



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/05836/2018 (V)

**THE IMMIGRATION ACTS**

Heard at Field House  
On 17<sup>th</sup> November 2020

Decision & Reasons Promulgated  
On 26<sup>th</sup> November 2020

Before

THE HON. MRS JUSTICE EADY  
UPPER TRIBUNAL JUDGE LINDSLEY

Between

WS  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: M A Blake, of Counsel, instructed by York Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**Interpretation:** An interpreter provided by Big Word in the Sinhala language

**DECISION AND REASONS**

*Introduction*

1. The appellant is a citizen of Sri Lanka born in 1987. He arrived in the UK in October 2009 and was granted leave to enter as a student until March 2013, and

that leave was extended until January 2015. He then overstayed, and in October 2015 he applied to remain on the basis of his private and family life ties with the UK. This application was refused in February 2016. A similar application made in May 2016 was refused in March 2017. The appellant applied for asylum in July 2017, and his application was refused on 20<sup>th</sup> April 2018. His appeal against the decision to refuse asylum was dismissed on all grounds by First-tier Tribunal Judge S Taylor in a determination promulgated on the 18<sup>th</sup> December 2019. Upper Tribunal Judge Lindsley found that the First-tier Tribunal had erred in law for the reasons set out in her decision of 8<sup>th</sup> June 2020, which is appended as Annex A to this decision.

2. The remaking of this appeal now comes before us. The hearing is a remote one heard via Skype for Business in order to limit the spread of the Covid-19 virus, and in circumstances where this is agreed to be a fair and just way to remake the appeal by the parties. There were no significant problems of audibility or connectivity during this hearing; although there were occasional lapses of connectivity in the court for the judges and also for the interpreter these were observed and the hearing halted and recapped so that no information was lost. We are satisfied that all evidence and submissions were heard by everyone involved.

#### *Evidence & Submissions – Remaking*

3. The appellant gave evidence through the Tribunal Sinhalese interpreter and confirmed his identity and that his unsigned statement was true and correct, and had been read back to him in a language he understood. We accepted that due to his mental health problems the appellant is a vulnerable witness, and asked that Mr Blake confirm that he was happy with the conduct of the proceedings, and asked him to draw any issues that needed addressing to our attention should they arise. Nothing was drawn to our attention in this respect. In short summary the appellant's evidence, from his statement and answers to cross-examination from Mr Melvin, is as follows.
4. The appellant is a Sri Lankan citizen of Sinhalese ethnicity. In November 2007, whilst living in Colombo, Sri Lanka, the appellant witnessed a bomb explosion in which he saw a lot of wounded and dead people and body parts in the blast area. This incident is material in relation to the post-traumatic stress disorder and anxiety he now suffers, but is not part of his reasons for claiming asylum. The appellant says that he has seen his GP about suffering from depression and anxiety, and takes sertraline and paroxetine medications. He has had psychotherapy but at present one to one sessions have stopped due to coronavirus. He has an appointment with his GP next Friday to discuss his mental health.
5. Prior to coming to the UK to study the appellant worked for bank in Colombo. The appellant met a Tamil woman, LT, in 2007 who worked in another bank in Colombo and started dating. They became close and had agreed between themselves that they would marry. His family were happy with this, and he

believes hers were too, although he never spoke to them directly as he does not speak Tamil and he never met them as they lived in the north of Sri Lanka. He had photographs of himself and his girlfriend in Sri Lanka but these stayed in his family home and he did not bring them to the UK, as he planned to return to his home country at the end of his studies.

6. In October 2009 the appellant travelled to the UK with a visa to study. He kept in touch with his girlfriend whilst he was studying in the UK using a pay as you go mobile telephone which he no longer owns, and therefore he cannot document those calls. He did not use social media at that time. His girlfriend asked if he could loan her father some money for his business, and in December 2012 the appellant sent £1000 through a money transfer agency. He sent another £1000 in mid 2013, and £750 at the beginning of 2014. The transfers were all made using A1 Money Transfer Agency in East Ham. He used this agency as it was closed to friends he visited. Whilst he was based in Wrexham for his studies he returned for weekends and short holidays to stay with friends in East Ham. He did not keep the tickets for his travel to see his friends as he did not know they would be relevant at the time. Likewise, he did not think it relevant to keep the receipts for the transfers after he sent the money and he had checked it had been received. The money was given to the agency in cash, and the Barclays account that he took money out of for the transfers has been closed down as he ceased to use it, and he has no old statements and had not been advised to try to get old statements from them. The appellant therefore accepts that he has no documentary evidence of these transfers. He cannot go back to the agency as it has since closed down. He was able to send money as he had permission to work in the UK up to 20 hours a week in term time and full time in the holidays at that time. After he had sent these amounts of money his girlfriend told him that the business was fine and did not ask for any more money. He never had any direct contact with her parents about the money as they were not able to communicate as they had no common language. The last time he spoke to his girlfriend was on 14<sup>th</sup> April 2014 when he called to wish her happy Sinhala-Tamil new year.
7. On 1<sup>st</sup> May 2014 the appellant's parents were visited at home by five army and police officers, and told that he was sought as a member of the LTTE, and shown a picture of his girlfriend in LTTE uniform. The authorities told his parents he was working for his girlfriend in the UK to rebuild to the LTTE, and took documents and photographs of him and his girlfriend from the family home. His father called him from a public telephone to tell him this information. The appellant had no idea that his girlfriend was a member of the LTTE, he felt betrayed by her and tried to get in touch (by calling her, getting his family to try to contact the bank where she had worked and by getting a friend to go to the place where she used to live) but was unable to find any trace of her. He suspects she may have been arrested.
8. The appellant extended his leave to remain in the UK as a student until 26<sup>th</sup> October 2015. In August 2015 his family home was visited again by the Sri Lankan authorities, so he applied to remain in the UK on human rights grounds, firstly in

February 2016 and then in May 2016, both these applications being refused. He did not claim asylum at this stage because he was scared of admitting to anyone that he was accused of being part of the LTTE, and was aware that this was a terrorist organisation banned not only in Sri Lanka but also in the UK and other countries. He did not understand about the asylum process, but at that stage would not have thought it would apply to him as he is not a Tamil. As he did not divulge the real reasons for his wishing to stay in the UK due to being scared, he was not advised to claim asylum by the solicitors who helped him with the private life applications to remain in the UK. This was also the reason why he did not seek medical help from his GP for his trauma until 2017; even though the events from 2014 caused his mental health to deteriorate he was scared to talk about what had happened with his being accused of helping the LTTE.

9. In April 2017 his parents were visited again by the Sri Lankan authorities. He then sought legal advice at the suggestion of a friend in whom he finally confided, and made an asylum claim in July 2017. His father was summoned to the police station in August 2017 and his father's life was threatened if the appellant did not surrender. On 20<sup>th</sup> January 2018 his father was arrested and detained for two days by the Sri Lankan authorities. His father continues to have to report to the police in the village once a month, but has not been served with any documentation regard this. The appellant does not know why his family chose not to seek advice from a lawyer in 2014, or if they have requested copies of the arrest warrant for him, and why they have not sought help from a human rights organisation in Sri Lanka. The appellant believes that if he is returned to Sri Lanka he will be detained and tortured on the basis of his imputed support for Tamil separatism.
10. In support of his claim the appellant submits the following evidence in addition to his own testimony:
  - Evidence of the qualifications he has acquired in the UK as a result of his studies: namely a Level 5 BTEC in electrical/electronic engineering awarded in June 2012 and a diploma of higher education in aeronautical and mechanical engineering awarded in October 2015.
  - A report from Dr Zapata, consultant psychiatrist, dated November 2018, who records that the appellant approached his GP suffering from mental health problems in 2017 and was diagnosed as a suffering from PTSD and prescribed anti-depressants and talking therapy. Dr Zapata diagnoses the appellant as suffering from post-traumatic stress disorder as a result of the bomb explosion in 2007, which has re-surfaced since 2014, since which point he had been suffering from anxiety attacks, insomnia, intrusive memories and nightmares. Dr Zapata finds that the delay in claiming asylum is consistent with the appellant's psychological state of depression and anxiety. He also records that the appellant had an active plan to kill himself by hanging in 2017, but that at the time of the report in 2018 he had suicidal thoughts but no actual plans, and that his family were a protective factor in this respect. He finds that a high risk of suicide would exist if he were to face

imminent removal to Sri Lanka. He considers whether the appellant is feigning his symptoms but concludes that he is not doing so.

- Letters from NHS CNWL Talking Therapies from 2017 regarding anxiety and suicidal thoughts and a moderate to severe risk of acting on those thoughts; GP notes; and copy prescriptions for sertraline and paroxetine.
  - A letter from the appellant's father dated 27<sup>th</sup> October 2018 in which he details being visited by the Maharagama district police station, first on 1<sup>st</sup> May 2014, and then in August 2015, then being required to report to them on 5<sup>th</sup> August 2017 and being detained for two days on reporting on 20<sup>th</sup> January 2018. He says that on the first visit he was shown a picture of the appellant's girl-friend and was able to recognise her in her LTTE uniform, and that documents including photo albums were taken from the family home. He says that the authorities have told him that the appellant is a Sinhala LTTE member and that he had sent large sums of money to Sri Lanka to support the re-emergence of the LTTE.
  - A letter from Mr Mohamad Dhailamy, a Sri Lankan attorney, dated 16<sup>th</sup> November 2018, along with his Sri Lankan Bar Association ID and extract from the Lawyer's Directory of 2017. Mr Dhailamy details how he was instructed by the appellant's mother as a result of the detention of her husband in January 2018. He explains how he went to the police station in Maharagama and talked to officers who told him that the appellant was wanted as a LTTE terrorist. He understood that it was the contention of the police that the appellant had been dispatched to London by the LTTE and had sent vast sums of money to Sri Lanka to support the LTTE. He records that he was not successful in obtaining the release of the appellant's father, but he was in fact released the following day.
  - Country of origin materials including CPIN Sri Lanka Tamil Separatism of May 2020 (Version 6).
11. It is submitted for the respondent that it is accepted that the appellant is a Sri Lankan citizen who has been diagnosed as having PTSD as a result of an accident which does not relate to the asylum claim which took place in 2007 but it is not accepted:
- that the appellant had a girlfriend as there is no documentary evidence of the seven-year claimed serious relationship, such as communication via text, Facebook, or greetings cards, and the appellant could produce no photographs of his girlfriend or of both of them together, which was not credible if there had been such a relationship.
  - that the appellant transferred £2500 from the UK to Sri Lanka given the lack of documentary evidence such as transfer slips or bank statements showing the withdrawal of the money; and it is argued that it is not plausible he would use an agency in East Ham when he was living in Wrexham.

- the existence of an arrest warrant and court summons given there had been no attempts to get copies of these documents from the Sri Lankan authorities. It is submitted that the evidence from the lawyer does not create a rebuttable presumption with regards to the documents. The appellant's father ought to have been taken to court if he were detained more than 24 hours, rather than just be released after 2 days, and it would be expected that the appellant's family would have sought legal help or help from a human rights organisation if they were being harassed by the authorities. Further lawyers' letters have been shown to be 90% false in research by the British High Commission, as evidenced by a letter in the respondent's bundle. The evidence from the father should be treated with caution as it was only produced in 2018 and not at the start of the asylum claim. It is further argued that, in any case, the appellant would not be seen as having a significant role in the post conflict diaspora given the relatively low amount transferred to Sri Lanka, i.e. £2750, and given that it will be clear that the appellant is not a significant member of the diaspora.
  - the medical evidence does not show an Article 3 ECHR medical claim, there was a lack of documentary evidence with regards the appellant's current state of health which could not be blamed on the Covid-19 pandemic. The current CPIN of July 2020 on Medical Treatment and Health Care in Sri Lanka showed that there would be sufficient mental health treatment and in addition the appellant would have his family to turn to for care.
12. As a result, it is argued for the respondent that the appellant has not shown he has a well-founded fear of persecution on return to Sri Lanka, or that he is entitled to succeed on grounds of humanitarian protection or on human rights grounds, as his claim is not credible on the lower civil standard of proof.
  13. It is argued for the appellant that the respondent is now taking points that they did not take in the refusal letter or before the First-tier Tribunal, which is not something that they ought to do. It is argued that the appellant ought to be treated as a vulnerable witness.
  14. It is argued that the medical evidence of Dr Zapata shows not only his original trauma in 2007, but also a subsequent breakdown in mental health from 2014 onwards. It is argued that there are good reasons why there is no direct documentary evidence of the appellant's girlfriend as his photo albums in the family home were taken by police, but it is argued that her existence is corroborated in the letters from the lawyer and the appellant's father. It is argued that there is a good reason why there is no documentary evidence of his financial transfers to her because the money transfer firm he used had closed down and he had understandably not kept the receipts. It is also said that it would not generally be likely for the appellant's family to be given a warrant, see the respondent's CPIN Sri Lanka Tamil Separatism of May 2020 (Version 6) at paragraph 4.7.5.
  15. It is further submitted that the letter from the appellant's lawyer and the letter from his father are good corroborative evidence supporting his history. It is likely

that he is on a watch list as a person seen as a threat to the integrity of the Sri Lankan state as a result of his girlfriend's actions, and therefore that he has a well-founded fear of persecution on account of his imputed political opinions, applying the country guidance case of GJ. The LTTE is a proscribed organisation, and in 2014 there is country evidence of the Sri Lankan authorities taking action against others who they believed were acting on behalf of the LTTE as there were extensive search and investigation activities at that time, which is supportive of the time line in the appellant's history. It is submitted that the explanation for the timing of the claim, and the delay being caused by fear about admitting to the accusations of LTTE membership were plausible. We were also asked to note that the appellant was not the "standard" asylum seeker as he was educated and from a good Sinhalese home. It is argued that the evidence of the appellant is consistent, and also consistent with the lawyer's letter and the letter from his father.

16. On behalf of the appellant, it is further argued that it has not been possible to update the 2018 medical evidence of Dr Zapata due to the Covid-19 pandemic; this report should be taken with the appellant's own evidence to assess his current mental health, and that he is therefore a suicide risk if returned to Sri Lanka. It is argued that he would be at real risk of committing suicide if returned to Sri Lanka, and that his removal would represent a breach of Article 3 ECHR on these grounds too. This is because the appellant subjectively genuinely believes that he will be detained and tortured on return, and there is insufficient mental health provision to provide for his mental health problems if he is sent back to Sri Lanka.

#### *Conclusions - Remaking*

17. The primary question in this appeal is whether the history of the appellant is credible. This must be assessed in the round.
18. The appellant has provided a very detailed witness statement and gave straightforward answers to the questions put to him under cross-examination from Mr Melvin. He is consistent in his statement and in his oral testimony, and his evidence is consistent with the factual material in the medical evidence (GP, therapist, prescriptions and psychiatric report of Dr Zapata), in his father's letter and the Sri Lankan lawyer's letter from Mr Dhailamy.
19. We find that the appellant has given proper explanations for the absence of documentary evidence which might have been available to support his claim. We accept that he could have left his photograph albums with his pictures of him and his fiancée in Sri Lanka (his original plan was to spend a relatively short period in the UK) and his evidence is that these were seized by the police in 2014 and thus that it is plausible he has no photographic evidence of his relationship. We accept that it is highly plausible that he no longer has the telephone he had between 2009 and 2014, so cannot print out text messages between them. We accept that it was likely he would not have kept the receipts from his financial transfers to his girlfriend after establishing that the money had arrived with her, and had not been advised to try and get old bank statements from his closed bank account to show

withdrawal of funds around the time of those transfers as this evidence would not show that money had been sent to Sri Lanka. As for the suggestion that the appellant's family should have been able to produce evidence of arrest warrants, we note paragraph 4.7.5 of the May 2020 CPIN, where it is stated: "The Attorney General's Department told the UK FFT that arrest warrants are not issued to the wanted person or their family." It is therefore reasonable that the appellant does not have such documents as they would not have been given to his family. Further at paragraph 4.7.6 of the same document, drawn to our attention by Mr Melvin, it is stated only that a summons "might" be given to family if the wanted person was not there, obviously leaving open the possibility that it might not.

20. We do not find that it is implausible that the appellant would have made the money transfers from East Ham whilst studying in Wrexham. He had previously studied in London, and so it was plausible he would have made friends there and returned there for short weekend breaks and that he would have used an agent to send the money during his time in London on the three claimed occasions. As the appellant has said he was allowed to work and took that opportunity and there is nothing inherently implausible about his deciding to send funds to help his fiancée's father's business.
21. It has been argued that the delay in claiming asylum is something that should lead us to find the appellant's credibility is damaged. We accept that this could be the case as, on face of it, the appellant has waited some four years from the first problems in Sri Lanka to the point when he claimed asylum, and in the meanwhile made three other claims to extend his leave: the first being on the basis of being a student and then two private life human rights claims. However, we find the explanation for his delay given by the appellant to be convincing. He has said that he was frightened and ashamed of being accused of being a LTTE supporter and being wanted on this basis. He was not part of a movement or ethnicity that offered any sort of general support to the LTTE. He viewed them as proscribed terrorists and was aware that this was the view of the British government as well as the Sri Lankan authorities. As a result he did not tell his lawyers, who helped him with his human rights applications, or seek a doctor's appointment about his problems despite suffering a resurgence of his latent PTSD caused by being caught up in the bomb explosion in 2007, and anxiety and depression. We find that it is plausible that the claim, made in July 2017, followed renewed interest in him by the authorities and a visit to his father on 20<sup>th</sup> April 2017 and that this was the trigger for him to finally manage to have a discussion with a friend about his predicament. As the appellant has claimed, having realised that he was able to safely unburden himself and make an asylum claim, he then simultaneously approached the home office and registered with a GP, and was diagnosed with PTSD in September 2017. It is clear from the letter from CNWL Talking Therapies dated 20<sup>th</sup> October 2017 that he had coped with his anxieties historically by "withdrawal, suppression and trying to push these thoughts away", but at that point he was anxious and depressed, with a moderate or severe risk of acting on suicidal thoughts due to fear of the Sri Lankan authorities.



22. The psychiatric report of Dr Zapata reaches a diagnosis of PTSD with depression and anxiety and some suicidal ideation but no active suicidal intention, which is consistent with the preceding GP diagnosis, the prescribed medications and the letters from Talking Therapies. Dr Zapata's report is in a proper format, from a suitably qualified doctor and includes a statement of truth; in the circumstances, we find it is a report which is deserving of weight. Whilst considering whether the appellant could be feigning his symptoms, Dr Zapata concludes that the appellant was genuinely afraid of being detained and tortured by the Sri Lankan authorities if returned to that country. He rightly does not express an opinion as to whether those fears are well-founded.
23. It has been drawn to our attention by Mr Melvin that in the Home Office bundle there is a letter from the British High Commission dated 5<sup>th</sup> June 2017 regarding verification of documents, which found that 91% were not genuine. We note, however, that this letter related to "documents purporting to be Sri Lankan Police and Court certificates, and therefore is not direct evidence with respect to the general reliability of lawyer's letters. Of course, we accept that there may also be forgery of lawyers' letters from Sri Lanka, and we cannot be certain this letter is genuine. That said, the appellant has provided good evidence that the apparent author of this letter is an attorney registered with the Sri Lankan Bar Association. The letter has full contact details set out, and was sent to the address of the appellant's UK solicitors, and there is nothing in its lay out or content which suggests that it is not genuine. We further note that the letter is not simply an account of reported matters given to the lawyer by the appellant's family: it is an account of the lawyer himself, being instructed by the appellant's mother, to assist the appellant's father who was in detention, and of this lawyer going to the police station and being told that the appellant was under terrorist investigation due to his supplying funds to a female member of the LTTE and so being suspected of trying to re-establish the LTTE.
24. We do not find that the weight to be given to the lawyer's letter is diminished by the family not reporting the matter to a human rights organisation or getting further legal help: the appellant does not know why they have not taken these options but it seems to us there are a number of likely reasonable explanations: for instance, that they may think that such acts might escalate their problems rather than diminish them or simply not wish to spend time and money in this way unless it is essential. It is notable that the lawyer's letter relates to the most serious thing that is said to have happened to the appellant's father, being held for two days, and thus there is a logic that this was the matter for which the appellant's family used a lawyer. We do not find that its veracity is diminished by the fact what is said at paragraph 4.7.2 of the May 2020 CPIN, as submitted by Mr Melvin (namely that under the Code of Criminal Procedure Act that a magistrate must authorise the detention of a suspect beyond 24 hours), as in the very next paragraph of the report, 4.7.3 it is added that the police can take "extraordinary powers of arrest" without the involvement of a judge, and this increases the risk of arbitrary detention, torture and ill-treatment. The fact that the lawyer was told in the police station that the appellant had sent vast amounts of money, without

citing an amount, may have been an exaggeration by the officer, or the officer's assessment of £2500, or may reflect the mistaken belief that the appellant had sent more than that amount. We do not find it a matter which affects our assessment of the credibility of the lawyer's letter.

25. We also consider the evidence, drawn to our attention by the appellant's representative, Mr Blake, from Refworld UNHCR entitled: Sri Lanka: Treatment of non-Tamil supporters of the LTTE by the government: whether religious minorities are viewed as LTTE supporters, including Muslims and Christians, and their Treatment dated 5<sup>th</sup> February 2013, which cites (at paragraph 3) evidence of Sinhalese support for the LTTE being a matter which likely to be shown "no mercy" by the government. It is clearly credible that the Sri Lankan authorities would take decisive action if they believed that a Sinhalese person was supporting the LTTE, and that the context is that this would not be unknown to the authorities as a possibility at the time when the appellant became a suspect.
26. We assess all of the above evidence in the round and conclude that we find the appellant credible and his evidence genuine, applying the lower civil standard of proof applicable in an asylum claim, because - for the reasons set out above - we find it consistent, plausible, and indicative of the appellant's subjective fear of return to Sri Lanka - reflected in his psychological condition of anxiety, depression and suicidal thoughts - being objectively well founded. We place particular weight on the letter from the lawyer, Mr Dhailamy, and the letter from the appellant's father, showing that he is at real risk of being detained on returned to Sri Lanka as a result of the outstanding LTTE terrorist charges against him. We do not find that the fact that a period of years has elapsed since the money transfers will reduce the risk as these are grave charges relating to terrorism.
27. We then turn to the current country guidance authority of GJ and Others (post-civil war; returnees) Sri Lanka CG [2013] UKUT 319. We find that, on the evidence as outlined above, the appellant is perceived as a threat to the integrity of Sri Lanka because he is perceived to have a significant role in post-conflict Tamil separatism, as he is wanted by the police for supporting LTTE terrorism. We find that it is likely that the appellant will be detained and interrogated about this matter if he is returned to Sri Lanka and, in accordance with the guidance in GJ, it is likely that he will be subjected to ill-treatment and torture during any such period of detention and interrogation. The appellant therefore succeeds in his asylum appeal on the basis he has a well-founded fear of persecution based on his imputed political opinions if returned to Sri Lanka. For the same reasons he is entitled to succeed on human rights grounds.
28. We do not find, however, that the appellant has shown that he would be at Article 3 ECHR medical risk on return to Sri Lanka as a result of his PTSD, depression, anxiety and suicide risk. Dr Zapata found in November 2018 that the appellant had some suicidal thinking but no planning or intent, although if he were faced with imminent removal then his suicide risk would be likely to increase to very risky levels. However, the medical evidence from Dr Zapata is two years old, as is

that from the GP and therapists, and the only current evidence we have, which we accept, is the evidence of the appellant that he continues to take his antidepressant medications. This, we conclude, does not amount to sufficient substantial evidence to find, applying the lower civil standard of proof, that at the current time return to Sri Lanka would expose the appellant to a serious, rapid and irreversible health decline, resulting in intense suffering or a significant reduction in life expectancy in the context of the health care available to him in Sri Lanka. Thus we conclude that the evidence is insufficient for us to find that the test in AM (Zimbabwe) v SSHD [2020] UKSC 17 is met. In addition, the appellant's representative did not take us to any evidence which would enable us to find that the Sri Lankan medical services would not be able to provide adequate treatment for the appellant if he were to become unwell in this way, or engage with the protective factor of his family. So, in relation to this separate Article 3 ECHR medical issue, we do not find that the appellant is entitled to succeed in his appeal.

Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. We set aside the decision of the First-tier Tribunal and all of the findings.
3. We remake the appeal allowing it on asylum and human rights grounds.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. We do so in order to avoid a likelihood of serious harm arising to the appellant and his family from the contents of his protection claim.

Signed *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

23<sup>rd</sup> November 2020

## Annex A: Error of Law Decision

### DECISION AND REASONS

#### *Introduction*

1. The appellant is a citizen of Sri Lanka born in 1987. He arrived in the UK in October 2009 and was granted leave to enter as a student until March 2013, and that leave was extended until January 2015. He then overstayed and in October 2015 applied to remain on the basis of his private and family life ties with the UK. This application was refused in February 2016. A similar application made in May 2016 was refused in March 2017. The appellant applied for asylum July 2017, and his application was refused on 20<sup>th</sup> April 2018. His appeal against the decision to refuse asylum was dismissed on all grounds by First-tier Tribunal Judge S Taylor in a determination promulgated on the 18<sup>th</sup> December 2019.
2. Permission to appeal was granted by Upper Tribunal Judge Norton-Taylor on all grounds on 26<sup>th</sup> February 2020, primarily on the basis that it was arguable that the First-tier judge had erred in law in the treatment of the psychiatric report and by requiring corroborative evidence from the appellant on a number of issues including one which may not have been raised as a live issue prior to or at the hearing, in the context of the appellant not attending the hearing for health reasons.
3. In light of the need to take precautions against the spread of Covid-19 and with regard to the overriding object set out in the Upper Tribunal Procedure Rules to decide matters fairly and justly directions were sent out to the parties by email on 5<sup>th</sup> May 2020 seeking written submissions on the assertion of an error of law from with a view to determining that issue on the papers, and giving an opportunity for any party who felt that a hearing was necessary in the interests of justice to make submissions on that issue too. Submissions were received from the respondent only.
4. The matter came before me to determine whether it is in the interests of justice to decide this matter without a hearing and if so to determine whether the First-tier Tribunal has erred in law. As the respondent has conceded that there is a material error of law in the decision of the First-tier Tribunal I find that it is appropriate to determine this matter on the papers notwithstanding the apparent lack of response from the appellant's representative, York Solicitors.

#### *Submissions & Conclusions – Error of Law*

5. In the grounds of appeal drafted by Mr P Lewis of Counsel for the appellant on 1<sup>st</sup> January 2020 it is argued, in brief summary, as follows. Firstly, that there was a failure to properly consider the psychiatric evidence which confirmed the appellant has PTSD. This diagnosis was accepted but the First-tier Tribunal did not deal with the aspects of psychiatric evidence which supported the credibility of the appellant's delay in claiming asylum, which in turn was a key reason for

rejecting the credibility of the asylum claim, and thus there was an error of law in failing to look at material evidence properly when assessing the credibility of the appellant. Secondly, the First-tier Tribunal is argued to have erred in law by requiring corroborative evidence of the appellant's relationship with his contended LTTE member girl-friend and of the fact that he transferred funds to his girl-friend when these issues were not contested by the respondent in the reasons for refusal letter and when they were not raised by Judge at the hearing in the context of it having been decided that the matter could justly proceed by submissions only. Further, it is argued, no sufficiently or properly reasoned regard is had to evidence which it is argued did corroborate these issues namely the letter from the appellant's father and the letter from the Sri Lankan registered lawyer.

6. In the submissions of Mr C Bates, Specialist Appeals Team, dated 22<sup>nd</sup> May 2020 it is accepted that the First-tier Tribunal materially erred in law at paragraphs 16-17 of the decision in assessing the credibility of the claim based on an issue of delay by apparently drawing a distinction with regard to the impact of the appellant's PTSD because its initial cause in 2007 was unrelated to the claim which is said to have arisen in 2014. The respondent accepts that someone who has PTSD may have this retriggered by subsequent traumatic events, and that the appellant was accepted as being a vulnerable witness to the extent that the appeal was to be dealt with by submissions only based on this evidence.
7. It is also accepted that the respondent did not dispute the existence of the appellant's relationship with his girl-friend per se either in the reasons for refusal letter or at the hearing, and that this was not an issue raised at the hearing, so that the findings at paragraph 18 of the decision were procedurally unfair.
8. The First-tier Tribunal did not attribute weight to the father's letter at paragraph 20 in part because of "other" credibility issues so that finding is accepted as being potentially contaminated by the material errors set out above.
9. It is also accepted that rejecting the lawyer's evidence at paragraph 20 of the decision on the basis that £2750 sent to the LTTE could not be seen as a vast amount by the Sri Lankan police was not reasoned with reference to any objective evidence that this amount would not be termed vast by the police.
10. I find that the decision and all of the findings of the First-tier Tribunal should be set aside for the reasons put forward in the grounds of appeal and articulated as accepted as material errors of law by Mr Bates for the respondent. I find that the matter should be retained and remade in the Upper Tribunal.

#### Decision:

1. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
2. I set aside the decision of the First-tier Tribunal and all of the findings.

3. I adjourn the remaking of the appeal.

**Directions - Remaking**

1. Having regard to the Pilot Practice Direction and the UTIAC Guidance Note No 1 of 2020, the Upper Tribunal is provisionally of the view that the forthcoming hearing in this appeal might properly be held remotely, by Skype for Business, on a date to be fixed within the period **June to September 2020**.
2. **No later than 14 days** after these directions are sent by the Upper Tribunal (the date of sending is on the covering letter or covering email):
  - (a) the parties shall file and serve by email any objection to the hearing being a remote hearing at all/by the proposed means; in either case giving reasons; and
  - (b) without prejudice to the Tribunal's consideration of any such objections, the parties shall also file and serve:
    - (i) Skype contact details and a contact telephone number for any person who wishes to attend the hearing remotely, which might include the advocates, the original appellant or an instructing solicitor; and
    - (ii) dates to avoid in the period specified.
3. **If there is an objection to a remote hearing**, the Upper Tribunal will consider the submissions and will make any further directions considered necessary.
4. **If there is no objection to a remote hearing**, the following directions supersede any previous case management directions and shall apply.
  - i. **The parties** shall have regard to the Presidential Guidance Note: No 1 2020: Arrangements During the Covid-19 Pandemic when complying with these directions.
  - ii. **The parties** shall file with the Upper Tribunal and serve on each other (a) an electronic skeleton argument and (b) any rule 15(2A) notice to be relied upon within **28 days** of the date this notice is sent.
  - iii. **The appellant** shall be responsible for compiling and serving an agreed consolidated bundle of documents which both parties can rely on at the hearing. The bundle should be compiled and served in accordance with the Presidential Guidance Note [23-26] at least **7 days before the hearing**.
5. The parties are at liberty to apply to amend these directions, giving reasons, if they face significant practical difficulties in complying.

6. Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents.
7. Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of his protection claim.

Signed *Fiona Lindsley*  
Upper Tribunal Judge Lindsley

8<sup>th</sup> June 2020