and questioned about the phone. As he and his mother gave contradictory answers, he was arrested and taken for further interrogation. They suspected him of carrying out his uncle’s previous duties for the LTTE.

10. His mother eventually secured his release by offering the army a bribe. He was told to report to the police station daily. He managed to flee the country with the help of an agent in Colombo. But as a result he did not attend a court hearing which he was expected to be at, and they were now looking for him. His mother had recently returned from India, because her family there were no longer able to support her, and she had been arrested and questioned about his whereabouts. She had to go and sign at the police station every day.

11. He said that being in detention had caused him to be very anxious and he had started getting flashbacks and nightmares. He showed no signs of self-neglect, but he presented as very anxious, tearful and in low mood. On the Hamilton Anxiety and Depression rating scale, he had a score of 22 for depression, which equated to moderate depression, and a score of 26 for anxiety, suggesting moderate to high levels of anxiety.

12. Dr Halari's initial assessment was that he was displaying symptoms consistent with PTSD and a depressive illness which was largely being maintained by his fear of going back to Sri Lanka.

13. The appellant was interviewed about his asylum claim on 7 January 2014. He said his English solicitor was trying to get documents from the lawyer who acted for him in Sri Lanka, whose name was N. Kesevan. The documents would include court documents showing that he had been produced to the court and then released on bail on condition that he reported to the police. Also, he could ask his uncle, who left Sri Lanka in 2008, to send from France his asylum claim support papers.

14. On 28 February 2014 the appellant's solicitors sent to the Home Office the following: (1) a letter of instruction to Mr Karikalan, Sri Lankan attorney, dated 5 February 2014; (2) Mr Karikalan's reply dated 24 February 2014; and (3) a further report from Dr Halari based on the same examination and interview that had been the basis of her first report.

15. In his letter, Mr Karikalan said he had perused the appellant's case record in front of the registrar but since he was not the Counsel who appeared for the appellant when he was produced before the Trincomalee Court, "a certified copy was refused".

16. In her report, Dr Halari addressed the question of whether the appellant was feigning or exaggerating his symptoms:

    '97. Overall his clinical presentation is consistent with the account he has given to me and with that of other torture victims I have seen in clinical practice. With reference to the Istanbul Protocol, I would consider his overall clinical picture as "typical" of those found in torture survivors. This would be the highest level of consistency I would be able to use in an asylum case, as there is not a certain way from a clinical picture of PTSD the specific details of the torture can be "diagnosed". There is a potential problem differentiating torture as a potential cause of his PTSD from other similar traumas, without relying on the victim's account of the content of their symptoms.'

17. On 9 January 2015 the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee. There were many inconsistencies in his account. The psychologist's report did not mention anything about his head hurting whenever he remembered his claimed traumatic experiences (a claim made in interview). Also, in view of the psychologist's analysis, his mental health conditions could not only be the result of his claimed torture by the Sri Lankan army, but in fact there could be any number of other reasons why he could have the mental health issue that he had been diagnosed with:

    > 'It is your own evidence that you have come from a war torn country where your father was killed, you were raised by a single parent, and people known to you including your uncle were harassed by the

authorities. In view of this it is considered that these issues could have also been contributing factors to your mental state.'

18. On the issue of risk on return, reference was made to the country guidance of **GJ and Others.** On his own evidence, he was never a member of the LTTE. But even if he was suspected in the past, his past activities would not place him within one of the risk categories.

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

19. Both parties were legally represented before Judge Hussain. In addition to the documents which had been served in advance of the hearing, the appellant relied on a witness statement dated 19 March 2015 which had purportedly been signed by SN, a Sri Lankan refugee from Trincomalee whose date of birth was 7 May 1983 and who had entered France on 22 February 2008. This information could be gleaned from the photocopies of the front and back of a 10 year residence card issued to SN on 25 May 2009. (The photocopies accompanied the statement, but were not formally exhibited to it, with the consequence that the maker of the statement did not identify the photocopies or state that he was the holder of the 10 year residence card which had been photocopied).

20. In the statement SN said that he was the appellant's uncle and confirmed that he supported the LTTE whilst working for a NGO. He had received a threat that he would be arrested in 2008 and so he had fled the country, and had claimed asylum in France. His statement had been accepted, and he had been granted asylum without an appeal. He confirmed he had sent a mobile telephone to the appellant in 2010. It had been taken by a friend who was travelling from France, and this friend had handed it over at the airport on arrival. He then got a call from his sister reporting the appellant's detention. She arranged for a lawyer named Varathan to intervene. He arranged for his nephew's production before the Court so that he could be released on bail. His sister had sold her land in Sri Lanka to raise funds to pay an agent to bring the appellant to the UK. She had gone back to Sri Lanka in October 2013 to obtain some documents in order for the appellant to claim asylum, and he had not been happy about this. She had been arrested, detained for 4-5 days, and later released on condition she report every day. In consequence, he had advised the appellant to claim asylum. The last he had heard from her she was planning to go to Malaysia, but he had not heard anything from her since and he had been unable to reach her.

21. The appellant was called as a witness. In cross-examination, he said that he was financially supported by his uncle who sent him money via a friend's bank account. But he did not have the bank statements to prove receipt of funds. His mother had arrived in Malaysia on 18 February 2014, and she had last called him from Malaysia on 20 March 2014. His uncle had visited him once here, in 2011. His mother had gone back to Sri Lanka to see if the problems had been sorted out.

22. He was asked whether his uncle had sent any documents to show why he had been granted a residence card. He replied that he had not. He did not have any proof either that the person concerned was his uncle.

23. In his subsequent decision, Judge Hussain's findings were set out at paragraphs [41] onwards. The appellant had not given a credible explanation for his delay in seeking asylum (paragraph 45). The appellant had not given consistent evidence about the impact on him of his uncle's flight from Sri Lanka and the level of interest showed in him by the authorities after being allegedly questioned about his uncle's whereabouts (paragraph 46). The appellant had been inconsistent about whether he had been released in 2010 on payment of a bribe or as a result of bail being posted. In his witness statement he claimed to have done both, but in cross-examination he denied that he had been released on payment of a bribe (paragraph 47).

24. The letter from the lawyer in Sri Lanka did not constitute sufficient evidence that the appellant was arrested and detained in 2010 (paragraphs 48-49).

25. On the topic of medical evidence, the judge said:

> "50. I also note that the appellant claimed to have been tortured very day and the details of that have been noted above. Yet, I find it unlikely, as does the Secretary of State, that with so much physical mistreatment, the appellant has no scar on his body. Whilst he has been diagnosed as suffering from post-traumatic stress disorder and depression, I accept the Secretary of State's view that these conditions can arise from many other factors [than] that [of] the alleged treatment of the appellant in Sri Lanka."

26. The evidence did not show that the authorities came looking for him for breaching his bail conditions, and the fact that he was able to remain in the country until 24 February 2011, albeit allegedly in hiding, reinforced his finding that the appellant was not the subject of arrest on 19 October 2010 (paragraph 51).

27. His mode of exit from the country, including him obtaining a valid passport, was not credible, given he was allegedly subject to an open arrest warrant (paragraph 52). His account of his mother returning to Sri Lanka was not credible, and also he had not been consistent as to why she had gone back. It could easily have been proved that his mother had fled to Malaysia by the appellant producing a copy of her passport with the endorsement on it. He did not believe the appellant had not been in contact with her (paragraphs 53-54).

28. But if he was wrong about the appellant's credibility, even if his claim was taken at its highest, he did not come within the risk categories set out in **GJ and others.**

## The Grounds of Appeal

29. The renewed grounds of appeal to the Upper Tribunal were settled by Mr Turner of Counsel, as were the initial grounds which were rejected by a First-tier Tribunal Judge. The renewed grounds were to the same effect as the initial grounds.

30. Ground 1 was that the judge had committed a fatal error by failing to consider Dr Halari's report first. Alternatively, he had erred by seeking to go behind the findings of Dr Halari, an expert in her field.

31. Ground 2 was that his decision was undermined by his failure to have any or any proper regard to the fact that the appellant's uncle had been granted refugee status in France or to the uncle's witness statement.

32. Ground 3 was that the judge had erroneously rejected the evidence of the Sri Lankan lawyer, contrary to **PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 1011**.

**The Hearing in the Upper Tribunal**

33. At the hearing before us to determine whether an error of law was made out, Mr Turner sought to develop all three grounds of appeal. Mr Nath objected, pointing out that the appellant had only been granted permission on Ground 1. We allowed Mr Turner to develop Grounds 2 and 3 *de bene esse* as it was open to debate whether UTJ Chalkley had granted permission generally, albeit that Ground 1 was the only ground he identified as having a realistic prospect of success, or whether he had meant to limit his grant of permission to Ground 1: see **Ferrer (limited appeal grounds; Alvi) [2012] UKUT 00304 (IAC)**.

**Discussion**

*Ground 1*

34. The first limb of Ground 1 is that the judge erred in not considering the medical evidence at the outset of his credibility assessment. The progenitor for this line of argument appears to be the principle affirmed in **Mibanga [2005] EWCA Civ 367** and **SA (Somalia) [2006] EWCA Civ 1302.**

35. The principle affirmed by the Court of Appeal in **Mibanga** was as follows:

> "Where the report is specifically relied on as a factor relevant to credibility, the Adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come."

36. In **SA Somalia**, the Court of Appeal found at paragraph [33] that the Adjudicator's decision was open to the criticism, in the light of **Mibanga,** that, as a matter of form, the content of the medical report was dealt with as an add on, following the section in which, as a result of examination of the evidence of the appellant, the Adjudicator found him to lack credibility and to have fabricated his case:

> "[O]n that narrow basis there appears to have been a breach of the approach proscribed in **Mibanga**, namely that medical evidence corroborative or potentially corroborative of the appellant's account of torture and/or fear of persecution should be considered as part of the entire package of evidence to be taken into account on the issue of credibility."

37. We do not consider that the judge has breached the **Mibanga** principle. He considered the expert evidence of Dr Halari as part of the entire package of evidence which needed to be taken into account on the issue of credibility. He was not required to consider it first. The requirement which he had to observe was not to address her expert evidence as an add-on, which did not undermine the conclusions to which he would have otherwise have come. He clearly complied with this requirement, as he went on to address additional considerations bearing upon the credibility of the core claim in paragraphs [51] to [54].

38. The second limb of Ground 1 is that the judge failed to give adequate reasons for going behind "the findings" of Dr Halari. As stated by the First-tier Judge who refused permission to appeal, Judge Hussain was the ultimate arbiter of the appellant's credibility and it was not Dr Halari's role to make "findings" on whether his account of torture was credible. Dr Halari acknowledged in paragraph [97] of her second report, which we have quoted above, that there was a potential problem differentiating torture as a potential cause of the appellant's PTSD from other similar traumas, *without relying on the victim's account of the content of their symptoms*. In adopting the line taken by the respondent in the refusal letter, which he earlier summarised at paragraphs [18] and [19] of his decision, the judge was accepting that Dr Halari's expert diagnosis of PTSD had independent probative value, while at the same time holding, as it was open to him to do, that the signs and symptoms of PTSD (some of which Dr Halari observed, and some of which were reported to her by the appellant) could have many other causes apart from being tortured in detention in 2010. Mr Turner submits that this finding was not open to the judge because it was speculative. We do not agree. Dr Halari's expert evidence supports the proposition that the appellant's PTSD could be caused by other traumas, including the trauma of being detained at Harmondsworth, which was what triggered Dr Halari's involvement in the first place.

39. Although the judge has only given one reason for not treating Dr Halari's expert evidence as significantly advancing the appellant's case, the one reason given is sufficient. Further discussion of her expert evidence was not going to lead to a different outcome.

*Ground 2*

40. Although not cited to us, we have had regard to **Muse & Others v Entry Clearance Officer [2012] EWCA Civ 10** on the topic of challenges to the adequacy of a judge's reasons. In **South Bucks District Council v**

**Porter (2) [2004] UKHL 33**, cited with approval by the Court of Appeal at paragraph [33], Lord Brown said:

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. *The reasons need only refer to the main issues in the dispute, not to every material consideration.* (our emphasis)"

41. The evidence purporting to come from, and pertaining to, the uncle was a material consideration in the appeal, but it was not one of the main issues in dispute. On the contrary, it was self-evidently of limited probative value and of only peripheral relevance. As had been explored in cross-examination, there was no documentary proof that SN was the appellant's uncle. Even assuming that he was, he had not produced his asylum papers to show that what he was saying in his witness statement accorded with what he had told the French authorities on entry; and it was also not shown that he had been recognised as a refugee in France. The appellant agreed that the photocopied documents did not show that SN had a 10 year residence card as a result of being recognised as a refugee. But even if all the above was assumed to be true, SN was not a witness to the alleged events that had unfolded in Sri Lanka since he had left the country in early 2008. So he could not provide any evidential support at all for the pivotal claim that the appellant had, on one version of events, been produced at court and then released on bail, and so was still of adverse interest to the authorities as he had jumped bail. This claim was pivotal because, absent credible evidence of bail jumping and there being an extant warrant for the appellant's arrest, the appellant did not have a profile which engendered a real risk of him being on a stop list or wanted list. Following **GJ and Others**, the uncle would not be of any ongoing adverse interest to the Sri Lankan authorities for transporting goods for the LTTE during the civil war; and so the appellant would also not be of any ongoing adverse interest, merely because of his association with the uncle. So the fact that the judge's reasons do not refer to the uncle does not translate into an error of law.

*Ground 3*

42. Mr Turner cites the following passage in **PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 1011**, which is taken from paragraph [41]:

> "While it is undoubtedly the case that false documents are widely available in Sri Lanka, once it was established that the documents in question originated from a Sri Lankan court, a sufficient justification was required for

> the conclusion that the appellant does not have a well-founded fear of persecution ... there is a letter from the Magistrate at the relevant court to the Controller of Immigration and Emigration stating the appellant is in the United Kingdom and that he is to be arrested on his return to Sri Lanka. In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material – retrieved independently, it is to be stressed, by two lawyers from the Magistrates' court on separate occasions – is that the appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities ... it is difficult to understand how the appellant could have falsified a letter from the Magistrate at the relevant court to the Controller of Immigration and Emigration ordering the appellant's arrest which he then placed in the court records so that it could later be retrieved by two separate lawyers. At the very least, this feature of the evidence required detailed analysis and explanation."

43. The case of **PJ** is not authority for the proposition that it was unlawful for the judge not to give significant weight to the evidence from a Sri Lankan lawyer, Mr Karikalan. As is apparent from the passage quoted above, the case turned on its own special facts which are readily distinguishable from the facts of this case. For the reasons given by the Court of Appeal, in that case there was strong prima facie evidence of the authenticity, and hence reliability, of a warrant issued by a Magistrate for the appellant's arrest, as two separate lawyers (one of whom was accepted by the UT Judge to be a bona fide lawyer) had retrieved a copy from the court file on two separate occasions. Here, in stark contrast, no court document has been produced, despite the appellant promising to provide evidence from the court files in his asylum interview. Far from supporting the credibility of Mr Karikalan's letter, **PJ** actually undermines it. For the implication of the evidence which the Court of Appeal found cogent in **PJ** is that Mr Karikalan should have had no difficulty in obtaining a certified copy of the alleged court document relating to the appellant, as he had been instructed to act as the appellant's lawyer for this purpose and so he had the necessary authority.

*Summary*

44. The judge gave adequate reasons for finding that the appellant was not credible, and hence that he had not discharged the burden of proving, to the lower standard of proof, that his account of past persecution or future risk was true.

**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

Deputy Upper Tribunal Judge Monson