



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

Appeal Numbers: AA/00392/2013  
AA/00574/2013  
AA/00575/2013  
AA/00576/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 8 August 2013**

**Determination sent  
On 13<sup>th</sup> August 2013**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

**MJW and others  
(ANONYMITY DIRECTION MADE)**

**Appellants**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr D Chirico of counsel instructed by Dean Manson solicitors  
For the Respondent: Mr P Deller a Senior Home Office Presenting Officer

**DECISION AND DIRECTIONS**

1. The appellants are Sinhalese citizens of Sri Lanka. The first and second appellants are respectively husband and wife and the third and fourth appellants are their children. They have been given permission to appeal the determination of First-Tier Tribunal Judge Higgins who dismissed their appeals against the respondent's decisions of 7

December 2012 to give directions for their removal from the UK following the refusal of asylum.

2. The wife claimed that she and her husband had been persecuted and feared future persecution in Sri Lanka because of his involvement with one of the major political parties compounded by the fact that they were of different religions, having married across the religious divide.
3. The husband and wife first came to the UK on 1 March 2007 with entry clearance as visitors. Their leave expired in August 2007 and they overstayed. Both their children have been born here. The wife claimed asylum in 2009. The respondent did not believe her account of events or that she would be at risk on return. Her claim was rejected in November 2009. Her attempted appeal was rejected as out of time. In June 2011 the wife's solicitors submitted witness statements and new documentary evidence and asked that these be treated as a fresh claim by her with her husband and the children as her dependents. The respondent declined to do this and the wife applied for judicial review. The judicial review proceedings were compromised and the respondent agreed to reconsider the claim. The decision to reject it was maintained on 7 December 2012 and the appellants appealed.
4. The judge heard the appeal on 12 February 2013. The appellants were represented but the respondent was not. In a lengthy, careful and detailed determination the judge accepted a number of aspects of the claim which had been rejected by the respondent. He found that they were of the nationality and ethnicity they claimed and of different religions. He accepted that they had lived in Sri Lanka and Korea, came to the UK in March 2007 and have lived here since in the circumstances they claimed. However, whilst he accepted that the husband and his father were supporters of the major political party and that the husband suffered bruising as a result of an assault in or about July 1999, he rejected the claims that the husband was any more than a normal supporter or that his involvement with the party led to the consequences alleged. He did not accept that the husband had been arrested or detained by the authorities or that the appellants would be at risk on return. He dismissed the appeal on asylum, humanitarian protection and human rights grounds.
5. The appellant sought permission to appeal which was rejected by a judge in the First-Tier Tribunal. However, on renewal to the Upper Tribunal, permission was granted.
6. I am persuaded that the appellants and those now representing them have been labouring under considerable difficulties. It is widely known and I accept that their former solicitors, Blakemore's, have gone out of business. I accept that the appellants have had great difficulty in finding new representation, their new representatives have been unable to obtain all the papers from those managing the affairs of Blakemore's and that a request made by the new representatives to the respondent for information and documents is, as yet, unanswered.

7. I viewed Mr Chirico's request to amend the grounds of appeal, at the last minute and without prior notification in the light of these difficulties. Prior to the hearing before me there had been an application for an adjournment on the basis that the new representatives were still trying to obtain relevant documents. This application was rejected but it is understandable that it was only at the last minute that Mr Chirico was able to obtain instructions from the appellants on some of the matters which were still unclear. Mr Deller did not oppose the application to amend the grounds of appeal and I agreed that they could be amended.
8. The grounds of appeal argue that the judge erred in law and acted unfairly and in breach of the Surendran guidelines by rejecting elements of the appellants' claims without putting them on notice that these points would be relied and by failing to have regard to the positive contribution to the UK made by the husband and wife.
9. Mr Chirico relied on the authorities of Haile v IAT [2001] EWCA Civ 663 and ML (Nigeria) v SSHD [2013] EWCA Civ 844.
10. The original grounds relied on two of the reasons given by the judge for making a partial adverse credibility findings, namely the absence of any reference in the husband's mother's affidavit to risk from the Sri Lankan authorities and a lack of medical reports relating to the husband claimed torture by the authorities in 2006. The amended grounds refer to paragraph 101 of the determination and what is claimed to be the judge's failure to give the appellants the opportunity to explain why the wife did not give further details of her husband's activities and position in the political party. Had he done so she would have said that she was not only very upset at her interview, as the record shows, but also unwell.
11. During the course of the hearing it became apparent that the appellants' new representative and Mr Chirico were not in possession of the respondent's bundle. This is a substantial bundle containing a great deal of documentary evidence submitted by the appellant's previous representatives at an earlier stage. The claim in the grounds of appeal that the judge should not have relied on what he concluded was a lack of medical reports relating to what happened to the husband in 2006 was made on instructions because the new representatives had been told by the appellants that relevant medical evidence was in the possession of the respondent. However, at that stage they did not have it so that the grounds could not be more specific. The prehearing request made to the respondent for these and other documents had been made in order to rectify this.
12. Mr Deller provided Mr Chirico with a duplicate of the respondent's bundle and I adjourned for all of us to examine this and in particular the relevant pages. Having done so it became apparent that the respondent had been given and the bundle contained a number of medical and laboratory reports notes and documents between pages V1 and V22. I find that this respondent's bundle was before the judge. He made a number of references to documents in it (for example in paragraphs 79, 80 and 81). In some areas the reports between pages V1 and V22 are not easy to decipher but on close

examination it soon became common ground that there was written medical evidence from December 2006 relating to injuries suffered by the husband. In paragraph 104 of the determination the judge said that the fact that the appellant had obtained a medical report about injuries he suffered in 1999 but not one for the injuries he suffered in 2006 undermined his credibility.

13. In his witness statement dated 9 June 2011 the husband said that when he was arrested detained and tortured in about September 2006 one of the injuries he suffered was to his nose and that this caused long-term injury. He also claimed that as a result he had to have an operation on his nose at the end of 2006 just before he came to the UK. At V7 of the respondent's bundle there is a report from the General Hospital in Chilaw which shows that the husband was admitted on 5 December 2006 and discharged on 8 December 2006, he had an operation to the septum in his nose under anaesthetic, pieces of cartilage were removed and the nose was repaired. It also shows that the appellant suffered a cardiac arrest during recovery.
14. Mr Deller accepted that the respondent had in her possession the report from the hospital in Chilaw but, as appears from paragraph 31 of the reasons for refusal letter dated 6 December 2012, had not taken this into account. He also accepted that this evidence was before the judge and, although there was no indication that his attention had been directed to it, it was clearly important evidence in relation to the husband's claim as to the injuries he suffered under torture in 2006. The judge had not found the appellants to be entirely incredible. On the contrary, he had accepted much of their evidence. In an asylum case great care had to be exercised and he concluded that he was in no position to argue that, whilst there were factors which militated against aspects of the appellant's credibility, it could be said that the judge would inevitably have reached the same conclusion had he given proper consideration to the medical evidence before him. He could not ask me to uphold the determination and accepted that it needed to be reheard by a judge in the First-Tier Tribunal.
15. I agree with Mr Deller's submissions and reach conclusions in line with them, as set out in the last paragraph. I also find that, had the judge applied Surendran principles in a case where the respondent was not represented, he should have drawn the appellant's representatives' attention and given the appellants the opportunity to provide explanations for the points on which he subsequently relied in finding them partially not credible, namely the absence of any reference in the husband's mother's affidavit to risk from the Sri Lankan authorities and the wife's failure, in interview, to give further details of her husband's and his father's activities in the political party. These reinforce my view that the determination cannot stand. I find no merit in the second ground of appeal; that in relation to the human rights grounds the judge failed to take into account the first two appellants' positive contribution to society in this country. I find that the reference to this in paragraph 129 of the determination when read with what the judge said in paragraph 89, provides sufficient indication that these elements were taken into account.

16. I make an anonymity direction to protect the interests of the appellants and in particular the children.
17. I set aside the judge's decision. As there has not been a full and effective hearing in the First-Tier Tribunal I agree with the representatives that the redetermination of this appeal should take place before a judge in the First-Tier Tribunal at Taylor House. None of the judge's findings of credibility or fact are preserved. The hearing is to be with all issues at large.

**Direction regarding anonymity - rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005**

**Unless and until a tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of Court proceedings.**

**DIRECTIONS**

- a) Arrangements have already been made for the case to be listed at Taylor House on the 12th December 2013.
- b) Time estimate three hours.
- c) Sinhala speaking interpreter required.
- d) To be heard by any First-Tier Tribunal judge other than Judge Higgins.

Signed:.....  
Upper Tribunal Judge Moulden

Date: 9 August 2013