



**UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)  
PA/12457/2017**

**APPEAL NUMBER:**

**THE IMMIGRATION ACTS**

**Heard at: Field House**

**Decision and Reasons  
Promulgated**

**On: 23 April 2019**

**On: 09 May 2019**

**Before**

**Deputy Upper Tribunal Judge Mailer**

**Between**

**MNS  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation**

**For the Appellant: Mr A Swain, counsel, instructed by Indra Sebastian Solicitors**

**For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer**

**DECISION AND REASONS**

Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.

1. The appellant is a national of Sri Lanka, born on 15 June 1964. He appeals with permission against the decision of the First-tier Tribunal Judge Conrath, promulgated on 18 February 2019, dismissing his appeal against the decision of the respondent to refuse his asylum, humanitarian protection and human rights claims.
2. In granting permission to appeal, First-tier Tribunal Judge Shimmin stated that it is arguable that the Judge failed to consider the appellant's medical condition when assessing his credibility; that he failed properly to appreciate the way in which the adverse interest in the appellant arose; that he failed 'to properly consider the medical evidence of suicide risk and to fully engage with that evidence' and finally that he erred in the approach to and the assessment of paragraph 276ADE(1)(vi) of the Immigration Rules.
3. Mr Swain, who did not represent the appellant before the First-tier Tribunal Judge, relied on the three grounds in the application for permission to appeal.
4. First, with regard to the asylum claim, he submitted that when assessing the appellant's credibility, no consideration was given to the medical evidence. The appellant had asserted that he had accommodated some Tamil men who were accused with being LTTE members who had carried out the bombing against the Dalada Maligawa Temple in 1998. Suspicion had developed against him in his home area and he feared that should he return home he would be attacked by people in his village and would reported to the authorities after he escaped from his home area.
5. There had been a diagnosis of both depression and PTSD which was associated with a specific trauma which was being revisited and which was causing flashbacks. That was linked to a specific event. The Judge failed to assess the possibility that the event was likely to be the 1998 bombing and its aftermath.
6. The appellant was not immediately identified, and it appeared that that it took the authorities time to identify the perpetrators and then to look and identify who might have helped them. He had not claimed to have been in the village for the whole period of six months after the bombing, but that he was travelling there from time to time. He had moved to Colombo and the villagers did not know where he was. The fact that he was not identified at that stage did not mean that he would not be identified now. Even if he was not aware of any actual interest in him, and it was his case that he is not, this did not mean that the authorities would not actually know this. Consideration of his mental health was also important in assessing that factor.
7. It is also contended that the Judge did not properly assess the suicide risk, having devoted a single paragraph to its assessment. It did not appear that he had looked at both reports of Dr Lawrence. Dr Lawrence first saw him in 2015. He examined him again in 2018. He considered that

his condition had been deteriorating since he first saw him in 2015. There would be a further deterioration if he were to be detained or removed. Mr Swain submitted that the Judge should have undertaken a full suicide risk assessment.

8. Further, his assessment of paragraph 276ADE(1)(vi) was insufficient. The Judge did not address the issues cumulatively. He failed to consider whether his subjective fears would have an impact on what he could do in Sri Lanka, and in particular whether he could integrate. The factors that the Judge referred to in [66] do not fully consider the issue.
9. In reply, Mr Tarlow submitted that the grounds amount to a disagreement with the decision reached by the First-tier Tribunal Judge. He has made proper findings.
10. The appellant made a claim for asylum in 2016 after his application for permission to remain on the basis of private life had been refused. The authorities would have had ample opportunity to locate him and harm him during the period that he remained in the village following the bombing, or in the subsequent two years that he spent in Colombo [51]. Those were findings open to the Judge.
11. He also made a sustainable finding that the appellant has not given a satisfactory explanation as to why he did not claim asylum earlier if the claim is genuine, having taken over 15 years to approach the Home Office.
12. He was entitled to find at [58] that he had embellished and exaggerated his fear when he saw Dr Lawrence in January 2018.
13. Finally, he dealt with the mental health issues that were raised. Any error of law would not be material. His finding that there would not be very serious obstacles to his re-integration into Sri Lanka is also sustainable.

### **Assessment**

14. The appellant's appeal based on the grounds of his long residency and/or private life, had been dismissed by First-tier Tribunal Judge Traynor on 20 November 2013. Judge Conrath noted that although the issue of asylum had been raised by the appellant in those proceedings, the Court was not on that occasion really concerned with an asylum appeal [4].
15. The appellant's asylum claim was based on his assertion that he had accommodated some Tamil men who were accused of being LTTE members who had carried out the bombing of the temple in 1998. Suspicion developed against him in his home area. He feared that if he returned there, he would be attacked by the villagers and it was likely that he had already been reported to the authorities after he escaped from his home area.
16. The Judge noted that it was not suggested that the appellant has suffered any form of harm in the past. He has never been arrested and detained by

the authorities in Sri Lanka, nor had been threatened directly by the villagers. The appellant did not appear to be claiming that the authorities were searching for him. The reality was that he had no difficulty in obtaining a visitor visa to leave Sri Lanka and come to the UK on more than one occasion in and around 2000 and 2001. He had no difficulty re-entering Sri Lanka in 2001. He himself 'expressed' that he intended to return to Sri Lanka as he had a property and business there [48].

17. He stated at [49] that the reality is that he only made a claim for asylum in November 2016, which he maintained was prompted by a letter from his sister that he would be in danger if he was to return. That letter was dated a month after his private life application had been refused. He said that in order to determine the weight he could attach to that letter he had to first determine the credibility of the appellant's credibility of his claim [50-51].
18. He did not accept that the appellant is still at risk from a group of villagers more than twenty years after the bombing of the temple in 1998. If they were seriously looking for him there had been ample opportunity to locate and harm him during the period he remained in the village or the next two years he spent in Colombo thereafter. Nothing happened to his parents whose property it was that the Tamils who caused the bombing had been renting. Nor had his sister or brother experienced any issues. His sister made no mention in her letter of threats against her family if the authorities found out the appellant was in the country.
19. Judge Conrath also noted that the appellant initially stated at interview that his sister and brother had not experienced any issues due to the bombing of the temple, which he found to be truthful. That had been an unprompted response to the question he was asked and his subsequent retraction only took place when he had time to think about what he was being asked [53].
20. He found it to be more than co-incidental that his sister's letter happened to be written within a month of the appellant's application for leave to remain on private life grounds was refused. That was effectively the only document that he had to support his claim. It was a document he asked his sister to provide to support his subsequent claim for asylum. He found that it was therefore a purely self serving document [54].
21. He stated that even if he accepted that certain 'unidentified' villagers were still interested in him, they are merely non-state actors. There would be sufficiency of protection in Sri Lanka to enable him to return without undue risk of harm. He could live in Colombo where his sister and family are already living, and where he too managed to live unimpeded and without difficulty for almost two years after the bombing incident [55].
22. I find that the Judge has given sustainable reasons for dismissing his asylum and humanitarian protection claims.

23. In the assessment of the appellant's mental health problem under Article 3, the Judge found that he had somewhat exaggerated and embellished his fear when he saw Dr Lawrence in 2018 [58]. He stated at [59] that it is right to point out that Dr Lawrence considered that his mental state had deteriorated since he last saw him and that he had more symptoms of depression. He was clinically more anxious than he was the last time. He also had regard to what Dr Lawrence indicated in his report about medication and treatment being available in Sri Lanka.
24. The appellant told him that he had received Group Therapy for about two to three months, some eighteen months prior to the hearing, but was not receiving any treatment at the time of the hearing in November 2018 [60].
25. In considering whether there would be a breach of his Article 3 rights, the Judge had regard to the suicide risk that the appellant presented. He stated at [62] that Dr Lawrence stated in his report that suicide is notoriously difficult to predict, and he is not currently a high risk.
26. The Judge did not refer to Dr Lawrence's conclusion in his 2015 report, that the risk would definitely be increased if the appellant were returned to Sri Lanka where he is without support and vulnerable because of his depression. By the time he came to assess him in January 2018, he concluded that his material health had significantly deteriorated. Whilst suicide risk is difficult to predict, it was clear that if the appellant were removed to Sri Lanka, or if he were detained in the UK before he was removed there, it is highly likely that his suicide risk would increase.
27. As submitted on behalf of the appellant, the Judge did not properly consider what this evidence meant. The appellant had contemplated suicide in 2015 and there would be a further deterioration if he was detained and removed. In those circumstances there should have been a full suicide risk assessment made in accordance with the guidelines in J v SSHD [2005] EWCA Civ 629, which were set out in the appellant's grounds of appeal before the First-tier Tribunal.
28. Finally, with regard to the paragraph 276ADE(1)(vi) assessment, the Judge did not follow the guidance referred to in Miah [2016] UKUT 00131, and did not look at issues cumulatively. There the Upper Tribunal stated at [17] that the public law duty engaged is to take account of all material considerations, weighing them in the round. In this context, they recorded that in response to a question from the bench, it was acknowledged on behalf of the Secretary of State that the age, gender, educational achievements and linguistic abilities of the person concerned are (inexhaustively) all material considerations.
29. The Judge did not adequately consider his subjective, but firmly held, fears which could have an impact upon what he could do in Sri Lanka and whether he could integrate.

30. I cannot find as Mr Tarlow urged that any error was immaterial. I thus cannot find that the same decision would inevitably have been reached had a proper assessment under Articles 3 and 8 been made.
31. The decision of the First-tier Tribunal as to the appellant's Articles 3 and 8 claims involved the making of an error on a point of law. I set aside it aside. It will have to be re-made.
32. I am satisfied that the amount of judicial fact finding which is necessary in order for the decision to be re-made is extensive. In the circumstances, it is appropriate to remit the case to the First-tier Tribunal for a fresh decision to be made.

**Notice of Decision**

The decision of the First-tier Tribunal involved an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made.

Anonymity direction continued.

Signed

Date 2 May 2019

Deputy Upper Tribunal Judge Mailer