



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/03927/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 23<sup>rd</sup> March 2016

Decision & Reasons Promulgated  
On 11<sup>th</sup> April 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

SUMATHY MARKANDU  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: The Appellant (unrepresented)  
For the Respondent: Mr L Tarlow (Home Office Presenting Officer)

**DECISION AND REASONS**

1. This is the appeal of Sumathy Markandu, a citizen of Sri Lanka born 30 September 1976, against the decision of 19 February 2015 to set removal directions against her following the refusal of her asylum claim.
2. Her asylum claim was based on having provided support to the LTTE whilst a student, by way of cooking food, raising funds, helping with conferences and participating in role plays. Additionally she had canvassed for a MP in 2004. On 20 June 2007 the army asked her and others to assemble on the A9 road and following their identity being checked, she was arrested, taken to Kumblavalah Pillaiyar camp, detained for three days, blindfolded, struck with a baton, and accused of

being a LTTE member. She denied those allegations though she admitted the assistance she had given them generally. Following her release having paid a bribe, she was subjected to reporting conditions, to which she adhered for four months, then becoming wanted by the police after she breached them. In 2008 gang members associated with the Eelam People's Democratic Party (a political party and a pro-government paramilitary organization) visited her three times in Manipay, and accused her of being an LTTE member, and threatened to arrest and kill her. She relocated to Colombo where she lived with a Sinhalese family before making arrangements to leave the country.

3. Her asylum claim was refused because, whilst her claim to have been detained following a round-up was credible, as were her activities in support of the LTTE, she had variously stated that she had been sought by the police after she stopped reporting, and that her uncle had used his influence with an EPDP member to terminate her reporting requirements; furthermore it was not credible that she could have relocated to Colombo with the assistance of a EPDP member if that organisation sought to arrest and kill her. Her use of false documents to enter the United Kingdom counted against her credibility.
4. It was noted that a Rule 35 report had been submitted on 14 April 2014 expressing a medical practitioner's concerns about her torture claim, though this was not accepted as amounting to independent evidence of her allegation.
5. The First-tier Tribunal dismissed her appeal on 22 December 2015. It assessed her claim, finding that her account was not credible, upholding the Respondent's thinking that her claim to have been both assisted by, and threatened with harm by, the EPDP to be inconsistent, given her uncle's influence with them; it was not plausible that the EPDP would have left her unharmed had they truly threatened her; her failure to claim asylum in France also undermined her application, and she had given no reasonable explanation for her eleven month delay in claiming asylum after arriving here. In any event she did not have a profile that would put her at risk, applying the Country Guidelines. A preliminary issue was considered by way of an adjournment request because a report from Consultant Psychiatrist Dr Persaud had been produced too late: the underlying examination had taken place on 9 December 2015 and it was unreasonable for it not to have been provided until the morning of the hearing on 16 December 2015.
6. Grounds of appeal contended that the exclusion of the medical evidence was unfair. The First-tier Tribunal granted permission to appeal on 15 January 2016 on the basis that the Judge might have erred given the allegation in the grounds that the report was only sent to her lawyers by its author on 15 December 2015.
7. Professor Persaud's report which the First-tier Tribunal saw fit to exclude notes that the Appellant appeared to be too frightened to discuss the torture she experienced in detention in Sri Lanka in any detail, and concludes with his opinion that Applicant continued to suffer from a serious psychiatric disorder, major depression

and PTSD, and he did not believe that she would be able to survive in Sri Lanka because of the mental and physical health problems she would face. Her concern that she had sustained long term damage in the pelvic area following the violence inflicted on her during her detention which had contributed to her miscarriage required further investigation and reassurance. The appropriate treatment was unlikely to be available to her in Sri Lanka. She presented moderate to high risks of completing suicide as she expressed hopelessness about her future.

8. As to her Article 8 claim, it was accepted that she was in a genuine and subsisting relationship with her British citizen husband. Given that the case could succeed under the Rules only if the couple established insurmountable obstacles counting against their removal abroad, and bearing in mind that her husband was of Sri Lankan origin and a failed asylum seeker, he would have spent his formative years there and was fluent in Tamil, and admitted to maintaining contact with family members there. He had previously worked as a bus conductor in Sri Lanka and there was no reason to think he could not find employment in the future. The First-tier Tribunal expressly relied upon *Agyarko* [2015] EWCA Civ 440 where it was found that the “mere fact” that the Sponsor was a British citizen who had lived all his life here and had employment here, and was reluctant to relocate to a country where they would face some difficulty in the future, could not constitute insurmountable obstacles.
9. Before me Mr Tarlow submitted that the decision was a reasonable case management one and that in any event taking the claim at its highest it could not succeed applying the relevant Country Guidelines.

### **Findings and reasons**

10. I had previously adjourned this appeal with a view to the Appellant finding legal representation, those solicitors who appear to remain on the record for her having nevertheless not attended the last or the present hearings. I now consider that there is no real chance of representation eventuating, given the Appellant's statement that her lawyers no longer wished to act for her and that she wished to proceed with the hearing without any representative.
11. It is trite law that asylum appeals require “anxious scrutiny” -- see, by way of example, the decision of the House of Lords in *Bugdaycay* [1987] AC 514. They are appeals which potentially involve vital issues of life, limb and liberty. In consequence, the overriding objective to ensure that justice is done must inevitably outweigh all other considerations. In *SA* [2006] EWCA Civ 1302 at [29] Potter LJ clarified that one role for a medical report is “to corroborate and/or lend weight to the account of the asylum seeker by a clear statement as to the consistency of old scars found with the history given”, and it is clear that evidence going to mental health may also bear on the assessment of credibility. In these circumstances I consider that the decision to exclude potentially vital evidence only because of case management failings was contrary to the interests of justice.

12. So I accept that the decision is flawed by an error of law. That does not necessarily demonstrate that the appeal requires rehearing, however, as the question remains whether this is a material error of law, as the failing is only a material one if it might arguably have had an impact on the outcome of the appeal.
13. In assessing the risks faced by the Appellant on a return, it would of course be necessary to base any findings on the Country Guidelines determination of *GJ (post-civil war: returnees) Sri Lanka* CG [2013] UKUT 319 (IAC). Indeed the First-tier Tribunal referenced that decision. As can be seen note from the headnote, in so far as relevant to this appeal, that: “(3) The government’s present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the ‘violation of territorial integrity’ of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka. (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection. (5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport. ... (7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are: (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.”
14. There is no evidence to suggest that the Appellant would fall into these classes of returnee. It must be appreciated that the Country Guidelines are a guide rather than a straitjacket: as stated with regard to Sri Lankan cases, by Underhill LJ in *MP* [2014] EWCA Civ 829, on a fair reading of *GJ* there may “be other cases ... where the evidence shows particular grounds for concluding that the Government might regard the applicant as posing a current threat to the integrity of Sri Lanka as a single state.” However there is no evidence in this appeal from which such a conclusion could reasonably be drawn. The Country Guidelines do not suggest that the mere historic breach of reporting conditions is to be equated with the actual issue of an arrest warrant or that visits from gang members associated with a political party some years ago would create a real risk of harm eventuating now, either from the state or from third parties.
15. As to the findings on the Appellant’s private and family life, this was not the subject of her application for permission to appeal and the matter is accordingly not before the Upper Tribunal for decision. In so far as the report from Professor Persaud may be relevant to her rights under the Human Rights Convention, that will be a matter

that the Secretary of State will doubtless wish to consider in the future, having contended for the report's exclusion from the appellate proceedings successfully.

**Decision**

16. Accordingly the appeal is dismissed.

A handwritten signature in black ink, appearing to read 'MAS', with a large, sweeping flourish underneath.

Signed:  
Deputy Upper Tribunal Judge Symes

Date: 23 March 2016