



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/04349/2015**

**Appeal Numbers:**

**AA/03966/2015**

**THE IMMIGRATION ACTS**

**Heard at Manchester**

**Decision & Reasons**

**On 23<sup>rd</sup> January 2018**

**Promulgated**

**On 16<sup>th</sup> February 2018**

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**DAV (FIRST APPELLANT)  
MRV (SECOND APPELLANT)  
(ANONYMITY DIRECTION NOT MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Mr J Waite, Counsel, instructed by Marsh & Partners  
Solicitors

For the Respondent: Ms H Aboni, Home Office Presenting Officer

**DECISION AND REASONS**

1. The first appellant is a citizen of Sri Lanka and the second is his wife.
2. The appellants have one daughter in the United Kingdom. They also have two children living in Sri Lanka.

3. The first appellant claimed asylum on 19<sup>th</sup> September 2013. He claimed that he was twice arrested for suspected involvement with the LTTE in 2006 and 2013. On both occasions he managed to escape from the authorities. His escape in 2013 triggered an investigation as to his absence by the authorities, who came to his home and raped his wife.
4. The respondent did not accept the credibility of the claim and refused to grant asylum or other protection, the date of those decisions being 29<sup>th</sup> August 2014 and 28<sup>th</sup> January 2015 respectively.
5. The appellants sought to appeal against those decisions, which appeal came before First-tier Tribunal Judge Ransley on 21<sup>st</sup> August 2015.
6. The appeal was dismissed in all respects.
7. The challenge made to the First tier Tribunal decision, came before Upper Tribunal Judge Bruce for consideration on 28<sup>th</sup> April 2016. For the reasons as set out in her judgment the decision of the First-tier Tribunal Judge was set aside to be re-made.
8. Thus it was that the matter came before First-tier Tribunal Judge Holt on 7<sup>th</sup> June 2017. In a determination dated 16<sup>th</sup> June 2017 the appeal was dismissed in all respects.
9. Challenge was made to that decision and, by permission granted by First-tier Tribunal Judge Adio on 2<sup>nd</sup> October 2017, the matter comes before the Upper Tribunal to determine whether or not indeed there was a material error of law in the determination.
10. The first challenge as mounted in the grounds of appeal is that the Tribunal Judge failed to take into account material evidence relating to the claim of the first appellant, namely an article in the "Uthayal" newspaper regarding the appellant which it is said forms a vital piece of evidence regarding his asylum claim.
11. In that connection it is right to note the difficulties which seem to have been presented in obtaining a complete set of documents for the hearing as set out in paragraph 7 of the determination. Mr Waite, who now represents the appellant, indicated that he was unclear on his instructions as to the nature of the evidence now relied upon.
12. I located in the bundle of documents an untranslated article from the said newspaper dated 24<sup>th</sup> March 2016. There was loosely attached to that document a purported translation in these terms for an entry of 24<sup>th</sup> March:-

"The security forces who had been carrying out a search operation following a gunfire attack on the security checkpoint at Kudathanai day before yesterday has arrested a young family man living at a welfare camp. It was AV (aged 22) who had been living at a welfare

camp meant for displaced persons at Manalkadu was arrested day before yesterday. It was said that a demonstration demanding the release of the family man was held in front of Pont Pedro Police Station but police did not have any records showing this man to be arrested”.

13. In terms of that matter, the first appellant was interviewed on 27<sup>th</sup> November 2013, when he indicated that he was arrested by the army in 2006 when he was loading a tractor on a road. He said the army had been attacking the LTTE and the army had been attacking one another and shots had been fired. The camp that he was then living in was for construction workers. There is no mention of the fact that anybody campaigned on his behalf following his arrest, which he claimed lasted for many days.
14. There is no indication that the Judge was specifically directed to that piece of evidence but in any event it would seem not to correspond to the nature of the evidence as given by the appellant as to the circumstances of his first arrest. The shooting was not the previous day but said by the appellant to have been occurred at the time when six people were detained including the appellant.
15. It is far from clear as to what relevance that article had in terms of the submissions made to the Judge.
16. Essentially the Judge, in considering the claim as presented on behalf of the two appellants, concluded for clear reasons that the first appellant lacked credibility. The reasons for such findings are set out in detail in the determination. The Judge also considered the evidence of the second appellant, the wife, particularly in paragraph 34 of the determination. It was noted that she did not specify the first appellant’s connection with the LTTE; rather stated that it was the tsunami which was the motivating factor for their coming to the United Kingdom. I can detect no lack of rationality in the conclusion as to credibility.
17. At the hearing before First-tier Tribunal Judge Ransley on 21<sup>st</sup> August 2015, reliance was placed upon a report by Dr Robin E Lawrence, consultant and general adult psychiatrist. This was in relation to the mental state of the second appellant. The Judge, for various reasons as set out in the determination gave little weight to that report. Upper Tribunal Judge Bruce in her decision of 23<sup>rd</sup> May 2016 indicated that the Judge was entirely right to place little weight upon that report and set out her reasons why she came to that conclusion.
18. Mr Waite in his submissions to me seeks to rely upon that report and contends that the Judge erred in law in not paying due regard to it. I have some concern as to that approach bearing in mind that that report is not the subject of the grounds of appeal and in any event was a report that was adjudged to be given little weight by the Upper Tribunal.

19. Of more relevance, however, is the report by Dr Lucy Klenki who is a consultant psychiatrist. The report is dated 26<sup>th</sup> May 2017.
20. It is said that the First-tier Tribunal Judge was unduly dismissive of that report in the context of the case.
21. It is perhaps of importance to look in detail at that report, which was prepared following a number of observations which the author had had of the second appellant over a period particularly from 1<sup>st</sup> October 2015 to 28<sup>th</sup> October 2015. It was noted that the second appellant had two daughters aged 9 and 10 living in Sri Lanka with her mother. Asylum was initially claimed on 10<sup>th</sup> October 2013 and refused on 28<sup>th</sup> April 2016 and is currently going through a process of appeal.
22. There was no past psychiatric history evidence until the appellant's first presentation with low mood a month prior to admission in October 2013. The asylum claim was based on the rape which is said to have occurred on 25<sup>th</sup> August 2013.
23. It was noted that the psychiatric services became involved some two years following the initial arrival in the United Kingdom. It was noted that the second appellant's mental health had deteriorated and her mood was low. She was referred to the Accident & Emergency Department in the hospital in Wrexham on 1<sup>st</sup> October 2015 and was seen by the liaison psychiatric team.

“The reason for admission at that time was that there had been a gradual deterioration in mood a few months following the rejection of her asylum claim. Mrs V's mood had been going down and it culminated in her self-harming. She had been head banging, burning herself, her husband had found a wire around her neck and she had started neglecting herself in that she was not washing, she was not looking after herself and has refused to eat”.
24. The diagnosis at the time was that of severe depressive episode with psychotic features.
25. The medication was re-started and the second appellant started to improve, being discharged from hospital on 28<sup>th</sup> October 2015. Her mood and situation has improved thereafter.
26. It was the view of the author of the report that the appellant had been in the United Kingdom for two years and had not been seen by psychiatric services but had managed to cope without any professional support. “In my opinion what initiated her presentation to mental health services was the threat and fear of going back to Sri Lanka”.
27. The report went on : “what she talks about more is the fact that she misses her two daughters and the rest of the family back in Sri Lanka”.

“Certainly during the time that I have been involved with Mrs V since her discharge into the community, she has not mentioned to either myself, Jacquie Lewis or Angela Jones, any mention of flashbacks and nightmares or any other symptoms of post traumatic stress disorder which have affected her to a point that she felt that she needed to mention them and this is corroborated by the individuals that I have mentioned”.

28. The report concludes that the appellant Mrs V has a diagnosis of severe depressive episode with psychotic symptoms which is in remission.
29. A number of other documents are cited, linked to that report, which do not significantly add to the issues. There was a service delivery plan review on 15<sup>th</sup> February 2017, which deals with her re-engagement with the public; a letter from the doctor’s surgery confirming that she is under the care of the community mental health team and a letter from the Methodist Church dated 18<sup>th</sup> May 2017 speaking as to the second appellant’s mental health problems which it is said have improved immeasurably. There is also a letter from Jacquie Williams who is a specialist health visitor for asylum seekers dated 17<sup>th</sup> May 2017 speaking of the fact that the family is known to her since their arrival in Wrexham in December 2013. Until August 2015 Mrs V was in good health which deteriorated quite rapidly over a period of two weeks leading to depression and being sectioned under the Mental Health Act for a period of time.
30. The Judge in the determination, in particular in paragraph 31 and 33, notes that particular evidence.
31. Although the second appellant claims to have suffered horrific rape in 2013, which resulted in her coming to the United Kingdom, there is no indication from her mental behaviour that that had adversely affected her; rather it was following the rejection of her asylum claim that there was a very rapid onslaught of that mental illness in 2015.
32. The Judge notes the proximity of the mental illness to the refusal of the asylum claim and links it with the comments made by Dr Klenki that the appellant is missing her family in Sri Lanka and concludes that a reasonable explanation for the onset of her mental difficulties is precisely because of the failure of her asylum claim and the fact that she does miss her family in Sri Lanka.
33. The Judge in paragraph 32 of the determination seeks to suggest that the report of Dr Klenki is not an independent report and is essentially an uncritical report based on what the appellant has to say. It is said in paragraph 33 that that report adopts an uncritical role of being the appellant’s advocate.
34. As is highlighted in the grounds of appeal, it would seem that such criticism of the report is unnecessary. Dr Klenki is seeking solely to reflect her observations of the appellant and of her assessment as to her

condition. It is perhaps unreasonable to accuse the doctor of being biased.

35. That having been said, however, there has been no analysis as to the link of PTSD with the rape.
36. Given the traumatic experiences as claimed by the second appellant, it is perhaps surprising that that in itself had not adversely affected her mental wellbeing when coming to the United Kingdom. It was only after the rejection of the asylum claim that symptoms began to emerge in 2015. Clearly one interpretation of such matters would be that the second appellant fears to return, with the second being that she is upset that the system has not supported her claim.
37. Without some probing as to the causation of the PTSD, it seems to me to be reasonably open to the Judge to conclude that it does not materially assist in the evaluation of the credibility of the claim.
38. It is important to bear in mind that the claim of rape is to some extent dependent upon the correct analysis of the context of the claim. The rape only occurred it is claimed because the authorities were seeking the appellant following his escape in 2013. If there was no such escape, but rather the alternative reason for coming to the United Kingdom as suggested in paragraph 34 of the determination, then that makes the claim of rape to be even less likely or credible.
39. As the Judge properly notes, the fact that the appellant was upset in 2015 is as consistent with her feeling upset because of the loss of her asylum claim than it is in her genuine fear of return because of rape.
40. It was open to the Judge in paragraph 34 to conclude, in the light of what the second appellant had to say in interview, that the real reason for coming to the United Kingdom was as an economic migrant and nothing more.
41. The important element is that which is highlighted by Upper Tribunal Judge Bruce in her determination at paragraph 31, namely that the second appellant was entitled to a proper analysis of her evidence. It seems to me that in paragraph 34 there has been that consideration. In some very real sense, as was recognised by Judge Bruce, the claims are interconnected. If there is nothing to indicate that the first appellant was sought by the authorities then that throws considerable doubt upon the claim of rape. Equally if the claim for rape is made out then that enhances the claim of the first appellant.
42. It seems to me that the First-tier Tribunal Judge did the best to give effect to that mutuality of claim, indeed it was recognised in paragraph 35 of the determination. Although the bold comments, critical of the medical report perhaps should not have been made, the reality exists that the report, even taken at its highest, is not supportive of the rape as claimed, other

than indicating that the second appellant has a mental problem or had one.

43. In all the circumstances I do not find there to be a material error of law. The Judge gave cogent reasons for disbelieving the first appellant as to his claim for asylum. The Judge noted what the second appellant had said, which indicates that the reason for the appellants coming to the United Kingdom was as a financial basis rather than a protection one. The Judge's analysis of the medical evidence is not such as to distort unreasonably that picture or those findings.
44. In all the circumstances therefore the appeal is dismissed before the Upper Tribunal.
45. The decision of the First-tier Tribunal shall stand, namely that the appeal is dismissed in all respects.

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

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.



Signed

Date 14 February 2018

Upper Tribunal Judge King TD