



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05836/2018

**THE IMMIGRATION ACTS**

Heard at the Royal Courts of Justice  
On 15 April 2019

Decision & Reasons Promulgated  
On 01 May 2019

Before

UPPER TRIBUNAL JUDGE FINCH

Between

WDPS

(ANONYMITY ORDER MAINTAINED)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. A. Blake of counsel, instructed by York Solicitors

For the Respondents: Mr. S. Kotas, Home Office Presenting Officer

**DECISION AND REASONS**

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Sri Lanka, who is Sinhalese and a Buddhist. He was born and brought up in the Colombo area of Sri Lanka.
2. He entered the United Kingdom on 8 October 2009, as a student, and remained here with such leave until 14 February 2016, when his first application for leave to remain on family and private life grounds was refused. He made a further application on human rights grounds on 23 May 2016 and this application was refused on 15 March 2017.
3. The Appellant applied for asylum on 13 July 2017 on a *sur place* basis. He did not assert that he had been politically active in Sri Lanka but relied on the fact that his girlfriend, who was from the Tamil community had asked him to send her money in order to support her family. As a consequence, he had sent her sums of money in 2012, 2013 and 2014; not knowing that she was using this money to support the LTTE. It was his case that subsequently the authorities discovered that he had sent her this money and started to call at his home and put pressure on his family to encourage him to hand himself into the authorities.
4. The Respondent refused his application on 20 March 2018. The Appellant appealed against the decision and First-tier Tribunal Judge Barrowclough dismissed his appeal in a decision promulgated on 7 December 2018. The Appellant appealed and First-tier Tribunal Judge Chohan refused him permission to appeal on 8 January 2019. But Upper Tribunal Judge Reeds granted him permission to appeal on 13 March 2019.

#### **ERROR OF LAW HEARING**

5. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have taken them into account before reaching my decision below.

#### **ERROR OF LAW DECISION**

6. Upper Tribunal Judge Reeds gave the Appellant permission to appeal on all three grounds of appeal.

## VULNERABILITY

7. The first ground of appeal was that First-tier Tribunal Judge Barrowclough had failed to take into account the Joint Presidential Guidance Note No. 2 of 2010 issued by the Presidents of the Upper and First-tier Tribunals of the Immigration and Asylum Chamber, entitled *Child, vulnerable adult and sensitive appellant guidance* and, as a consequence, take proper account of the opinion provided by Dr. Zapata, a consultant psychiatrist.
8. The Guidance recommends that judges recognise that mental health problems, social or learning difficulties, religious beliefs and practices, sexual orientation, ethnic social and cultural background, domestic and employment circumstances and physical disability or impairment can all render an appellant vulnerable. In particular, paragraph 3 states that:

“The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole”.
9. In paragraph 15 of the Guidance it is also said that:

“The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind”
10. It is clear from her decision, that First-tier Tribunal Judge Barrowclough did not follow this guidance. This is despite the views expressed by the Court of Appeal in *In AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123, where Sir Ernest

Ryder, Senior President, gave guidance on the general approach to be adopted in law and practice by the First-tier and Upper Tribunals to ensure that fair determination of appeals from children, young people and other incapacitated or vulnerable persons whose ability to effectively participate in proceedings may be limited.

11. He also noted at paragraph 21(f) of *AM* that “in making asylum decisions, the highest standards of procedural fairness are required”.
12. At paragraph 25 of his decision, First-tier Tribunal Judge Barrowclough did note that Dr. Zapata had found that the Appellant was suffering from PTSD and a moderate to severe depressive episode. He also noted that Dr. Zapata had outlined how these conditions would impact on the ability of the Appellant to give cogent answers about his past experiences. However, in paragraph 31 of his decision, he then disregards this medical evidence when considering the Appellant’s credibility.
13. When doing so, he gives no reason for departing from a very detailed and cogent report by a consultant psychiatrist with appropriate qualifications and who had adopted appropriate clinical methodologies. Therefore, First-tier Tribunal Judge Barrowclough failed to adopt the procedures necessary when an appellant was vulnerable. This gave rise to an error of law in his decision.
14. The fact that Dr. Zapata did not find that the Appellant’s mental conditions arose from his girlfriend’s activities is not fatal to the Appellant’s case. He found that the original trigger for the Appellant’s PTSD had been witnessing a bomb attack leading to fatalities in Colombo. He also found that his PTSD had abated until he heard that he was wanted in Sri Lanka and then it revived in the form of a fear of being returned to Sri Lanka. He also explained why those suffering from trauma often delay in seeking medical help or making applications which would involve them addressing previous trauma.

## **REASONS FOR REJECTING CORROBOATIVE EVIDENCE**

15. There was a detailed and cogent letter from the Appellant's father in the Appellant's bundle which described the visits by the authorities to the family home. It is also clear that the authorities were aware that the Appellant had been away as they made enquiries as to whether he had returned to Sri Lanka and, if not, where he was. There was nothing in the letter which was inconsistent with the available objective evidence or any of the other evidence provided by the Appellant. Some of the dates and details were also internally consistent with the letter from the Attorney at Law, Mr. Dhailamy. In addition, the provenance of the letter from the Appellant's father was strengthened by the fact that it was accompanied by the envelope in which it was posted and by the fact that it was addressed to the Appellant's solicitors.
  
16. There was also a letter from the Attorney at Law who confirmed that he had been instructed by the Appellant's mother when his father had been detained by the authorities. Again, the dates were consistent with the letter by the Appellant's father and the Appellant's own evidence. The letter was also detail and well-written and accompanied by a copy of the Lawyers Directory 2017 produced by the Bar Association of Sri Lanka and a copy of the Attorney's Bar Association card. The provenance of the letter was supported by these documents.
  
17. Nevertheless, First-tier Tribunal Judge Barrowclough found in paragraph 32 of his decision that he could not give any weight to these letters. When doing so he failed to consider the provenance of the letters or consider their content in the light of the objective evidence. Instead, he relied on two letters from the British High Commission, dated 3 July 2015 and 5 June 2017 which were not specific to the Appellant's particular case. The second letter was not relevant as the Appellant was not relying on a letter from a court or the police. The first went no further than asserting that within a small sample of 30 cases, 17 had involved attorneys whose evidence or credentials had been found to be false and in 11 cases the attorney in question could not be contacted.
  
18. In addition, he did not consider this evidence as part of a holistic assessment of the credibility of the Appellant's account as required by *Karanakaran v Secretary of State for the Home Department* [2000]. This gave rise to a further error of law.



## **FAILURE TO PROPERLY CONSIDER THE COUNTRY INFORMATION**

19. First-tier Tribunal Judge Barrowclough only dealt with one aspect of the findings in *GJ and Others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC. This was the sophistication of the intelligence network developed by the authorities in Sri Lanka.
20. He did not consider the core of the Appellant's fear which was whether sending a comparatively large sum of money to someone thought to be active in the LTTE from a city thought to be a centre for LTTE activists may give rise to a risk on return.
21. As a consequence, there were errors of law in First-tier Tribunal Judge Barrowclough's decision.

## **Decision**

- (1) The appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Barrowclough is set aside.
- (3) The appeal is remitted to be heard *de novo* by a salaried first-tier judge at Taylor House and, in any event, the appeal should not be re-listed before First-tier Tribunal Judges Barrowclough or Chohan.

**Nadine Finch**

Signed

Date 25 April 2019

Upper Tribunal Judge Finch