



IAC-FH-CK-V1

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

Appeal Number: AA/07836/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 March 2016**

**Decision & Reasons Promulgated  
On 8 March 2016**

**Before**

**THE HONOURABLE LORD BURNS  
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)  
UPPER TRIBUNAL JUDGE WARR**

**Between**

**[M N]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr B Bundock, Counsel instructed by CK Law Solicitors

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against a determination of the First-tier Tribunal promulgated 16 November 2015 refusing an appeal against the Secretary of State's decision of 19 March 2005 which refused the appellant's claim for asylum.
2. The appellant is a national of Sri Lanka born on [ - ]. He claims under the Qualification Directive to be a refugee with a well-founded fear of

persecution in Sri Lanka. He also claims refugee status under the Convention. He says that he is suspected of association with LTTE members in Sri Lanka in 2009 and 2010 and, if returned to Sri Lanka, would be persecuted for that association.

3. The appellant maintained that he assisted a Tamil called [D] in 2009 in purchasing for him phone cards and other items. That person and the appellant's uncle were subsequently arrested by the police. He was informed by his aunt that he would be arrested and he spent six to twelve months hiding in Colombo thereafter. His aunt then again contacted him to inform him that [D] had given the appellant's photograph and details to the army and that, since [D] was a member of the LTTE, the appellant was likely to be arrested. The appellant obtained a student visa and flew out of Sri Lanka on 12 March 2011. That visa expired on 31 May 2012. He claimed he did not apply to extend that visa but claimed asylum on 5 June 2013. That claim was refused by the respondent by a decision letter dated 19 March 2015.
4. Before the First-tier Tribunal the appellant gave evidence. The judge was concerned about the way in which the appellant conducted himself in giving that evidence and states at paragraph 20 that the appellant clearly had difficulty comprehending questions asked of him. At one stage he started crying and it was apparent that he had been prescribed medication for depression in 2011. Furthermore, it was apparent that the appellant forgot answers he had given very shortly before when answering further questions. Those matters raised concern in the mind of the judge about the appellant's mental state.
5. The judge did not find the appellant to be credible. He did not find it credible that helping someone to obtain SIM cards would be considered to be pro-LTTE activities. At paragraph 33 the judge states that a warrant for arrest of the appellant dated 22 June 2010 predated the issue of the appellant's passport and further that he was able to leave Sri Lanka despite a warrant being enforced for his arrest.
6. He finds at paragraph 38 that the appellant could not have known that [D] gave the appellant's details to the police since the aunt, according to information advanced, had had no way of obtaining that information in order to pass it on to the appellant. The judge felt he could not attach weight to the arrest warrant documents because they did not read like court documents.
7. In the light of these findings the judge dismissed the appeal. He also considered briefly the appellant's Article 8 claim in the context of paragraph 276ADE of the Immigration Rules but did not accept that significant obstacles existed in respect of his return to Sri Lanka. In considering Article 8 outside the Rules he considered that the appellant had a minimal period of residence in the United Kingdom and what little private life he had was developed in part as an overstayer. His mental health difficulties were described in the psychiatric report as symptoms of

minor depression. In those circumstances the judge was not satisfied that these considerations would expose him to risk of particular problems on return to Sri Lanka.

8. Before this Tribunal Mr Bundock submitted that the Tribunal had materially erred in law. He submitted first that the respondent had conceded in her refusal letter that any association with LTTE members around 2009 and 2010 was a reason for arrest. In the light of that concession there was no adequate reasoning for the Tribunal's finding at paragraph 32 that no sensible reason had been given by the respondent for the authorities to have any interest in him.
9. Secondly, the Tribunal erred in failing to give adequate reasons for its finding that the appellant's safe departure from Sri Lanka was of significance. Standing the country guidance advice on Sri Lanka **GJ [2013] UKUT 00319 (IAC)** at paragraph 170 that a finding that a person has travelled out of Sri Lanka unhindered is not in itself a reason to reject an account as incredible, the Tribunal erred in failing to explain its contrary view.
10. Thirdly, the explanation in relation to the appellant learning from his aunt about [D]'s arrest came from the evidence before the Tribunal that the appellant had said at interview that the army had visited the aunt and shown her the photograph which [D] had given to the authorities. The Tribunal failed to have regard to that clear explanation. On the contrary, the Tribunal founded on the apparent lack of credible explanation as to how the appellant came by that information.
11. Fourthly, Mr Bundock criticised the approach of the Tribunal to the documentary material produced. The Tribunal had equated what was in fact a police report to the Magistrate with the arrest warrant itself at paragraphs 40 and 41.
12. In relation to the Tribunal's treatment of the appellant's claim under Article 33, Mr Bundock submitted that the Tribunal had applied the wrong test. The judge states at paragraph 45 that he was not satisfied that there was evidence before him that the appellant is a current and significant risk of suicide. The correct test set out in **J v SSHD [2005] EWCA Civ 629** was whether there was a real risk of mistreatment. The use of the word significant suggested that the Tribunal had applied a higher threshold than was applicable.
13. In relation to his Article 8 claim the Tribunal failed to take into consideration the respondent's lengthy delay of two years in making a decision on the appellant's asylum claim during which time his mental health had deteriorated and he had developed further private life. It was a matter which was of materiality to the proportionality of his removal.
14. Mr Whitwell accepted that the Tribunal erred in failing to have regard to the respondent's concession in relation to the departure from Sri Lanka of

the appellant not being probative of a lack of adverse interest in an individual. He also accepted that the Tribunal had misdirected itself in respect of the arrest warrant document. However, he submitted that there were three matters in the appellant's evidence in which the Tribunal had identified a discrepancy which justified the finding that he was not a credible witness. In paragraph 20 of the determination the Tribunal had pointed out that the appellant had been unclear as to when his mother had died and whether it was in 2002 or 2007. At paragraph 26 the Tribunal had been unclear as to when he had first met [D], at one stage stating that he had been 19 and at another that he was 11. Lastly at paragraph 34 the appellant was unclear as to whether he had been in hiding for six months or one year.

15. In respect of Article 3 Mr Whitwell pointed out that Mr Bundock at the First-tier Tribunal did not submit that mental health on its own would constitute risk on return. Accordingly, the Tribunal was entitled to have regard to the evidence as a whole on this matter and conclude that there was no real risk on return.
16. In relation to the Article 8 claim the delay of two years was not a material factor. It had not apparently been argued that there had been any adverse change in that intervening period which should have been taken into account.

### **Decision**

17. We consider that the Tribunal materially erred in law in a number of respects as submitted by Mr Bundock. We consider Mr Whitwell's concession in relation to the assistance given by the appellant to the LTTE to have been properly made. That concession was noted by the Tribunal at paragraph 6 of its determination. No reasons are given for a contrary finding. We agree also that no adequate reasons are given for the finding at paragraph 33 in relation to the appellant's ability to leave Sri Lanka in the face of the country guidance case quoted above.
18. The Tribunal also appears to us to have erred in its approach to the source of the information which the appellant gave about [D] having the appellant's photograph and having given that and the appellant's details to the police. There was a patent explanation for that advanced in the evidence which the Tribunal appears not to have had regard to. In relation to the Tribunal's approach to the arrest warrant documents, the judge appears to have failed to recognise that the appellant produced a translation not only of the police report to the Magistrate seeking a warrant for arrest but the arrest warrant itself. Indeed, at paragraph 40 in the first sentence the judge appears to proceed upon the basis that the police report itself was the arrest warrant. That is incorrect and it is not surprising that the police report did not read like a court document since it was not of that character.

19. We are not convinced that the Tribunal's description of there being a significant risk of suicide is of material significance nor are we satisfied that the failure to mention the delay between the application for asylum and the decision falls to be considered a material error.
20. However, in the light of our findings in relation to the other criticisms advanced by Mr Bundock, we are of the view that, taking all these matters into account, the Tribunal materially erred in law in its assessment of the credibility of the appellant's claim and we will accordingly allow this appeal.
21. We will remit the case to the First-tier Tribunal for a rehearing.

**Notice of Decision**

The appeal is allowed.

No anonymity direction is made.

Signed

Date 4 March 2016

Lord Burns  
Sitting as a Judge of the Upper Tribunal