



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

Appeal Numbers: AA/10811/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 February 2015**

**Decision and Reasons Promulgated  
On 23 November 2015**

**Before**

**DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA**

**Between**

**MR MOHAMED NISMATH MOHAMED RAFEEK  
(no anonymity direction made)**

Appellant

**and**

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

Respondent

**Representation:**

For the appellant: Miss P Young of Counsel

For the respondent: M R Petersen, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant is a national of Sri Lanka born on 23 May 1986. He appeals to the Upper Tribunal against the determination of [First-tier Tribunal] Judge Ian Howard dated 19 November 2014 refusing his appeal against the decision of the respondent dated 4 December 2013 refusing him asylum and humanitarian protection and to remove him from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999.
2. Permission to appeal was granted by [First-tier Tribunal] Judge RA Cox on 16 December 2014 stating that it was arguable that the First-tier Judge failed to properly

assess the appellant's profile, failed to make clear and adequate findings on material matters and failed adequately to engage with the relevant country guidance.

### **The first-tier Tribunal's findings**

3. The Judge in his determination made the following findings which I summarise.

- The appellant arrived in the United Kingdom on 27 February 2010 with a student visa valid until 4 December 2012. He made his claim for asylum on 13 November 2013.
- The appellant and his family are from Kandy in central Sri Lanka and they own two properties. One of the properties was rented from April 2006 until May 2008 to 3 men known to the appellant as Jana, Suresh and Surya who were all from Jaffna. Sometime after these tenants left the property, they were arrested and accused of serious acts of violence. During their interrogation they named the appellant and he was arrested on 6 May 2008 and detained. The police informed the appellant that his name had been used during telephone calls and to buy Sim cards that were used in connection with the tenant's violent crimes. During the detention the appellant was tortured.
- The appellant's father with the help of a wealthy and influential friend, Zorak secured the appellant's release with no conditions by paying a bribe of eight lakh rupees. Following his release the appellant relocated to his uncle's home in Kandy. The police who did visit the appellant's home and were also unable to locate him at his uncle's house. Zarook's influence helped the appellant not to be found. In September 2009 the appellant returned home upon assurances given to him by Zarook. In December 2009 the police obtained a summons for the appellant to attend the Kandy Magistrate's Court on 8 December 2009. This was the second summons and the first summons issued was in August 2008.
- The appellant was arrested on 20 November 2009 before the summons was issued and he was detained and tortured for the same reason as previously. 15 lakh rupee bribe was paid to secure his release on 21 January 2010. The appellant applied for a visa to enter the United Kingdom on 8 February 2010.
- In support of his claim the appellant has submitted original and translated copies of two summons, a psychiatrist report and copies of prescriptions for medication prescribed in the UK. At the heart of the appellant's claim is the suggestion that he has been implicated in very serious acts of violence that have resulted in the deaths of a number of MPs in Sri Lanka. That evidence came initially from the disclosures of the alleged perpetrators under interrogation and secondly by Sim cards that were used in the attacks been bought in the appellant's name.
- Reliance upon evidence obtained by torture by the authorities in Sri Lanka is well known and well documented. If the authorities consider that they have evidence which in their estimation is reliable and which implicates the appellant in serious acts of violence directed against members of the government and it is against this background that the appellant claim that he was arrested, detained and tortured is considered.
- Given that the authorities consider that they have reliable evidence of the appellant's involvement in the more serious crime offences such as murder

directed towards members of government, it is questionable that a bribe, even one facilitated when influential friend, would secure his release in the way claimed.

- Even if he is wrong in this finding, he must go on to consider the events of which the appellant subsequently speaks about his release. The appellant claims that his father and Zarook bribed the police to release him. He however was persuaded by assurances from Zarook to return home. Once home he was again detained for the same alleged crimes and reliant upon the same evidence. He was again detained and tortured and a second bribe was paid and he was released. This gives rise to the original concern that given the egregious nature of the crimes with which the appellant was implicated, for him to be able to secure his release twice by the payment of bribes, even by an influential friend is simply not credible. Given the evidence he alleges that the authorities hold against him, there is no reason why he should not have been prosecuted.
- It is acknowledged that the appellant's points to the alleged fact that Zarook has influence with the government. On the appellant's own evidence that influence is limited. Firstly, it did not prevent two summons being issued against the appellant. The second of which is that at the time, Zarook was giving the appellant's family assurances about the appellant safety and the appellant was still arrested, it can only reasonably be inferred from that that such influence is in reality limited. Notwithstanding this limited influence, the appellant maintains he was twice able to facilitate his release, notwithstanding the nature of the allegations and the evidence held by the authorities.
- The appellant relies on two police summons in support of this claim. It is impossible to know whether they are genuine or not. However, on the basis they are genuine documents, they do not specify the reason why the appellant is required to attend the magistrate's court in Kandy. In his statement the appellant asserts that the attack carried out by the three tenants took place in Colombo. These are the crimes in which the appellant is implicated. But summons state that the crimes for which the appellant is accused took place in the Kandy division. For each of these reasons the judge was not satisfied, even to the lowest standard, that the events of which the appellant speaks are credible.
- The appellant also relies upon a psychiatrist report prepared by Dr Robin Lawrence dated 18 April 2014. At page 15 of the report, the doctor sets out his "impressions and conclusions". The finding is that the appellant is describing as showing the signs of major depression secondary to post-traumatic stress disorder which the Judge accepts.
- The question is whether there is to be found in the diagnosis any support for the appellant's claim to be at risk of persecution on his return. The appellant provided the same narrative history to the doctor. The Judge noted that at page 8 the appellant revealed for the first time that his torture included sexual abuse. The doctor was asked to consider whether any other trauma other than that spoken of is a possible cause of the condition diagnosed. He states it is extremely unlikely any sets out his three reasons for so concluding.
- The Judge was satisfied that the correct interpretation of the doctors reported is that the appellant has been the subject of physical and sexual abuse. The

doctor however cannot say at whose hands. The Judge rejected the appellant's claim that it is at the hands of the Sri Lankan authorities given his findings and in particular the fact the summonses appear to relate to alleged criminal activity in Kandy and not that perpetrated by the three tenants in Colombo. Whether the alleged criminality alleged in the summons lies behind his present condition the Judge said, I know not. The judge was not satisfied that matters for which the appellant claims is the cause of his condition.

- For each of the reasons set out above, he rejected the account advanced by the appellant and was satisfied that the appellant is not of any interest to the Sri Lankan authorities for any involvement with the LTTE.
- That he may be the subject of unrelated alleged criminal activity in Kandy is possible. However, the evidence advanced by the appellant does not permit the conclusion that these allegations of those he claims are political in nature. As the appellant has no links to the LTTE, he does not come within any of the risk groups identified in **GG and others (post-Civil War: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
- In respect of his human rights, the appellant relies upon the same factual matrix. Having found him not credible it follows that to return the appellant to Sri Lanka would not subject him to the risk of inhuman and degrading treatment and so for the same reasons his claim for subsidiary protection is rejected.
- The appellant at paragraph 21 of his grounds of appeal advances his depression and PTSD for founding a claim under Article 3 of the 1950 Convention. It is suggested that his mental health condition will deteriorate at the point of removal and that adequate treatment will not be available to him in Sri Lanka.
- It has also been submitted but half of the appellant that he comes from a family who have property in affluent Kandy. As such the appellant's family is not without means and indeed the appellant was able to demonstrate access to sufficient funds to successfully obtain a student visa in 2010.
- The only evidence of the non-availability of treatment in Sri Lanka come from Dr Lawrence. He states that nine years ago when in Sri Lanka the drugs and therapy at the National Institute for Clinical Excellence guidelines advise to treat the appellant's condition were not available in Sri Lanka and such drugs are only available to the expatriate community. There was no evidence as to the availability of these drugs Sri Lanka today whether provided by the state or paid by privately. The only evidence on the effect of the appellant of the withdrawal of his "treatment is that his symptoms would undoubtedly be made worse by his return to Sri Lanka".
- In the case of **N v United Kingdom 26565/05, [2007] ECHR 746** gives the test to be applied in medical cases. The appellant's case is not compelling as to meet the requirements of the test in **N**.

### The grounds of appeal

4. The appellant in his grounds of appeal states the following which I summarise. The Judge has materially erred in law in his assessment of the appellant's profile. This is that the appellant is Tamil speaking Muslim, he was formally arrested on suspicion of

having assisted the LTTE and was of continuing interest to the authorities. He forced his release from detention on payment of a bribe. The appellant considers that he will be arrested and detained on his return to Sri Lanka and he will be deemed a threat to the Sri Lankan authorities' concept of a unitary state. There is an outstanding warrant for his arrest as of 26 August 2008. He submits that he will be questioned at the airport and refer the Tribunal to appendix C of **GJ Sri Lanka** at paragraph 4-15 and paragraph 308- 310.

5. The Judge's findings commence at paragraph 14 of the determination but it is respectfully submitted that there are no clear findings of fact as to whether the appellant was actually arrested and detained in May 2008 on suspicion of LTTE involvement. At paragraph 28 the Judge makes a number of observations and opinions that if what the appellant speaks of had taken place, this would not have been remarkable in Sri Lanka.
6. The Judge in the early sentences of this paragraph considers that the appellants claim when placed on the factual background is plausible but considers that the appellant's account of being released was not credible. What is troubling about the Judges assessment of the appellant's core claim is, the fact that there are no clear findings as to the circumstances giving rise to the appellant's arrest and detention, no assessment of the ill-treatment that he had endured, no assessment of paragraph 399K of the Immigration Rules and no findings as to why reference to bribery and corruption in Sri Lanka was not considered when the judge reached a conclusion as to the plausibility of the appellant's release from detention.
7. The Judge materially erred in law by failing to make any clear **Tanveer Ahmed** findings pertaining to the summons issued against the appellant. The appellant provided detailed written and oral evidence pertaining to the manner in which the summonses were issued and whilst the offence is not specified in the summons, the fact of the matter is that whilst the Judge considers that the account provided by the appellant is not credible, there is no clear assessment of this claim or of the documentary evidence.
8. At paragraph 41 the Judge's findings that the appellant is not at risk on return due to his claim being predicated on non-political grounds and further that he is not credible is irrational. The judge has failed to adequately engage with the country guidance decision of **CJ Sri Lanka**.
9. The appellant relies on the Court of Appeal decision of **MP Sri Lanka [2011] EWCA Civ 362** where the court held that it would normally be in error of law not to adequately follow relevant country guidance. It was held that the claimant was entitled to a hearing and a decision which addressed the material risk factors and the significance attached to this country guidance, with proper reasoning as to how they apply to the facts in the particular case. The Judge's findings of fact as to the appellant's risk on return is materially deficient due to the above material errors in law.

### **The hearing**

10. On behalf of the appellant, Miss Young adopted the grounds of appeal and her skeleton argument. She further argued that no clear findings of fact were made as to

whether the tenants of his house linked the appellant to the atrocities committed. It is commonplace for bribery to be used in Sri Lanka. There were also no findings of fact for why the appellant is not a LTTE supporter. In **GJ** it was found that anyone who has been previously detained is at real risk of harm. The Judge did not consider the summons provided by the appellant in line with **Tanveer Ahmed** and did not take account of the evidence in the round. The Judge accepted that the appellant gave the same narrative to the doctor about his injuries. The doctor carefully interpreted that the appellant has been subject to physical abuse but said he cannot say at whose hands. The Judge gave no weight to the medical evidence report and did not undermine it at all.

11. On behalf of the respondent, Mr Peterson adopted the Secretary of State's Rule 24 response. Although the Judge did not refer to the case **Tanveer Ahmed**, he applied the legal principles in the case. He submitted that at paragraph 32, the Judge stated that it is impossible to know whether the documents are genuine or not. He was entitled to rely on the fact that the summons refers to crimes committed in Kandy but the offences were in fact committed in Colombo. At page 6 of the summons refer to Chapter 15 of the Penal Code of Sri Lanka and there was no evidence before the Judge as to what chapter 15 states. The appellant did not have any links to LTTE so he would not be on the watch list at the airport. The Judge was entitled to find that the appellant did not have a political profile in Sri Lanka.

### **Error of law findings**

12. I have given anxious scrutiny to the determination of Immigration Judge B Dawson and have taken into account the grounds of appeal and the documents provided by the appellant's previous solicitors.
13. As to the first ground of appeal, the Judge, at paragraph 17 considered the evidence relating to the appellant's scars and acknowledged that the medical report stated that the injury on the appellant's anus was highly consistent with been caused by an object such as a screwdriver. The Judge however said at paragraph 18 that "even on the lower standard there is the possibility that they were other reasons for these scars. The Judge said that the Dr Josse in his report does not state the time when the injuries to the appellant's anus occurred. Dr Josse simply said that the scars are well healed which the Judge said brings the timeframe into question. The Judge stated that he 'bears in mind the medical evidence in his assessment of the account but in isolation, it is by no means decisive of the appellant's claim'. It is clear that the Judge made a typographical error by omitting that would "not" before "in isolation" in the sentence. The Judge clearly meant to say that she bears in mind the medical evidence in the assessment of the account but *not* in isolation. I find that it is clear from reading the determination in the round that she took into account the medical evidence in the round and not in isolation. This is an unfortunate typographical error but I find that it is not a material one.
14. The Judge did not refer to the Istanbul protocol but it is clear from her reasoning that she found that there was a possibility that there could have been other reasons for the scars. Dr Josse in the medical report did not refer to the Istanbul Protocol in his Report. The report states at paragraph 3 that "the injury would have resulted from some sort of penetrating wound. It is not possible to indicate how deep that was but it is well healed. It would be highly consistent been caused by an instrument such as a

screwdriver". Dr Josse did not consider any other possible causes for the injuries, which he was bound to do and nor did he say that it was intentionally caused under torture. Dr Josse in his report stated that the appellant had stitches in that region but failed to exclude any other possibilities such as that the injury was due to a cut with a knife during an operation which would have required stitches. The Judge was therefore entitled to find that she could not rely on the medical evidence on its own to demonstrate that the injuries were caused as a result of torture.

15. This is equally true of the injury to the appellant's right leg which Dr Josse said was caused following a blunt trauma and would be "highly consistent with having been caused by an instrument such as the butt of a rifle". Dr Josse did not consider if there may have been other possible causes for this injury in line with the Istanbul protocol, which was his duty to do. The I Judge was entitled to find that there may be other reasons for this blunt trauma.
16. I find that the Judge was entitled and required to reach her conclusion based on her consideration and evaluation of the evidence as a whole. I find that the Judge did take into account Dr Josse's report of which she made no criticism. However, an expert report is simply evidence in the case, which must be considered and assessed together with all of the other evidence in the case. This is what the Judge did. I find that the Judge was entitled to find and to take into account that the appellant gave inconsistent evidence and his account was not credible or plausible and was entitled to consider the expert report together with the appellant's own account in reaching a conclusion as to whether the scarring was consistent with the appellant's account. I therefore reject the appellant's ground of appeal in respect of the medical evidence.
17. The appellant relied on two police summons in support of this claim. The Judge properly noted that the summons do not specify the reason why the appellant is required to attend the Magistrate's Court in Kandy when the appellant's evidence is that the attacks were carried out by his three tenants in Colombo. She was entitled to find that there was no credible explanation for this inconsistency in the evidence. The summons refer to Chapter 15 of the Penal Code of Sri Lanka and there was no evidence before the Judge as to what chapter 15 states. The Judge was entitled to find that the appellant may be the subject of unrelated alleged criminal activity in Kandy.
18. The appellant's remaining grounds of appeal are that the Judge's findings are flawed and unsustainable and that she has failed to take the explanations of the appellant into account. I find that the Judge considered the evidence in the round gave sustainable reasons for her finding that the appellant's evidence is not credible in her determination. The Judge has given details of specific inconsistencies and implausibility's in the evidence which led to the Judge's finding that the appellant's evidence was not credible and that the appellant did not leave Sri Lanka because he fears persecution from the Karuna group. The Judge was entitled to find that it is not credible that the Karuna group waited for two years before they decided to extort money from the appellant. I find that the grounds of appeal are no more than a quarrel with the Judge's findings. I find that the Judge's reasoning is understandable, and not perverse.
19. For each of these reasons the judge was not satisfied, even to the lowest standard, that the events of which the appellant speaks are credible

20. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982**

Brooke LJ commented on that analysis as follows:

“15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings.”

21. I find that I have no difficulty in understanding the reasoning in the Judge's determination for why she reached her conclusions. I find that the grounds of appeal and no more than a disagreement with the Judges findings of fact and the conclusions that she drew from such findings.

22. I find that no error of law has been established in Judge Ian Howard's determination. I find that she was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold the decision of Judge Ian Howard.

**DECISION**

Appeal dismissed

Dated this 6<sup>th</sup> day of March 2015

Signed by,

Mrs S Chana  
Deputy Judge of the Upper Tribunal