



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-003513
PA/50582/2021; IA/04845/2021**

THE IMMIGRATION ACTS

**Heard at Field House
On the 2 November 2022**

**Decision & Reasons Promulgated
On the 21 November 2022**

Before

**UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE JARVIS**

Between

**ND (SRI LANKA)
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. D Coleman, Counsel, instructed by Liyon Legal Ltd
For the Respondent: Mr. E Tufan, Senior Presenting Officer

Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

Introduction

1. The appellant appeals a decision of Judge of the First-tier Tribunal Webb ('the Judge'), sent to the parties on 21 June 2022, dismissing his international protection and human rights appeals.

Anonymity Order

2. The Judge made an anonymity order, and no request was made by either party for it to be set aside. We consider it appropriate that the order be confirmed, and we detail it above.

Brief Facts

3. The appellant is a national of Sri Lanka, ethnically Sinhalese and presently aged 33. He entered the United Kingdom with entry clearance as a Tier 4 (General) Migrant in December 2011 and was granted leave to enter until 16 February 2012. He subsequently overstayed.
4. He sought international protection by a claim dated 17 January 2020. He states that he was in a relationship with an ethnic Tamil girlfriend, and they resided at a property in Colombo from 2008. Her brother stayed with them on occasion. He details that the Sri Lanka authorities attended the property in June 2010 and detained him. He was interrogated as to his involvement with the LTTE, a militant Tamil organisation. The applicant states that during detention he was beaten and kicked, with his interrogators seeking the whereabouts of his girlfriend. The appellant asserts that he was informed by an officer that there were orders to kill him, but he secured his release seven days after his arrest following payment of a bribe.
5. The appellant remained in Sri Lanka for further six months, applying for entry clearance as a student on 6 January 2011 and travelled through Colombo airport in his own identity on 12 February 2011 before arriving in the United Kingdom.

First-tier Tribunal Decision

6. The appeal hearing was held at Taylor House on 27 May 2022. The Judge dismissed the appellant's appeal, having concluded, *inter alia*, that:
 - Whilst an interethnic relationship was plausible, there was no reference to the girlfriend on the tenancy agreement, nor was any evidence adduced beyond the appellant's oral evidence to demonstrate that he was in a long-standing relationship with his girlfriend.
 - The appellant was vague in interview, both generally as to events and as to the questions asked by his interrogators.
 - Though medical evidence was relied upon, the scarring was consistent with other forms of injury and not only serious ill-treatment in detention.

- As to his release, though he engaged with his mother by telephone to arrange the bribe, he was unable to identify the sum of money she paid to secure his release.
 - No plausible explanation was provided as to the absence of evidence from the appellant's mother.
 - Police and court documents, when considered in the round, enjoyed limited weight consequent to numerous, and major, defects.
7. The Judge observed the delay in the appellant seeking international protection and considered it to damage the appellant's credibility: section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. The Judge confirmed that the delay in claiming asylum was not itself determinative of the claim.
8. Judge of the First-tier Tribunal Landes granted permission to appeal by a decision dated 18 July 2022. In a detailed – and helpful – decision, Judge Landes considered one element of ground 1 to be arguable in respect of the Judge's consideration as to when the appellant first stated that he sought medical help following his release from detention. The rest of the grounds were considered to enjoy less merit, if not to be very weak, but permission was granted to the appellant to advance all grounds raised.

Discussion

Preliminary matter - rule 15(2A) application

9. The grounds seeking permission to appeal to this Tribunal, dated 30 June 2022, were drafted by Liyon Legal Ltd, and state at [6]:
- '6. ... Also, at page 25 and 26 of the documents the appellant's part of address [sic] is included with his name. We have checked the original Sinhalese version and the relevant pages of the original Sinhalese version only contain [the] appellant's name and no address is included in the relevant pages. The appellant seeks permission to adduce [a] correct translation of these documents. It is acknowledged that this was not a fault of the FTT J and we seek the permission of the Tribunal to submit a new translation as this is a mistake by the translator.'
10. No copy of an amended translation accompanied the application, nor was a witness statement filed evidencing the purported interpreter error.
11. At 15.51 on the day before the hearing in this Tribunal, the appellant's representatives sent an application by email to adduce further evidence under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008. There is no confirmation on the face of the email that it was additionally sent to the respondent.

12. The application simply details:

‘Your records will show that we act for the above named in this matter.

We herewith make an application under rule 15(2A) to adduce the following evidence.

- Translations of the [sic] pages 5 and 6 of the court documents issued by the Magistrate Court of Kurunegala on 10/3/2020 (correct translation of pages 25-26 of the Appeal bundle)

With respect we ask the Upper Tribunal to accept this evidence in the interests of justice.’

13. Rule 15(2A)(ii) establishes that when considering whether to admit evidence that was not before the First-tier Tribunal, the Upper Tribunal ‘must’ have regard to whether there has been unreasonable delay in producing that evidence.
14. We are concerned that Liyon Legal Ltd failed to abide by the requirement of rule 15(2A) to explain why the evidence was not submitted to the First-tier Tribunal. This will usually necessitate an accompanying witness statement. We remind Liyon Legal Ltd that assertions made in grounds of appeal are not evidence.
15. Ultimately, we have no evidence before us as to what the purported error in the original document is, why the new document could not be filed and served prior to the First-tier Tribunal hearing or, alternatively why it is interests of justice for it to be admitted now, four months after the grounds of appeal were drafted and three months after the grant of permission to appeal.
16. Further, no explanation has been provided as to why the application was made at 15.51 on the day before the hearing, and why it was considered appropriate by professional representatives to make the application so late in time.
17. In the circumstances we refused to admit the evidence at the hearing in respect of the appeal before us.

Error of law assessment

18. We confirmed at the hearing that we set aside the decision of the Judge and we now give our reasons.
19. At [38] of his decision the Judge concluded:

‘38. The appellant states that during his substantive asylum interview his interrogators ‘*torture[d] me, beat me up*’ and ‘*most of the time they just tortured me*’. He also states that he was beaten up ‘*3 times*’. (See his answers to Qs 48, and 50-51 at RAB pages 28-29). In his witness statement the appellant said that he was

beaten up so badly that on one occasion he fell to the floor and was unconscious (paragraph 12) and that he was hit with wooden sticks (paragraph 14) He further said that '*I still have the scars due to the beatings and torture I went through*' (paragraph 14). **Nowhere in that witness statement did he indicate that he required and received medical treatment after he was released. It was only when specifically asked at the hearing whether he received medical help that he mentioned a doctor had come to the property of his uncle's friend where he was residing.** [Emphasis added]

20. The appellant raised the issue of his receiving medical attention in his substantive asylum interview, where he detailed at Q116 that two days after his release a doctor visited him to treat his injuries, including his broken nose. The appellant repeated these events, though not in precisely the same terms, at paragraph 17 of his witness statement dated 8 November 2021.
21. Mr. Tufan properly accepted that the Judge had materially erred in his consideration of this matter. We agree. Whilst the Judge took notable care elsewhere in his decision, he was wrong to conclude that the appellant had raised for the first time at the hearing his receipt of medical treatment after his release from detention. We accept Mr. Coleman's contention that it is not possible to identify that the erroneous assessment of this evidence did not infect other credibility assessments in respect of the appellant's arrest and detention. On this ground we find a material error of law and set aside the decision of the Judge.
22. We informed Mr. Coleman that the remaining grounds were unattractive. It is a matter for a Judge as to where they commence their credibility assessment and there is no bar upon consideration of section 8 of the 2004 Act being undertaken at the commencement of a holistic assessment. No proper criticism can be made of the Judge concluding that the appellant was vague as to events in his substantive asylum interview. Such conclusion was reasonably open to him, as were his stated concerns as to the official police and court documents.

Remaking the decision

23. The parties agreed that the resumed hearing should take place in the First-tier Tribunal. Consequent to the likely extent of the fact-finding exercise to be undertaken we consider such agreement was appropriate.
24. We remit the matter to the First-tier Tribunal sitting at Taylor House, with no findings of fact preserved.
25. The parties should be aware that the undated medical report of Dr Andrew Izquierdo-Martin may properly be required to be assessed in light of the recent guidance provided by the Upper Tribunal in *HA (expert evidence; mental health) Sri Lanka* [2022] UKUT 00111 (IAC). No medical records appear to have been placed before Dr Izquierdo-Martin to permit him an

understanding as to whether the appellant consistently recounted events underpinning his scarring to his GP

Decision

26. The decision of the First-tier Tribunal dated 21 June 2022 is set aside with no findings of fact preserved.
27. The appeal is remitted to the First-tier Tribunal sitting at Taylor House to be heard by any judge other than Judge Webb.
28. The anonymity order is confirmed.

Signed: *D O'Callaghan*

Upper Tribunal Judge O'Callaghan

Date: 4 November 2022