



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

Appeal Number: PA/00092/2019

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25 October 2019**

**Decision & Reasons Promulgated  
On 31 October 2019**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**M S**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr A Blake, counsel instructed by York Solicitors  
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Abebrese, promulgated on 16 August 2019. Permission to appeal was granted by First-tier Tribunal Judge Ford on 18 September 2019.

Anonymity

2. No direction was made previously, however as this is a protection matter involving a potentially vulnerable appellant, such a direction is set out below.

### Background

3. On 21 June 2018, the appellant arrived in the United Kingdom by air and applied for asylum. That claim was based on his fear of persecution in Sri Lanka as a person suspected of assisting the Liberation Tigers of Tamil Eelam (LTTE). In a letter dated 20 December 2018, the Secretary of State refused that claim on credibility grounds, concluding that the appellant would be at risk on return to Sri Lanka. The appellant's health issues were considered however, it was not accepted that his removal from the UK reached the high threshold of severity to breach Article 3 ECHR.

### The decision of the First-tier Tribunal

4. The judge found that the appellant had not provided a credible account of assisting the LTTE or of coming to the adverse attention of the Sri Lankan authorities. His claims under Articles 2, 3 and 8 ECHR were similarly dismissed.

### The grounds of appeal

5. The grounds of appeal included the following criticisms of the decision:-
  - there had been a failure to consider whether to treat the appellant as a vulnerable witness on mental health grounds or to consider whether his mental state had an impact on his ability to give a coherent, consistent account. There was no reference in the decision to the medical evidence submitted or the Article 3 arguments made;
  - the credibility assessment was based upon an error of fact, that being the judge's finding that the appellant had been convicted of two offences and had travelled through six checkpoints, which was a claim the appellant had not made;
  - there was reliance on an out of date Country Guidance case;
  - the judge erred in requiring corroboration;
  - there had been a failure to consider the documentary evidence provided by the appellant;
  - there was a failure to give reasons for rejecting the appellant's account;
  - there had been a misunderstanding of the basis of the appellant's case;
  - the judge reached inconsistent conclusions regarding whether the appellant was arrested;
  - the judge erred in failing to consider the medical evidence relating to scarring;

6. Permission to appeal was granted on all grounds, albeit the vulnerable witness issue was described as not arguable.
7. The respondent did not file a Rule 24 response.

### The hearing

8. Mr Tarlow immediately stated that the errors of law were made out and his view was that the matter had to be remitted to the First-tier Tribunal. I indicated that this was also my initial view. Mr Blake said it was difficult to know where to begin but given Mr Tarlow's concession he only wished to emphasise one matter. The psychiatric report set out how vulnerable the appellant was and the effect that giving evidence would have on him, however the judge had relied on a clear typographical error indicating that the appellant was able to give evidence, which should have read that he was unable to give evidence.
9. At the end of the hearing, I announced that I agreed with the parties that the First-tier Tribunal judge made the series of errors described in the grounds and that the decision was set aside in its entirety.

### Decision on error of law

10. There was a plethora of errors within the judge's decision and I will therefore highlight just a few areas.
11. The psychiatric report of Dr Zapata gave a detailed account of the appellant's mental state and the effect of this upon his ability to give evidence. In particular, it was said that the appellant was likely to find the hearing and being cross-examined upsetting. Furthermore, Dr Zapata was of the view that the appellant would have been suffering from PTSD at the time of his screening and asylum interviews and that this had an impact upon the information he provided. Neither of these aspects were taken into consideration by the First-tier Tribunal and nor was the appellant treated as a vulnerable witness. Indeed, there was no reference to this report at all in the decision and reasons.
12. The appellant relied upon a medical report by Dr Izquierdo-Martin in which it was said that some areas of scarring were "*highly consistent*" with his account of being tortured and that the scars were unlikely to have been self-inflicted or have an alternative cause. At [21] the judge summarises those findings in the following way, "*the report states the injuries could have been caused in the manner stated by the appellant but also claims that the injuries could have occurred in alternative manner.*" The judge's consideration of the medical report does not reflect the medical opinion expressed and nor does the judge indicate what weight he attached to the report.
13. The judge made a serious mistake of fact at [27], where he found that the appellant had been convicted of two offences. This was never the appellant's claim. This error was particularly material because the judge

went onto make a negative credibility finding in relation to the appellant's ability to leave Sri Lanka as a person with two convictions.

14. At [30], the judge erred in that he relied upon the decision in *PT (Risk of bribery-release) Sri Lanka* [2002] UKIAT 03444 in order to conclude that the appellant was released from detention on payment of a bribe because he was no longer of interest rather than considering the Country Guidance on this issue, in GJ.
15. The judge found at [32] that the appellant did not provide evidence in support of his claimed activities in Sri Lanka or sur place activities in the United Kingdom and immediately concludes, "*I do not find the appellant to be credible in relation to the above activities.*". To require corroboration amounted to a clear misdirection. In any event, the appellant provided 30-pages of supporting evidence in his main appeal bundle regarding these aspects of his case, to which the judge made no reference. This amounts to a further material error of law.
16. In view of the above-mentioned errors, the decision of the First-tier Tribunal is unsafe and is set aside in its entirety. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have a fair or adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration. I therefore remit the appeal to the First-tier Tribunal for a fresh hearing, with no findings preserved.

## **Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.**

**The decision of the First-tier Tribunal is set aside.**

**The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Abebrese**

## **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

No report of these proceedings shall directly or indirectly identify him or any member of their 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.

Signed

Date

Upper Tribunal Judge Kamara