



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

**Appeal Number: PA/13231/2018**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 November 2019**

**Decision & Reasons Promulgated  
On 15 November 2019**

**Before**

**UPPER TRIBUNAL JUDGE FINCH**

**Between**

**THILAKASEKARAM [V]**

**Appellant**

**-and-**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the Appellant: Ms R. Kotak of counsel, instructed by Gurney Harden Solicitors

For the Respondent: Mr. S. Walker, Home Office Presenting Officer

**DECISION AND REASONS**

**BACKGROUND TO THE APPEAL**

1. The Appellant is a national of Sri Lanka. He entered the United Kingdom on 22 February 2009 and applied for asylum the next day. His claim was refused on 17 May 2011 and his

subsequent appeal was dismissed by Immigration Judge Cohen, in a determination promulgated on 29 July 2011. His appeal rights became exhausted on 9 September 2011.

2. Further submissions were made on 23 December 2013 and 10 January 2017, but the Respondent was not satisfied that he had made a fresh claim on either occasion. However, the Appellant challenged the second decision by bringing a claim for judicial review. Permission was granted on the basis that there had not been sufficient anxious scrutiny applied to medical records which may have suggested that his mental health had affected his ability to give cogent evidence.
3. The claim for judicial review was withdrawn by consent and the Respondent reconsidered her decision but made a further decision to refuse the Appellant refugee status on 6 November 2018. He appealed and First-tier Tribunal Judge Chana dismissed the Appellant's appeal in a decision promulgated on 18 July 2019. The Appellant appealed against this decision and First-tier Tribunal Judge Kelly granted him permission to appeal on 1 October 2019.

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

4. Counsel for the Appellant made oral submissions and then the Home Office Presenting Officer accepted that there was force in the contents of ground one of the grounds of appeal. I have taken these submissions into account when reaching my findings below.

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

5. It is clear from the Respondent's decision that the Appellant's fresh claim was partly based on the fact that he had been tortured in Sri Lanka and that he would be at risk of persecution there, due to his involvement with the TGTE and TCC. He also claimed that his *sur place* activities in the United Kingdom would mean that he would be identified by the Sri Lankan authorities if he returned to Sri Lanka. The Appellant's counsel had also submitted a very detailed skeleton argument which indicated that he still relied on his own activities in Sri Lanka and also his brother's.
6. Therefore, it was not the case, as found by First-tier Tribunal Judge Chana in paragraph 20 of her decision, that "the only issue in this appeal is whether the appellant's *sur[place]* activities

in the United Kingdom with Eelam, a proscribed organisation by the Sri Lankan authorities [will lead to persecution] on his return”.

7. There was a significant amount of medical evidence before First-tier Tribunal Judge Chana. In particular, there was a psychiatric report by Dr. Zapata, dated 14 September 2016, and a further psychiatric report by Dr. Balasubramanian, dated 19 April 2019. The latter specifically stated that the Appellant may have difficulty recalling events in chronological order and attributed his post-traumatic stress disorder to the torture he had experienced in detention in Sri Lanka. The Appellant had also provided a copy of his medical records, which consistently stated that the Appellant had reported feeling depressed and suicidal from 2011 onwards.

8. However, First-tier Tribunal Judge Chana did not analyse of this evidence but merely said in paragraph 23 of her decision:

“I have considered the medical evidence provided by the appellant. At the hearing the appellant said that he is not in therapy although he has been referred by his General Practitioner but there is a long waiting list. The appellant’s account of what he claims happened to him in Sri Lanka was not believed and I do not accept that his medical evidence should disturb that finding of the previous judge”.

9. In addition, the Judge did not give any reasons for finding that the medical evidence did not disturb the findings of Immigration Judge Cohen. It was not sufficient to just state that the Appellant was not currently receiving any counselling, when the Appellant had explained that he was on a waiting list and there was no evidence before her as to how patients were prioritised for counselling. It was also the Appellant’s evidence, as confirmed in paragraph 12 of the Judge’s decision, that the Appellant’s GP had told him in case of an emergency he should phone the doctor. Furthermore, the record of proceedings confirms that, in his oral evidence, the Appellant explained that his GP has explained that, if he was feeling down or thinking of suicide, he should contact him.

10. The Judge’s failure to take this medical evidence into account also undermined her findings in paragraph 30 of her decision that “no credible reason has been given for why [the Appellant] waited all this time to become a member [of the TGTE] other than to say the he was

traumatised”. I also note that the Judge failed to treat the Appellant as a vulnerable witness, as requested at the hearing, despite the psychiatric evidence before her.

11. It is also arguable that the Judge failed to give sufficient weight to the statement by Mr. Yogalingam, the President of the Transitional Government of Tamil Eelam. She had refused the Appellant an adjournment on the basis that no prejudice or unfairness would arise from the fact that this witness could not attend on the date of the hearing. However, nowhere in her findings does she mention Mr. Yogalingam’s evidence. In particular, his evidence would have been potentially very relevant in relation to her findings in paragraph 41 of her decision that the Appellant’s participation in demonstrations and other activities had been merely opportunistic.
12. In addition, the Judge failed to give any consideration of the substance of the evidence contained in the Appellant’s brother’s witness statement in which he said that, when he was arrested by the Sri Lankan authorities in 2016, he was accused of working to regroup the LTTE and of having received financial support from the Appellant to do so. It was not sufficient for the Judge to merely query why this brother did not attend. She should have considered what weight to give to his evidence, which was that the Appellant was sympathetic to the LTTE and sent him funds by money transfer. This was particularly the case, when this account had been accepted by First-tier Tribunal Judge Bart-Stewart in its entirety.
13. Furthermore, in paragraph 45 of her decision, the Judge found as a fact that his brother did not attend as he was in Sri Lanka when there was no evidence to support this finding. In his oral evidence, the Appellant had said that this brother could not attend because of his mental illness. This was confirmed by his brother in his witness statement where he said: “I suffer from various mental health issues following my detention and torture and hate talking about my detention in Sri Lanka; hence, I am not attending court to give evidence as I would be asked about my detention and questioning. This would trigger my memories that I have been trying so hard to forget”.
14. The Appellant’s brother had also provided a copy of the determination of his own asylum appeal by First-tier Tribunal Judge Bart-Steward, which was promulgated on 20 March 2019. There was nothing in the evidence to suggest that the Appellant’s brother had ever been back to Sri Lanka since arriving here on 13 August 2016. In addition, as his asylum appeal was

only allowed by First-Tier Tribunal Judge Bart-Stewart on 20 March 2019, he clearly was not the person referred to by Immigration Judge Cohen in paragraph 8 of his determination, promulgated on 29 July 2011, who was a British citizen.

15. In addition, the Judge did not give any weight to the Appellant's father's statement in which he said that the Sri Lankan authorities had shown him a copy of newspaper article which had an accompanying photograph of the Appellant at a protest in London and had also shown him television footage.
16. Finally, the Appellant had provided a copy of his medical records, which consistently stated that the Appellant had reported feeling depressed and suicidal from 2011 onwards and this was confirmed in both Dr.Zapata and Dr. Balasubramaniam's reports and the Appellant's own third statement. In the context of this evidence, First-tier Tribunal Judge Chana failed to reach any findings on whether the risk that the Appellant may commit suicide gave rise to a breach of Article 3 of the ECHR.
17. For all of these reasons I find that there were material errors of law in First-tier Tribunal Judge Chana's decision.

## **DECISION**

- (1) The Appellant's appeal is granted.
- (2) First-tier Tribunal Judge Chana's decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* re-hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Cohen, Chana or Kelly.

# Nadine Finch

Signed  
Upper Tribunal Judge Finch

Date 11 November 2019