



IAC-FH-AR-V2

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

Appeal Number: AA/10790/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 27 May 2015  
Prepared 27 May 2015**

**Decision & Reasons  
Promulgated  
On 18 June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

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

Appellant

**and**

**VP**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Mr C Avery, Senior Presenting Officer

For the Respondent: Miss S Pinder, Counsel, instructed by Wimbledon Solicitors  
(Merton Road)

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the Claimant.
2. The Claimant, a national of Sri Lanka, date of birth 23 November 19876 appealed against the Secretary of State's decision dated 24 November 2014 to make removal directions pursuant to the provision of section 10 of

the Immigration and Asylum Act 1999, a form 1A15A having been served on the same date and an asylum/human rights based claim refused.

3. The basis of the claim as shortly set out in the Reasons for Refusal Letter dated 20 November 2014 was that further circumstances had arisen such that there was a new risk posed to the Claimant by reason of past matters arising in relation to his presence in Sri Lanka and since he had left.
4. The Claimant had originally made a claim based upon risks posed to him because his identity had been used by one of his younger brothers and who had been involved with the LTTE and thus he was perceived to have been involved with the LTTE and it followed at risk from the Sri Lankan security forces. That claim came before First-tier Tribunal Judge N K Lawrence who, in March 2005, concluded that first the judge did not accept the Claimant's credibility or claim to have joined the LTTE, his brother having joined the LTTE using the Claimant's details, and, secondly, he did not find the Appellant had established that he was of any interest to them and thus there was no real risk of a breach either under the Refugee Convention of persecution or of proscribed ill-treatment contrary to Article 3 of the European Convention on Human Rights.
5. Following that failed claim, the Claimant returned to Sri Lanka in 2007 but ultimately returned to the United Kingdom claiming that he had been the object of adverse attention associated with the authorities' belief in his having active involvement or connection with securing the release of two, arguably LTTE, cousins leading to his detention and ill-treatment. The Claimant claimed that the torture and ill-treatment he had received was evidenced by medical evidence and a psychiatric report and what was essentially argued was that this was a wholly different claim and therefore in the light of the case of Devaseelan [2004] UKIAT 282 the previous decision should not be held against him and that his evidence was credible and to be accepted in relation to the more latterly arising events.
6. That claim came before First-tier Tribunal Judge J Bartlett who, on 16 March 2015, allowed the appeal on Refugee Convention grounds. The Secretary of State sought permission to appeal that decision which was granted by First-tier Tribunal Judge Landes on 13 April 2015.
7. Before me Mr Avery has argued that the judge essentially failed properly to deal with and reason in his decision with the previous adverse decision by Judge Lawrence. For Judge Bartlett had failed to make reference to the earlier hearing and the relevance, whether he discounted it or not, of the adverse findings on the Claimant's credibility. Mr Avery argued that the judge did not have to resolve differences between the two accounts but at least explain the differences that had arisen. Rather what the judge needed to do was to take them into account and disclose at least some reasoning why he considered the later arising events put the earlier adverse credibility findings to one side in the assessment he made of the claim to sustain the conclusion that the Appellant was at risk of persecution contrary to the Refugee Convention.

8. Mr Avery's second point was that the judge's analysis of the medical evidence was essentially confused or unreasoned. In the circumstances the judge had not properly weighed the evidence in the round to assess the relevance of the medical evidence provided in assessing the credibility of the Claimant or the likelihood that he was at risk of proscribed ill-treatment on return to Sri Lanka.
9. Similarly, it followed, the Secretary of State did not accept the judge's conclusions in relation to Article 3 of the ECHR.
10. In response Miss Pinder provided me with a Rule 24 response, which had been settled by Miss A Walker of Counsel in April 2015. Miss Pinder helpfully advanced with brevity nonetheless similar arguments as to why the judge's decision should stand.
11. It is trite law that the parties to such litigation are entitled to reasons which are adequate in law and sufficient on the facts to justify the decision made. In this case I am persuaded that the judge did not properly reason the conclusion he reached on the outcome of the case with reference to the earlier adverse decision; where the Claimant's credibility was significantly challenged. It seemed to me, whilst it was not determinative, the judge needed to address why the Claimant who had previously pursued an unmeritorious claim to an appeal should be treated as credible in respect of a later account. This is not to say with sufficient reasons a judge would not be entitled to reach that view. Absent of analysis of any kind, it was very hard to infer that the decision would nonetheless have been the same, if the judge had taken those matters into account, on the reasoning that was given.
12. It follows that the decision with its reasons set out at paragraphs 18 to 24 does not adequately explain why the judge found the Claimant to be credible in respect of his current account of events arising from 2007 and onwards gave rise to a real risk on return. The judge may well have been right but I cannot second guess why he found the Claimant credible. Absent of proper reasoning to explain the differences in terms of the assessment as between the earlier events and the later events, was I find a material error of law. The original Tribunal decision cannot stand.
13. In relation to the medical evidence, that of itself must of course in the light of Mibanga [2005] EWCA Civ 367 be an assessment that is made on the evidence in the round as a whole. The criticisms are made of that evidence, the weight to those criticisms and the extent to which it undermined the credibility of the claimed cause of the injuries, it is said by the Sri Lankan authorities, was primarily a matter for the judge. It seemed to me that the judge having accepted the Claimant's account of the later events inevitably accepted medical evidence which could be properly explained to different causes or as to when they arose, which are not related to the Sri Lankan forces or the events claimed. It seems to me therefore that by itself the appeal could not be sustained simply on the

medical evidence and that the matter will have to be looked at its totality again.

14. Accordingly the Original Tribunal's decision is set aside and the matter will have to be remade in the First-tier Tribunal.

**Directions**

- (1) Relist in the First-tier Tribunal before a judge other than Judges J Bartlett and N M K Lawrence, and T B Davey.
- (2) Time estimate 3 hours
- (3) Tamil interpreter
- (4) Any further documentation in support of the hearing to remake the decision to be served not later than 10 working days before the date of further hearing.
- (5) If the Claimant intends to call witnesses then notice of them should be given to the Secretary of State's together with any information concerning their immigration status, nationality and so forth.

**NOTICE OF DECISION**

The appeal is allowed to the extent it is remitted to be remade in the First-tier Tribunal (IAC).

**DIRECTION REGARDING ANONYMITY - RULE 14 OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

The anonymity order made on 16 March 2015 should be continued.

Signed

Date 10 June 2015

Deputy Upper Tribunal Judge Davey