



IAC-AH-SC-V1

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

Appeal Number: AA/02504/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13<sup>th</sup> October 2015**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE M A HALL**

**Between**

**MOHAMADU PIKASH MOHAMADU PYSAL  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mrs A Bhachu of Counsel instructed by Kothala & Co Solicitors

For the Respondent: Miss A Fijiwala, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction and Background**

1. The Appellant appeals against a decision of Judge of the First-tier Tribunal Landes (the judge) promulgated on 15<sup>th</sup> May 2015.
2. The Appellant is a male Sri Lankan citizen born 27<sup>th</sup> November 1973 who arrived in the United Kingdom as a visitor on 15<sup>th</sup> August 2013 and made an appointment to claim asylum on 28<sup>th</sup> December 2013. The asylum

claim was based upon his imputed political opinion, in that he claimed to have been accused of supporting the LTTE.

3. The application was refused on 30<sup>th</sup> January 2015 and the appeal against that decision was heard by the judge on 29<sup>th</sup> April 2015.
4. The judge did not accept that the Appellant had given a credible account, and did not find that he would be at risk if returned to Sri Lanka, and his appeal was dismissed on all grounds.
5. The Appellant applied for permission to appeal to the Upper Tribunal and permission was refused by Designated Judge of the First-tier Tribunal Zucker on 9<sup>th</sup> June 2015.
6. The Appellant renewed his application and permission to appeal was granted by Upper Tribunal Judge Lindsley on 10<sup>th</sup> August 2015 in the following terms;
  - “(1) The Appellant is a Sri Lankan asylum seeker.
  - (2) This is a renewed application for permission to appeal. The grounds contend that Judge of the First-tier Tribunal Landes erred in law as she firstly materially fails to give reasons; secondly failed to resolve a conflict on material matters of evidence; and thirdly irrationally rejected the claim although key findings relating to the core account went in the Appellant’s favour.
  - (3) Whilst the decision of the First-tier Tribunal discloses a generally detailed analysis of the evidence it is arguable that the decision errs in law as it fails to give sufficient reasons for the negative findings against the Appellant and thus, given the matters which broadly are decided to fall in his favour that the decision might go in favour of the Appellant if a sufficiency of reasoning were applied to these issues as set out in the grounds.”
7. Directions were subsequently issued making provision for there to be a hearing before the Upper Tribunal to decide whether the First-tier Tribunal decision should be set aside.

### **The Appellant’s Submissions**

8. At the hearing before me Mrs Bhachu relied and expanded upon the grounds contained within the application for permission to appeal which may be summarised as follows;

### **Ground 1 - Duty to Give Reasons as to Rejecting Evidence**

9. The judge erred at paragraph 38 in finding implausible that the Appellant was released from detention after payment of a bribe on 10<sup>th</sup> June 2013, and was able to obtain a passport the next day, 11<sup>th</sup> June 2013. The error was that the judge provided no reasons for this finding. It was contended that oral evidence had been given that the Appellant’s family had been involved with an agent prior to his release, and the agent had been able to obtain the passport and organise a visa application within a short

timeframe. The judge made no findings upon the involvement of the agent, and gave no reasons for her finding of implausibility.

## **Ground 2 - Resolving Conflict on Material Matters**

10. At paragraph 52 of her decision the judge found that the Appellant had been inconsistent about a significant part of his case but at paragraph 55 recorded that “The most I can say is that he may have been detained from the airport and ill-treated in March 2011. It was contended that the judge had erred by failing to address the reasons for such detention and the length of such detention. There was a failure to identify whether the detention was due to the Appellant’s involvement with the LTTE or his uncle’s connection with the LTTE.
11. It was contended that the finding that the Appellant may have been detained in 2011 was at odds with the consideration at paragraph 40 of the Appellant deceiving the Entry Clearance Officer in his application for a visa.
12. The judge found that the Appellant, on his own account, successfully deceived the Entry Clearance Officer and did not make a finding as to whether at the time of the visa application the Appellant’s account was genuine. It was contended that the judge had erred by being ambiguous as to whether she found the Appellant was telling the truth at the time of entry clearance and that an agent was not used, or found that an agent was used to deceive the Entry Clearance Officer. It was submitted that if the judge found the Appellant was telling the truth at the time of entry clearance then her decision is at odds with the finding that the Appellant was detained in March 2011 for an unidentified period. On the other hand if it was accepted that an agent was used to assist the Appellant and deceive the Entry Clearance Officer, such a finding would support the centrepiece of the Appellant’s claim.

## **Ground 3 - Assessing the Core Aspects of the Claim**

13. It was submitted that the judge in making findings on core aspects of the Appellant’s claim, erred by then going on to dismiss the claim. It was submitted that inconsistencies found by the judge do not outweigh the findings made which are either neutral or do not affect the Appellant’s credibility. It was noted that at paragraph 34 the judge did not consider that the Appellant’s account of his torture had necessarily been inconsistent. This is a central feature of the case, but the judge went on to dismiss the claim.

## **The Respondent’s Submissions**

14. Miss Fijiwala submitted that it was open to the judge to make findings that it was implausible that the Appellant would be released on 10<sup>th</sup> June 2013 but was able to obtain a passport on 11<sup>th</sup> June 2013.

15. It was further submitted that the judge was entitled to find, for the reasons given, that the Appellant's general credibility was not established. In making the finding at paragraph 55 that the Appellant may have been detained from the airport and ill-treated in March 2011, the judge was considering the claim at its highest, but then correctly went on to find that even if that detention occurred, the Appellant would still not fall within any of the risk categories set out in G] and Others Sri Lanka CG [2013] UKUT 319 (IAC).
16. It was submitted that it was unclear how the judge had failed to resolve a conflict in relation to her findings at paragraph 40. The judge had made a finding, that on the Appellant's own account, he had been able to tell very detailed and plausible lies when making his application for entry clearance. The judge had found that the Appellant had deceived the Entry Clearance Officer, but not because he was at risk in Sri Lanka. Miss Fijiwala submitted that the judge had summarised her findings at paragraphs 54 and 55, and adequately explained why the Appellant's account was not accepted.
17. In relation to the contention that the judge had erred in assessing the core aspects of the claim, it was submitted that this was not the case. The judge had clearly found that the Appellant had not been detained in prison for more than two years. The judge had considered the Appellant's evidence of scars, and found for cogent reasons at paragraph 44, that the photographs of the scars could not be given any weight independent of the Appellant's evidence. The judge had considered the medical evidence at paragraphs 45 - 47 and noted the inconsistencies which caused her to give little weight to that evidence. It was not correct to say that the judge had accepted the core of the Appellant's account. There was no error in the decision of the First-tier Tribunal which should stand.

### **The Appellant's Response**

18. Mrs Bhachu argued that the finding that the Appellant may have been detained did not sit well with the finding that the Appellant would not be at risk, and submitted that the judge had been inconsistent and had erred by not making findings as to why the Appellant was detained, and how he escaped from prison.
19. At the conclusion of oral submissions I reserved my decision.

### **My Conclusions and Reasons**

20. In relation to the first ground, the duty to give reasons is summarised in the headnote to Budhathoki (reasons for decision) [2014] UKUT 00341 (IAC), which I set out below;

"It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve

key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.”

21. I find that the judge erred in not giving reasons for her conclusion at paragraph 38 that it was implausible that the Appellant was released from detention on 10<sup>th</sup> June 2013, and was able to obtain a passport the following day on 11<sup>th</sup> June 2013. There may be cogent reasons for this finding, but they are not set out and therefore this is an error, but I find that this does not make the decision unsafe for the reasons that I explain below, and therefore the error is not material.
22. I deal with the second and third grounds together and find no error of law for the following reasons.
23. The judge carries out a careful analysis of the evidence at paragraphs 32 – 49. She summarises her findings at paragraph 52 which I set out below;

“52. Taking everything together, the Appellant has been inconsistent about a significant part of his case, namely the disappearance of his uncle (see paragraph 36 above). The Appellant’s explanation about his wife being in hiding was implausible and inconsistent with what was said in interview (see paragraph 41 above). It is implausible that a new passport would have been obtained the day after the Appellant was released from prison after more than two years. The police report with its date of 13<sup>th</sup> June 2011 is inconsistent with the Appellant’s case. The Appellant is not someone whose general credibility can be said to be established; on his account he successfully deceived the Entry Clearance Officer (who described him as credible and genuine after interview) and he did not claim asylum at the earliest possible time (see paragraph 49 above).”
24. There has been no specific challenge to the findings made in relation to the Appellant’s uncle, or the Appellant’s explanation about his wife being in hiding, or the police report being inconsistent with the Appellant’s case, or the fact that the Appellant did not claim asylum at the earliest possible time.
25. I do not find that the judge erred at paragraph 40 in recording that the Appellant on his own account was able to tell very detailed and plausible lies to the Entry Clearance Officer, in relation to his visa application. This finding was taken from the Appellant’s own case in which he admitting lying to the Entry Clearance Officer.
26. The judge set out at paragraph 54 a further summary of her findings, and this is set out below;

“54. Looking at everything together as I have said, for the reasons I have summarised at paragraphs 50 onwards above and described more fully in the analysis before that, I am not satisfied even bearing in mind the low standard of proof applicable that the Appellant was detained in prison for more than two years and in 2013 was a person in whom the authorities were still actively taking an interest. I am not satisfied that he was reporting in the summer of 2013 to the police or that he would

be in trouble with the authorities on return because he failed to report. I am not satisfied that his uncle was anyone of significance or who had a significant role within or supporting LTTE.”

27. At paragraph 55 the judge concludes that because the Appellant is a person whose general credibility has not been established, there is no basis for being satisfied to the applicable standard of any part of his account. Prior to paragraph 55, the judge had explained in detail her reasons for concluding that she could not be satisfied of any part of the Appellant’s account.
28. There was therefore no acceptance that the Appellant had been detained in prison for just over two years, and the judge then concludes at paragraph 55 by stating that the most that she can say is that the Appellant may have been detained from the airport and ill-treated in March 2011.
29. That is not an acceptance that he was detained in prison for a period of two years which has specifically been rejected at paragraph 54.
30. In my view the judge was correct at paragraph 56 to state;

“56. Even if he was detained and ill-treated in March 2011, given the other facts I have found he is not someone who falls within the risk categories in GJ. His declared role was in the past and before the war had ended, and he has not been involved in any diaspora activities”.
31. The judge summarised the risk categories set out in GJ at paragraph 53. I will not set out here the categories of those said to be at risk in GJ, but they are contained in paragraph 7(a) – (d) of the headnote to that decision. The judge found that there was no evidence that the Appellant had a significant role in relation to post-conflict Tamil separatism within the diaspora, he was not a journalist, he had not given evidence to the Lessons Learned and Reconciliation Commission, and there was no evidence that his name appears on a computerised “stop” list because the judge did not accept that there is an extant court order or arrest warrant in force for him.
32. I therefore do not accept that the judge failed to resolve any conflict on material matters.
33. I do not discern any error in the judge’s assessment of the core aspects of the Appellant’s claim. The assessment of the evidence is detailed and fair. At paragraph 50 the judge acknowledges that the case turns on credibility. There is no irrationality in the findings made, and in my view the judge considered all the material issues, and did not take into account any immaterial issues. Adequate and sustainable reasons are given for concluding that the Appellant is not credible and therefore his account was not accepted, and having applied the country guidance case law, the judge did not err in finding that the Appellant would not be at risk if removed from the United Kingdom. The failure to give reasons for finding

his acquisition of a passport so quickly implausible, does not, in view of the other sustainable findings made, make the decision unsafe.

**Notice of Decision**

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision. The appeal is dismissed.

**Anonymity**

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity to the Upper Tribunal, and no anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

15<sup>th</sup> October 2015

**TO THE RESPONDENT  
FEE AWARD**

No fee has been paid or is payable. The appeal is dismissed. There is no fee award.

Signed

Date

Deputy Upper Tribunal Judge M A Hall

15<sup>th</sup> October 2015