



IAC-PE-SW-V1

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

Appeal Number: AA/06839/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 19<sup>th</sup> November 2015**

**Decision & Reasons Promulgated  
On 29<sup>th</sup> December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE BAIRD**

**Between**

**MR CHIYAMATHAN RASATHURAI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Rothwell - Counsel

For the Respondent: Mr C Avery - Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by Mr Chiyamathan Rasathurai, a citizen of Sri Lanka born on 5<sup>th</sup> April 1985. He appeals against the determination of First-tier Tribunal Judge Row issued on 12<sup>th</sup> August 2015 dismissing on asylum, humanitarian protection and human rights grounds his appeal against the decision of the Respondent made on 17<sup>th</sup> March 2015 to refuse to grant asylum and to remove him from the United Kingdom.

2. On 6<sup>th</sup> October 2015 First-tier Tribunal Judge Cruthers granted permission. He said:
  - “4. To a large extent this appeal was dismissed on the basis of a series of points (‘credibility points’) that the judge took as undermining the Appellant’s core asylum account (the judge’s paragraphs 20 onwards). The grounds on which the Appellant seeks permission to appeal are in effect an attack on each of the judge’s credibility points.
  5. Without restricting this grant, I record my suspicion that there is little substance in at least some of the complaints made in the grounds. For example I do not think that the judge had an obligation to put the Appellant on notice as to parts of his account that might not be accepted (at paragraph 17 of the grounds). But it may be that the judge did err in some of the ways alleged. In particular it is arguable that the judge may not have assessed the likelihood of the Appellant having been tortured in detention or the likelihood of him having left Sri Lanka on his own passport against the relevant country information and the guidance in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319.”
3. There is a response under Rule 24 from the Secretary of State who maintains that the decision does not contain any material errors of law. At paragraph 4 of the response it is stated:
  - “4. More pertinently the Immigration Judge was rightly concerned with the presence of scars on an Appellant who had apparently seen Dr Lingham two weeks prior to his appointment with Dr Lawrence but Dr Lingham had not noted the presence of any scarring such that he was unable to produce a report.
  5. The Appellant’s solicitors in their Grounds of Appeal seek to argue that there was no mention of any previous consultation with Dr Lingham. They seek to complain about the Appellant’s former solicitors’ conduct. At this stage this remains an unsubstantiated assertion and in any event paragraph 31 of the determination reveals that Counsel for the Appellant made the disclosure to the Immigration Judge and yet his new solicitors have not sought to approach Counsel who appeared at the hearing. Given that Counsel was clearly aware of the issue at the hearing it is respectfully submitted that the latest written statement and the correspondence in relation to the same, submitted with the Grounds of Appeal ought not to be admissible in line with Ladd v Marshall principles; evidently the fact that this issue was clearly in Counsel’s knowledge at the date of hearing meant documentary material and evidence relating to the same ought to have been adduced on that occasion and certainly no adjournment application was made on that basis.”
4. At the hearing before me Miss Rothwell appeared for the Appellant. First of all it became clear that neither I nor Mr Avery had any substantial papers relating to this appeal. The Appellant had submitted two bundles previously and neither was in the file. She advised me that the Appellant’s instructing solicitors have been found by the Law Society to have been guilty of dishonesty. She had evidence of this. It was the solicitor who had said that the Appellant had gone to Dr Lingham but Dr Lingham had found no scars. The position is that the Appellant has never seen Dr Lingham. The new representatives have been trying to get the Appellant’s file but it is not in the solicitors’ office. They have been unable to recover it.

5. She said that as far as she is concerned the errors of law made were that the judge failed to look at the scarring; he failed to consider the evidence of the Appellant's escape in the light of the background information on that and he failed to consider the Appellant's *sur place* activities in the UK.
6. I discussed this with Mr Avery. I expressed the view that in light of the fact that we have literally no idea what elements of the Appellant's evidence came from the Appellant and what came from his solicitor, who was apparently guilty of giving false information, the decision of Judge cannot stand and must be set aside. It was agreed that the best course of action would be to remit the appeal to the First-tier Tribunal to be heard de novo.

### **Notice of Decision**

I find that the determination of the First-tier Tribunal is flawed because of the established dishonesty of the Appellant's representatives who gave false information to the court. I direct that the appeal be remitted to the First-tier Tribunal to be heard anew.

No anonymity direction is made.

Signed

Date: 26<sup>th</sup> November 2015

N A Baird  
Deputy Judge of the Upper Tribunal