



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/13229/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 16 May 2019

Decision & Reasons Promulgated  
On 28 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

RA  
(Anonymity order made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Tawiah, Counsel

For the Respondent: Mr N Bramble, Home Office Presenting Officer

**REASONS FOR FINDING A MATERIAL ERROR OF LAW**

**The Appellant**

1. The Appellant is a citizen of Sri Lanka born on 25 October 1989. He appeals against a decision of Judge of the First-tier Tribunal O'Hagan sitting at Birmingham on 23 January 2019 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 6<sup>th</sup> of November 2018. That decision was to refuse the Appellant's claim for asylum and humanitarian protection and to refuse him leave to remain on human rights grounds.

2. The Appellant arrived in the United Kingdom on 12 January 2011 with a valid student visa (extended to 12 August 2013). He has remained here since then without leave. An application for further student leave on 12 August 2013 was refused on 30 July 2015 after it was concluded that the TOEIC certificate submitted in support of the application had been obtained by deception. On 24 June 2014 the decision was made to remove the Appellant from the United Kingdom. That decision was withdrawn on 15 July 2015 because the Appellant had absconded. The Appellant claimed asylum on 6 March 2018 the refusal of which has given rise to the present proceedings.

### **The Appellant's Case**

3. The Appellant's case was that his father, who died when the Appellant was young, and his mother were members of the LTTE. In May 2010 the Sri Lankan authorities came to the home of the Appellant's aunt and demanded the telephone number of the Appellant's mother. Two days later they returned and arrested the Appellant. The Appellant was detained for five days during which he was questioned and ill-treated. He was released after his mother paid a bribe to secure his release.
4. In January 2015 his mother returned to Sri Lanka to investigate the situation following a change of government but was arrested at the airport and subsequently sentenced to seven years in prison. The Appellant relied on a medical report from a Clinical Psychologist, Dr Rozmin Halari which diagnosed post-traumatic stress disorder precipitated by the Appellant's traumatic experiences. He also relied on correspondence from a Sri Lankan attorney Mr S Somapala who confirmed the existence of an arrest warrant and the incarceration of the Appellant's mother. The Respondent did not accept the Appellant's account of his mother's involvement with the LTTE because it was said to be vague and lacking in detail and there was no supporting evidence for it.

### **The Decision at First Instance**

5. At the outset of the hearing and before commencing the evidence the Judge had a discussion with the advocates about how best to enable the Appellant to give his evidence given the vulnerabilities outlined in a psychologist report. It was agreed that questions should be put simply and clearly. There was a need for a non-confrontational approach. The Judge was satisfied with the way the Presenting Officer cross examined the Appellant, see [13] of the determination.
6. The Judge also raised at the outset his concern that the expert had not seen the Appellant's medical records before preparing the psychological assessment report and that would need to be addressed in closing submissions. The Appellant's solicitors had attempted to obtain his medical records, but they were not received until 22 January 2019 the day before the hearing and five days after the report itself was prepared. The Judge accepted the Appellant's explanation why the Appellant had employed a proxy test taker in relation to his English language test, see [37]. The Judge noted that Doctor Halari was qualified to express his opinions and had conducted a clinical interview with the Appellant and had made appropriate

observations. This ordinarily would have led the Judge to conclude that the resulting report was reliable but there were significant countervailing factors. Doctor Halari had not had sight of the Appellant's medical records. Whilst Doctor Halari could only consider what was available to him was, it was nevertheless the case that he had failed to acknowledge that the medical records were not before him or to consider the deficit in his knowledge that arose as a result.

7. The Judge gave an example of what problems the absence of the medical records had led to, noting that at paragraph 25 of his report Doctor Halari had said the Appellant had no medical problems prior to the claimed trauma. There was a gap of over 8 ½ years between the Appellant's claimed detention and mistreatment in May 2010 and the psychological assessment by Doctor Halari in January 2019. It was reasonable to suppose that Doctor Halari should have asked the Appellant how the Appellant had managed in the intervening period but there was no indication that Doctor Halari had considered that point at all. At no time since his arrival in the United Kingdom had the Appellant sought any medical support. The Appellant's engagement with medical services was not consistent with the clinical picture presented by Doctor Halari and as a result the report carried substantially less weight than might otherwise have been the case.
8. Whilst there were factors that suggested that the letter written by Sri Lankan lawyers and attachments were documents on which reliance could be placed there were countervailing factors. The letter was not on headed notepaper but had the appearance of having been simply printed off. More significantly was that the lawyers had destroyed their file of papers following the hearing at which the Appellant's mother was said to have received a substantial prison sentence. As a result, the Judge treated the Sri Lankan lawyers' letter with more caution than would otherwise have been the case. There were other credibility issues partly to do with delay. The Judge struggled to understand why the Appellant had waited for a period of about 6 months between being released from custody in May 2010 and applying for leave to come to the United Kingdom as a student on 29 November 2010. The Appellant had not attempted to claim asylum until March 2018 seven years after he first came to the United Kingdom. The return of the Appellant's mother to Sri Lanka was an absurdly risky thing for her to do. It lacked credibility that she would simply return despite the obvious risk to which she was exposing herself.
9. The Judge noted that Doctor Halari had expressed the view that there would be a very real risk of suicide but the weight that could be attached to the report was reduced by reason of the absence of the GP records. The Judge did not accept that there was a risk of suicide and he dismissed the appeal.

### **The Onward Appeal**

10. The Appellant's grounds of appeal made six points. The first was that there was nothing in the determination which suggested that the detail of the Appellant's detention had been considered by the Judge. The 2<sup>nd</sup> point took issue with the reduced weight the Judge had placed on the report of Doctor Halari. It was not

necessary or compulsory for either psychologists or psychiatrists to have access to GP medical records when making assessments. The psychologist was aware of the gap between the Appellant's detention and the date of his assessment. There had been a lengthy face-to-face meeting with the Appellant and the report was Istanbul protocol compliant. The Appellant's medical records demonstrated the Appellant had been referred for therapy. The Appellant's symptoms had worsened after his mother's detention and he struggled immensely in discussing these matters owing to the shame he felt. The 3<sup>rd</sup> ground argued the Judge had erred in respect of the documentary evidence relying on the Court of Appeal authority of PJ [2014] EWCA Civ 1011. Weight should have been attached to the lawyer to lawyer correspondence.

11. The 4<sup>th</sup> ground refers to other errors in the Judge's assessment of credibility and the 5<sup>th</sup> ground complained that the Judge had rejected the Appellant's health claim owing to a faulty assessment of Doctor Halari's report. The Judge had failed to consider and apply the country guidance in relation to health claims. The 6<sup>th</sup> ground argued the Judge had rejected the claim under the immigration rules paragraph 276 ADE (vi) on the basis that the asylum claim was rejected but this was erroneous.
12. The First-tier Tribunal granted permission to appeal because it was arguable that the Judge had failed: (i) to accord distinct weight to Doctor Halari's report and should have taken into consideration the doctor's finding that the Appellant had been suffering from psychological symptoms which fortified the Appellant's account of his experiences and had failed: (ii) to accord weight to the arrest warrant having said that the letter and arrest warrant were documents on which reliance might be placed.

### The Hearing Before Me

13. For the Appellant counsel relied upon the detailed grounds of onward appeal and argued that the Judge had erred in assessing the Appellant's credibility in the light of the detail the Appellant had provided. The GP records (not before Doctor Halari) had referred to the Appellant's need for therapy. It was not clear what weight the Judge placed on the correspondence with the Sri Lankan lawyer. Due to the arrest warrant, the Appellant came within the GJ risk factors as he was likely to be on a stop list. No efforts, counsel informed me, had apparently been made by the Appellant's solicitors to ask the Sri Lankan lawyer why he had destroyed his papers.
14. For the Respondent, the Presenting Officer indicated he agreed with the grant of permission to appeal. In relation to the credibility findings of the Judge for example the mother's circumstances and the issue of her mobile phone number, there were other explanations which the Judge had not taken into account. Whilst another Judge might still find as this Judge had, there were material errors in the determination.

### Findings

15. The difficulty the Judge had in this case was that the two key pieces of evidence the Appellant was relying upon had come into existence two months after the refusal letter had been written. The hearing took place on 23 January 2019. The medical report of Doctor H was prepared on 17 January. The correspondence with the Sri

Lankan lawyer included a certificate from the magistrates' court that the document produced was a true copy of the warrant of arrest. The certificate was dated 11 January 2019, 12 days before the hearing. The Appellant's solicitors had only written to the Sri Lankan lawyer on 20 December 2018. Two key pieces of evidence were thus filed and served very much at the last minute.

16. The Judge was concerned at the omission from Doctor Halari's report of the Appellant's GP records which might or might not indicate whether the Appellant had a long history of psychiatric problems since being in the United Kingdom or whether they might have come into existence after the refusal letter. The Sri Lankan lawyer's documentation was distinctly unusual because the Sri Lankan lawyer had destroyed his file of papers. The Judge considered that that was significant enough to mean that he could not place weight on what would otherwise have been very important evidence. The Respondent does not consider that either of the objections which the Judge made to the two key pieces of evidence were free from material errors of law.
17. The appeal before me thus raised two questions. Firstly, if the determination was a set aside and the appeal reheard, were there likely to be any other sustainable challenges (beyond what the Judge had found) to either Doctor Halari's report or the Sri Lankan lawyers' correspondence? Secondly, if there were no other sustainable challenges and the Respondent was not prepared to accept a decision in his favour in the terms of the determination on those two pieces of evidence, was there another course of action other than allowing the appeal outright?
18. My concern is the late filing of crucial evidence in this case in circumstances where that evidence was incomplete. Doctor Halari's report was incomplete because he had not seen the GP records. I do not accept the argument that because other doctors in other situations do not see GP records, there was no need for Doctor Halari to see the GP records in this case. In my view they were crucial and if Doctor Halari's report was to be admitted the doctor should have been invited to write a supplemental report evaluating the GP records and what they meant in terms of his overall conclusions.
19. In relation to the Sri Lankan lawyers' evidence, because this was filed and served so late in the day, the Respondent had no opportunity to use his offices in Sri Lanka to check whether this documentation, particularly, the arrest warrant was or was not genuine. The Respondent's position in this appeal is somewhat muddled and I have to say I was not assisted by the submissions of the Presenting Officer. As the Respondent is not prepared to stand by the determination of the First-tier Tribunal it is difficult to uphold it and I therefore set it aside. I am not however prepared at this stage to allow the appeal outright because of the gaps in the evidence which I have outlined above.
20. I remit this appeal back to the First-tier Tribunal to be heard de novo. I expect that in the meantime Doctor Halari will be invited to prepare a supplementary report in the light of the GP records and the Respondent will decide whether to investigate the

arrest warrant produced by the Appellant. The Respondent should obviously have completed his enquiries by the time of the rehearing. If the Respondent does not feel able to challenge either or both of these two pieces of evidence he may wish to give consideration to withdrawing his decision. It will be open to the First-tier Tribunal at the re-hearing to evaluate for itself the significance or otherwise of the allegation of a proxy test taker.

**Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law and I have set it aside. I direct that the appeal be remitted to the First-tier Tribunal to be re-heard

Appellant's appeal allowed to that limited extent

I continue the anonymity order made by the First-tier Tribunal.

Signed this 22 May 2019

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Judge Woodcraft  
Deputy Upper Tribunal Judge

**TO THE RESPONDENT**  
**FEE AWARD**

The First-tier made no fee award because the appeal was dismissed. I have set the determination aside and the issue of a fee award will be decided upon at the re-hearing.

Signed this 22 May 2019

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Judge Woodcraft