



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

Appeal Number: PA/00160/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 September 2018**

**Decision & Reasons Promulgated  
On 17 October 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

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

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Bronwen Jones (Counsel instructed by Tamil Welfare Association)

For the Respondent: Mr Steve Walker (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The Appellant appeals from the decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent to refuse her protection claim which she had pursued on the basis that she was a former LTTE member and supporter who had been detained and seriously ill-

treated by the Sri Lankan authorities in 2002 and 2006, and who remained of ongoing adverse interest to the Sri Lankan authorities because of her past record as a propaganda activist for the LTTE.

### **The reasons for the grant of permission to appeal**

2. On 1 August 2018 Deputy Upper Tribunal Judge Black granted the Appellant permission to appeal for the following reasons:

- “2. The grounds argued that the FTTJ erred in failing to properly assess the Appellant’s vulnerability following **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123**, failing to give weight to medical evidence that corroborated her account of past persecution, and failure to taking out risk factors in **GJ & Ors** and/or with regard to the UNHCR risk factors, and evidence that showed that it was disputed that the Appellant was [only] a low level LTTE member.
3. The grounds in respect of the medical evidence are, in my view, arguable in particular the omission to grasp the point for why there was delay in disclosure of sexual abuse and which required a therapeutic medical setting. Further, I take the view that it was arguable that the FTTJ failed to properly consider the Appellant’s vulnerability before reaching findings of fact and credibility and the consideration of UNHCR risk factors.”

### **Relevant background**

3. The Appellant is a national of Sri Lanka, whose date of birth is 21 November 1984. On 2 February 2010 she applied for entry clearance as a student. The application was refused on 2 March 2010. The Appellant applied again on 30 March 2010, and she was issued with a visa granting her leave to enter to remain in the UK as a student from 22 April 2010 until 10 June 2012.
4. The Appellant arrived in the UK on her visa on 26 June 2010. Following the expiry of her student visa on 10 June 2012, the Appellant requested an appointment to claim asylum on 24 August 2012. She claimed asylum on 14 September 2012, and was given a screening interview. She had become a member of the LTTE in 2005. She had been involved in Heroes Day activities at this time. She also talked to people about the LTTE and encouraged them to join the LTTE.
5. She was asked whether she had been arrested, charged with or convicted of any offence in any country. She said that in June 2006 she was arrested in Sri Lanka because she was a member of the LTTE. She was released after one week. She was asked whether she had any medical conditions. She said she was not registered with a GP. She did not have any medical conditions and she was not taking any medication.
6. Her substantive asylum interview did not take place until 24 February 2015. She said in October 2002 she was stopped by the authorities as part of a group of eight people walking out of school. Three of them were taken to Chundukuli Camp, which was about 10 minutes from her home. She was

held for a week there and tortured. Her release was arranged by her classmates who spoke with her local priest about what was happening.

7. She joined the LTTE in 2005, but she could not remember the month or the day that she did this. In 2006 she was detained for one week on suspicion of involvement with the LTTE. She was held in Thuraiyappa Stadium. She was beaten while in detention, and questioned about her involvement. She was allowed to leave after the Human Rights Commission in Jaffna interceded on her behalf.
8. In November 2007, she was taken to Iluppai Kadavu where she underwent self-defence training and she assisted with preparing food for LTTE soldiers. On an unknown date, because of advancing Sri Lankan government forces, she was sent first to Vidathal Mithaivu, and then later to Kilinochchi. On 15 May 2009 she left Kilinochchi and on 10 June she arrived at Vavuniya, where she was sent to Chetti Kulam Refugee Camp on 13 June.
9. She became ill with chickenpox and she was hospitalised. As she did not recover, a priest arranged for her to be taken to a hospital in Borala. After this she lived in a hostel. On 10 October 2009, the police came looking for her there. However she was not present as she was visiting her aunt in Wellawatte.
10. When she returned to the hostel, a nun informed her that the authorities were looking for her. She returned to her aunt's house, and from there her family arranged for her to leave Sri Lanka. On 4 June 2012, government forces had visited her parent's house looking for her.
11. At Q&As 157 to 163 of her asylum interview, the Appellant confirmed that there had been a three-year gap between the authorities trying to find her in 2009 and a visit to the family home on 4 June 2012. She confirmed the visit on 4 June 2012 was the only time the authorities had come looking for her since she had left Sri Lanka in 2010.
12. The Home Office refused the Appellant's application for asylum in March 2015. The Appellant appealed against the decision, and her appeal came before Judge Beg on 23 May 2016.
13. Judge Beg referred the case back to the Home Office for her asylum application to be reconsidered in the light of the evidence which she submitted at her appeal hearing, which comprised disclosure of sexual abuse suffered by her during her detention in 2006 and medical evidence that she was suffering from clinical depression and PTSD.
14. On 13 December 2017, the Respondent gave her reasons for refusing the Appellant's asylum claim upon reconsideration. Her account was internally inconsistent. She had not mentioned in her screening interview that she had been detained in 2002. With regard to her detention in 2006, she had not mentioned in her asylum interview that she had been sexually abused

as well as being beaten with a stick so that she became unconscious. She had provided a letter from her mother, but it was considered to be self-serving. She had also provided a copy document from the Human Rights Commission. This document added no weight to her claim as she had failed to provide the original and her claimed ongoing problems in Sri Lanka were not credible.

15. With regards to future fear, even if it was accepted that she had previously taken part in LTTE activities, which it was not, she would be safe on return to Sri Lanka as since the civil war finished in 2009 and the GOSL's present objective was to identify Tamil activists in a diaspora who were working for Tamil separatism and aiming to destabilise the unitary State. Given her responses during her asylum interview, it was not accepted that she was on a "watch list" or that the Sri Lankan authorities were actively seeking her.

### **The Hearing before, and the Decision of the First-tier Tribunal**

16. The Appellant's appeal came before Judge Andonian sitting at Taylor House on 2 February 2018. Ms Bronwen Jones of Counsel appeared on behalf of the Appellant, and the Respondent was represented by a Home Office Presenting Officer. The Judge received oral evidence from the Appellant.
17. In his subsequent decision, the Judge set out the medical evidence at paragraphs [52] to [58]. The Judge then set out the Appellant's evidence in cross-examination at paragraphs [59] to [66], and her evidence in re-examination at paragraphs [67] to [71].
18. At paragraph [72], the Judge recorded Counsel's submission that the Appellant was a vulnerable witness, who had sought medical attention for her PTSD symptoms following an adjourned hearing on 18 August 2015. Since then she had produced considerable medical evidence. This included a letter from the Appellant's GP dated 2 September 2015 indicating the Appellant had attended at the surgery on that date presenting with the appearance of PTSD and the history of having attempted suicide by overdosing on paracetamol approximately one year previously.
19. At paragraphs [73] to [76] the Judge rehearsed the findings of various psychiatric reports, including those made in an updated psychiatric report provided by Dr Stevens on 31 January 2018.
20. At paragraph [77], the Judge summarised the Appellant's case as being that she was a Tamil and former member and supporter of the LTTE who had been detained and tortured on two occasions in 2002 and 2006 respectively and that, because of her political activities, "*however low*", such as assisting the LTTE by the provision of food and knocking on doors to try and persuade Tamils to join the LTTE - and when she was at school, taking part in school plays and singing songs for her Tamil homeland - she feared now to return as she was a wanted person, as evidenced by the fact

that the authorities had come looking for her on several occasions and had threatened her parents.

21. The Judge set out his findings at paragraph [78] onwards. He accepted that the issue of credibility had to be taken in the round and looked at holistically, taking into consideration all the circumstances. He said that, in coming to his conclusions, he had taken into consideration all the medical evidence.
22. At paragraphs [79] and [80], the Judge accepted that it was reasonably likely that the Appellant would have been involved in some way or another with the LTTE at a very low level.
23. At paragraph [81], the Judge said that, even taking into account her depressed mood and medical issues, it was not credible for the Appellant to say that she had only mentioned the 2006 arrest and detention in her screening interview - and not the 2002 detention - because that was the most recent.
24. At paragraph [84], the Judge said while he understood that the Appellant may have been somewhat embarrassed to speak to the male Home Office Interviewing Officer in front of another male interpreter about the sexual abuse she had allegedly suffered, this did not sit well with the fact that she did in fact tell other males in the UK about the alleged sexual abuses and before Dr Dhumad she had been very descriptive. So he did not believe her evidence that she felt ashamed to say anything to the Home Office.
25. At Paragraph [85], he reiterated that he had assessed the issue of credibility after assessing the medical evidence.
26. At Paragraph [88]. the Judge referred to the risk factors set out in **GJ & Ors**, and held that the Appellant would not be perceived to have a significant role in relation to post-conflict Tamil separatism or as having any interest in the renewal of hostilities within Sri Lanka, given the nature of her past activities for the LTTE.
27. At paragraph [89], the Judge said it made no sense that the authorities would continue coming on a regular basis from 2010 onwards until 2015 allegedly looking for the Appellant, and then simply doing nothing except coming again and again to the house asking for the Appellant and then going away and threatening the Appellant's father. According to the Human Rights Commission, the authorities did not believe that the Appellant was in England, and had told her parents that on her return she should report to the Jaffna District Office. The Judge said that he had to consider whether this was credible evidence taking into account all the circumstances of the case holistically. He did not think it was credible evidence. The Judge continued:

“... It seems to me that the evidence the Appellant’s father gave to the Sri Lankan Human Rights Commission was bolstered and fabricated in order to obtain a letter to support the Appellant’s claim.”

28. At paragraph [91], the Judge said that while he accepted the Appellant may well have had some connection with the LTTE and may indeed have been questioned by government forces about involvement with the Tamil Tigers, this did not mean the authorities would have any interest on her upon her return. She was not and never had been a prominent member of the LTTE, and if she ever was a member, it was at a very low level, so insignificant that there would be no interest in her whatsoever upon return. He could not see how providing food and knocking on doors to galvanise support for the LTTE over 11 years ago, and singing songs and being in plays at school some 16 years ago, would open her to a risk of persecution upon return. He did not believe that she came within the ambit of **GJ**.

### **The Hearing in the Upper Tribunal**

29. At the hearing before me to determine whether an error of law was made out, Ms Jones developed the arguments advanced by her in the permission application which she had settled.
30. In reply, Mr Walker adhered to the Rule 24 response opposing the appeal. He acknowledged there was some force in Ms Jones’ criticism of the way in which the Judge had handled the issue of late disclosure of sexual abuse, and in her criticism of his finding about the letter from the Human Rights Commission which I have quoted verbatim in paragraph [27] above. But he submitted that any errors on these matters were not material as the Judge had given adequate reasons for finding that the Appellant would not be at risk on return.
31. In reply, Ms Jones submitted that, since the Judge’s findings on past persecution were flawed, this meant that his findings on future risk were unsafe, having regard to paragraph 339K of the Rules.

### **Discussion**

32. Ground 1 is that the Judge failed properly to assess the Appellant’s vulnerability in accordance with the guidance given in **AM (Afghanistan) v SSHD [2017] EWCA Civ 1123**, and in thereby making adverse credibility findings based on the Appellant’s screening interview, her late disclosure of sexual abuse, and the asserted vagueness in her evidence.
33. Having reviewed the guidance given in **AM**, I am not persuaded that there was an egregious failure to follow the guidance, still less that any identifiable error in the assessment of the issue of the Appellant’s vulnerability led to a material error in the Judge’s findings on past persecution.

34. Vulnerability covers a wide spectrum. At one extreme, a vulnerable witness does not have capacity; or, if she or he does have capacity, their vulnerability is such that it is not appropriate for them to give oral evidence. Then there are cases where the vulnerable witness is able to give oral evidence effectively, but only with the support and assistance of an intermediary. The Appellant was not in either of these categories. As the Judge noted at [76], the opinion of Dr Stevens was that she had litigation capacity and was fit to face “*sensitive*” cross-examination.
35. The potential probative value of the diagnosis of PTSD was, firstly, that the symptoms which she reported to Dr Saleh and/or which he observed – poor concentration, poor memory, a difficulty in recording dates and the chronology of events – were common in PTSD cases, and so could potentially explain discrepancies in her evidence which might otherwise be attributable to her making up an account; and, secondly, that it supported her account of past ill-treatment in Sri Lanka.
36. The Judge acknowledged this by setting out in some detail the findings of Dr Saleh and other doctors, and also Counsel’s submissions, before making his credibility findings. In these findings he pointed up, as it was open to him to do, potential alternative causes for the Appellant’s observed and reported symptoms.
37. The Appellant did not complain of the symptoms of PTSD until the late summer of 2015, after the initial refusal of her asylum claim. Although she said that she had been suffering from these symptoms since 2010, on her own case she had not sought any medical treatment for such symptoms until late 2015, and in her screening interview in 2012 she had not mentioned any problems with her health.
38. Moreover, her explanation for not mentioning the alleged detention in 2002 in her screening interview was not that she was in such a confused mental state at the time that she had forgotten it. Her explanation was that she had only mentioned the 2006 arrest and detention because it was the most recent.
39. It was open to the Judge to find the Appellant not credible in this explanation for the reasons which he gave in paragraphs [81] and [86]. While he agreed that she might have thought that the 2006 arrest was more serious, nonetheless the arrest in 2002 was her first arrest; she had never been arrested before as a schoolgirl, and she had never previously found herself in a situation where she had been interrogated by strangers; on her account she was beaten and treated badly for about a week, and had her clothes torn off. It was thus open to the Judge to find that this was an incident that would have “*stuck in her mind*”. It was open to the Judge to find that, even having taken into account “*her depressed mood and medical issues*”, it was not credible for the Appellant to say that she had only mentioned the 2006 arrest and detention because that was the most recent.

40. As is apparent from the recitation of the Appellant's asylum claim earlier in this decision, the Appellant had been capable of providing an entirely coherent and very detailed account in her substantive asylum interview. Accordingly, notwithstanding the diagnosis of PTSD, it was open to the Judge to remark upon the fact that in cross-examination she had replied to many of the questions that she could not remember, and to observe that a possible explanation for this was *"the stress of trying to appear to remember matters that perhaps did not exist in order to remember."*
41. Despite this, the Judge accepted that the Appellant might have been questioned as to what she was doing exactly for the LTTE.
42. With regard to the Appellant's late disclosure of sexual abuse, I agree that the Judge's stance was inconsistent. At paragraph [78], he said it was reasonable that the Appellant may not have wanted to inform the Home Office about the rape and sexual abuse because she was ashamed to do so as it was a cultural issue and also because the Home Office interviewer and interpreter were male. Accordingly, he said he was prepared to give her the benefit of doubt.
43. However, when he returned to the topic at paragraph [82], he expressed disbelief about the Appellant's explanation as she had made detailed disclosure of the sexual abuse to a male doctor, Dr Dhumad, and to other male clinicians.
44. Ms Jones submits that this finding by the Judge was irrational as each of the medical professionals to whom the Appellant disclosed her experiences explained that this was done only after a rapport and a relationship of therapeutic trust was established, save in the case of Dr Dhumad, who recorded that she had made the disclosure only after prompting.
45. I do not consider that his finding was irrational, but I accept that the Judge overlooked a credible explanation for the late disclosure. But his error is not material, not least because the Judge did not rule out the possibility that the Appellant had been questioned by the authorities and ill-treated. The only respect in which he expressed disbelief about the Appellant's account of ill-treatment in detention was in respect of her account of sexual abuse during her detention in 2006. He did not express any incredulity about her account of being beaten to the point of unconsciousness in 2006.
46. Ground 2 is that the Judge failed to give *"adequate weight"* to the medical evidence as corroborating her account of past persecution. This ground of appeal is inherently problematic, as the Judge had inherent discretion as to how much weight he should give to the medical evidence as providing corroboration.



47. It was open to the Judge to find that the symptoms which the Appellant had reported to various medical practitioners, such as sleeplessness, headaches and “*many others*”, were consistent with other causes.
48. But if the Judge fell into error in failing to give adequate reasons for not endorsing the diagnosis of PTSD, or the firm medical opinion that it arose from the sexual abuse which the Appellant had experienced in 2006, I do not consider that the Judge’s error was material for two reasons. Firstly, he accepted that she might have been questioned in 2006 about her involvement in the LTTE; and, secondly, the outcome of the appeal turned on the issue of future risk. Given the thrust of the country guidance in **GJ & Ors**, past persecution in 2002 and 2006 was not a guide to future risk twelve years later.
49. Ground 3 is that the Judge erred in law in his assessment of “*the objective evidence*”, specifically the letter from the Human Rights Commission dated 7 September 2012. This ground is problematic, as it is tendentious to characterise the letter as constituting objective evidence in circumstances where it has been rejected as unreliable by the Respondent on **Tanveer Ahmed** grounds.
50. Ms Jones submits that the finding made by the Judge at the end of paragraph [89] is irrational, as the Appellant did not make an asylum claim until 2015, whereas the letter from the Human Rights Commission is dated September 2012, and it refers to complaints made by the Appellant’s father to the Human Rights Commission on 2 April 2010, 12 December 2011 and 5 June 2012 about the family home being visited on several occasions by army personnel enquiring about his daughter in a threatening manner.
51. Although the Appellant did not claim asylum until 14 September 2012, she had made an appointment to claim asylum before the purported genesis of the Human Rights Commission letter on 7 September 2012. In addition, on the Appellant’s account, she came to the United Kingdom in 2010 to claim asylum, albeit that she then delayed making her asylum claim until after her visa had expired.
52. Against this background, it was not perverse of the Judge to find that her father had made false reports to the Human Rights Commission in 2010, 2011 and 2012 to bolster a fabricated asylum claim.
53. In the permission application, Ms Jones also refers to a complaint made by the Appellant’s father on 28 May 2009. However, it is clear from the contents of the letter that this related to another matter, and it had nothing to do with army personnel allegedly trying to find his daughter.
54. The Judge gave a number of reasons for finding that it was not credible that the army had been searching for the Appellant between 2010 and 2015, the principal one of which was that such continuing adverse interest

was not consistent with the fact that the civil war had ended in 2009, and the Appellant's previous role in the LTTE had been at a low level.

55. The Judge's finding on this issue is entirely congruent with the country guidance given in **GJ & Ors**, and Ground 3 is on analysis no more than an expression of disagreement with findings that were clearly open to the Judge on the evidence and applying the country guidance.
56. Ground 4 is that the Judge erred in law in treating the Appellant as being involved with the LTTE at a very low level, and that he ought to have treated her as falling into the UNHCR risk category of, "*LTTE fundraisers and propaganda activists and those with, or perceived as having had, links with the Sri Lankan diaspora that provide funding and other support to the LTTE.*"
57. Ms Jones submits that by recruiting for the LTTE, and by taking part in propaganda musical and drama productions for the LTTE, the Appellant was a propaganda activist. Accordingly, Ms Jones submits this makes it plausible that the GOSL has maintained an adverse interest in her since her departure from Sri Lanka in 2010.
58. At paragraph [62] of his decision, the Judge records the Appellant as having agreed that she did not take part in any combative role; that her involvement was at a very low level; she was never a high-level member of the LTTE; and that she was never a leader and had never been given a title. She had provided food and had also knocked on doors to try and persuade people to join the LTTE. She also said that she was in school plays and had sung patriotic songs about a Tamil homeland.
59. At paragraph [25] of the permission application, Ms Jones sets out her record of the evidence given by the Appellant in cross-examination on this topic, and she submits that the Appellant did not in fact agree with the proposition put to her by the Presenting Officer that her involvement was very low level.
60. I accept that her record shows that the Appellant did not agree with this proposition. But it also shows that she did not claim to be "*very much involved with Tigers*" other than in 2006 in Vanni. Thus she did not claim to have any detectable involvement with the LTTE in the closing stages of the civil war from 2007 to 2009.
61. Ultimately, the Appellant's perception of the importance of her role in the LTTE is not material. What is material is whether it was open to the Judge to characterise her activities for the LTTE as being at a very low level. The answer to this is plainly yes, and the Judge did not err in law in not treating her as falling into the UNHCR risk category of a propaganda activist.

## **Notice of Decision**

62. The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

**Direction Regarding Anonymity**

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Deputy Upper Tribunal Judge Monson