



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

Appeal Numbers: AA/01144/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 14 October 2015**

**Determination Promulgated
On 29 December 2015**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

T B
(no anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Azani of Counsel

For the respondent: M H Holmes, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka born on 28 September 1978. He appeals to the Upper Tribunal against the determination of First-tier Judge Chohan dated 14 July 2014 refusing his appeal against the decision of the respondent dated 9 January 2015 refusing him asylum and humanitarian protection and to remove him from the United Kingdom pursuant to section 10 of the Immigration and Asylum Act 1999.

2. Permission to appeal was granted by First-tier Tribunal Judge Dineen on 5 August 2015 stating that it was arguable that the First-tier Judge failed to make relevant findings as to the letter from the lawyer from Sri Lanka which relates to an arrest warrant in proceedings against the appellant as the truth or falsity of such a document must be significantly relevant to the appellant's case notwithstanding the Judge's adverse findings as to his overall credibility.

The first-tier Tribunal's findings

3. The Judge in his determination made the following findings which I summarise.

[15] "There are some serious credibility issues in respect of the appellant's claim. It is the appellant's claim that he returned to Sri Lanka on 19 July 2007 because he could not get hold of his parents whilst in this country. On arrival at the airport, it is claimed, that he was detained and questioned for a period of two hours. However, he was then released without any action being taken against him. I find that somewhat odd that upon release the appellant took a taxi to travel to Galle and when the taxi was stopped, the appellant was arrested and detained by CID officers. I find it odd because had the appellant been genuinely of adverse interest of the Sri Lankan authorities then I do not find it credible that he would have been released at the airport. It is not clear how the CID officers knew that the appellant was travelling in a particular taxi. Clearly, based on the appellant's account, the CID officers knew that the appellant had arrived in Sri Lanka and again it begs the question as to why they simply did not approach him when he had been detained at the airport. In short, the appellant's account does not make any sense.

[16] The case **GJ and others (post-Civil War: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** refers. In support of his case, the appellant has submitted an arrest warrant which a lawyer in Sri Lanka has managed to obtain and send to the appellant. I note that the arrest warrant posted dates the appellant's return to Sri Lanka and was issued after his return to the United Kingdom. Nevertheless, it does not take away from the fact that the authorities had the appellant in detention at the airport, and to release him without any action simply does not make any sense.

[17] The appellant claims that he was helped by an officer to escape from custody. 25 lakh rupees were paid to the officer by the appellant's father-in-law. I find that quite incredible. Firstly, according to the appellant's account he had received information that he and his parents were to be killed by the authorities. In light of that, I find it incredible that an officer would assist the appellant to escape irrespective of the payment of a bribe. Secondly, again, according to the appellant's account his parents had been accused of supporting the LTTE and not the appellant himself. In light of that, I find it incredible that the appellant made no effort to assist his parents in

securing release from custody. Of course, it is the appellant's explanation that because he had a visa to come to the United Kingdom he had been assisted by the officer. Nevertheless, the fact that his parents had been accused as above and faced death, the appellant having made no effort to assist them I find to be quite incredible.

[18] there are many inconsistencies in respect of the appellant's journey to the airport after he was released. During his asylum interview, at question 69, the appellant stated that "only the three people that took me to the airport and they drop me and went away". However, in questions 17, the appellant went on to state "I never had the passport they had the ticket and the passport. Only once I was inside and it was sorted they left".

[19] clearly, the answers given to the question 69 and 70 of the Asylum interview are inconsistent. In order to explain that, in his witness statement at paragraph 25, the appellant states "three men escorted me to the airport. They had my passport and ticket. They did not just drop me outside the airport. That is not what I meant by my response to question 69. As I explained at question 70 they had control of my passport and only left once everything was sorted. This escorted me as far as the immigration checks and ensured I was not detained".

[20] The above is at odds with the letter from the appellant's father-in-law, in the appellant's bundle at page 41-42. In that letter, the appellant's father-in-law states "I went to the airport with money and everything at the airport. He collected the money and everything and informed that he cannot show TB". It can be seen that during his asylum interview, the appellant did not mention that his father-in-law went to the airport. During his oral evidence, the appellant stated that his in-laws were not at the airport and that everything had been arranged prior to the arrival, even the passport. These inconsistencies further damaged the appellant's credibility.

[22] it could be seen from Mr Mason's medical report that he has not ruled out the possibility of the scars on the appellant was inflicted by other means than is claimed by the appellant. When one considers the appellant's claim as a whole and the inconsistencies as highlighted above, it can only be concluded that the scars were not caused as claimed by the appellant.... Even if I were to be wrong in arriving at that conclusion, and the scars were caused deliberately by a third party then based on the appellant's lack of credibility, I find they were not caused by the Sri Lankan authorities.

[26] considering the appellant's account as a whole, I find that it lacks credibility. Reasons have been set out above. In light of that, I place little weight on the arrest warrant which I find has simply been produced through a lawyer in Sri Lanka in order to enhance the appellant's claim. The appellant simply does not wish to return to Sri Lanka and is here for reasons other men seeking refugee status.

The Judge also noted that the appellant's wife came to Sri Lanka three years later had very little knowledge about the appellant's asylum claim. It was claimed that the authorities visited the appellant's father-in-law and wife. The Judge find it incredible bearing in mind that the appellant is wanted by the authorities, that they took no action against his father-in-law and his wife.

The Judge considered the delay in claiming asylum with other evidence in respect of the appellant's appeal. In answer to the Judges question the appellant answered that he knew three or four years from the year 2007 that he could claim asylum but failed to do so. According to the appellant's oral evidence, at some point he did seek legal advice in respect and was silent as he had no funds he showed no interest. The bottom line is that the appellant knew about asylum many years ago but failed to claim. Indeed, he did not claim asylum until it was encountered by chance in March 2013. The appellant has not put forward a satisfactory explanation for not claiming asylum sooner.

The Judge dismissed the appellant's appeal and found that the appellant could be returned to Sri Lanka and he would face no real risk of persecution, serious harm oral treatment. He found that the Sri Lankan authorities never had any adverse interest in the appellant and upon return they will have no interest in him. He noted that the country guidance case of **GJ** states that the Sri Lankan authorities only identify Tamil activists in the diaspora are who were working for Tamil separatism and to destabilise the unitary Sri Lankan State. There is nothing before me to suggest that the appellant is a Tamil separatist or that the Sri Lankan authorities have any adverse interest in him.

The grounds of appeal

4. The appellant in his grounds of appeal states the following which I summarise. In Ground 1 it is argued that at paragraph 26 of the determination, the Judge asserts "considering the appellant's account as a whole, I find it lacks credibility. Reasons have been set out above in light of that, please little weight on the arrest for it which I find has simply been produced through a lawyer in Sri Lanka in order to enhance the appellant's claim".
5. It is clear from this reasoning that the Judge has failed to consider the arrest warrant in the round, instead of reaching the decision as the appellant's general credibility, before then going on to consider the weight attributable to the warrant. Further and alternatively, the stark conclusion that the warrant has simply been produced by a lawyer in Sri Lanka in order to enhance the appellant's claim is wholly unreasoned and un-evidenced. As an aside, it is not possible to decipher whether the Judge is here suggesting that the warrant was falsely procured or produced by the Mr Latif U Gamage, the Attorney at Law who attest to having obtained the court documents in his letter of 20 January 2015.

6. Ground 2 states that the Judge erred in failing to consider or make clear findings in respect of the items of corroborative evidence. The Judge has made no findings at all in respect of the letter of the Attorney at Law dated 20 January 2015. In that letter, the attorney attests to having appeared on behalf of the appellant before Galle Magistrate's Court. He attests to having obtained certificate copies of case number D2408/12 which pertains to the appellant. He confirms his professional fees charged for assisting the appellant, and confirms these content of his letter to be used in support of the appellant's asylum appeal in the United Kingdom.
7. The Judges lack of reasons for either dismissing the letter, or placing limited weight on it amounts to a material error of law. Indeed, it is unclear whether the letter has been considered at all. In **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** it was held that it is the duty to explain the Tribunal's assessment of the more fundamental pieces of evidence and to provide reasons for choosing to give (as the case may be) no, little, moderate or substantial weight thereto. In this case the evidence of the attorney, who attested to having previously represented the appellant and having obtained copies of the court file which included the extant arrest warrant, is at the centre of the request for protection because of risk attendant upon detention in Sri Lanka recognised in the headnote (4) of **GJ**.
8. At the hearing the appellant said he does not seek to rely on the third ground of appeal.
9. The fourth ground of appeal states that the Judge erred in making adverse credibility findings on matters during the course of the hearing and in misrepresenting the appellant's evidence.
10. Paragraph 17 of the determination the Judge avers "according to the appellant's account his parents had been accused of supporting the LTTE and not the appellant himself". In light of that, I find it incredible that the appellant made no effort to assist his parents in securing release from custody". The appellant's evidence was clear that he too was accused of supporting the LTTE which is evident from paragraph 20 of the appellant's witness statement where the appellant said that all of them including his parents were accused of assisting the LTTE.
11. The respondent in her rule 24 response stated the following. There is no material error at paragraph 26 of the determination. The Judge has clearly considered the arrest warrant and a letter from the lawyer however, it is a matter for the Judge as to the weight he places on the evidence before him. The appellant was found not to be a credible witness and it was open to the Judge to find that the documents had been produced in order to enhance the appellant's claim, therefore it can be inferred that the Judge does not find the documents to be genuine. The Judge looked at all the evidence in the round in making the adverse credibility findings and there is no material error.

Decision as to whether there is an error of law.

12. I have given anxious scrutiny to the determination of Immigration Judge Cohan and have taken into account the grounds of appeal and the documents provided by the appellant's representatives.
13. The main complaint about the determination is that the Judge did not adequately consider the appellant's evidence which was a letter from the appellants Attorney from Sri Lanka who confirms the documents provided by the appellant, were produced from the Magistrate's Court in Sri Lanka respect of the appellant's case. The appellant's position appears to be that as the documents have been provided by a registered attorney from Sri Lanka, the documentation should be accepted as genuine. and that the appeal turns upon, largely on the credibility of documentation submitted from Sri Lanka and if those had been considered properly, the Judge would have reached a different conclusion.
14. I find that the Judge was entitled and required to reach his conclusion based on his consideration and evaluation of the evidence as a whole. He implicitly found that the letter from the attorney in Sri Lanka was not credible and had been produced to enhance his asylum claim. Therefore, the Judge did consider the letter and found that he can place little weight on the arrest warrant. It cannot therefore be said that the Judge did not take into account the letter. The appellant's quarrel is that he was not correct in placing little weight on this evidence. It is a matter for the Judge to decide what weight any particular piece of evidence deserves. Therefore, on the evidence, the Judge was entitled to place very little weight on the letter by the Sri Lankan attorney that an arrest warrant was issued against the appellant after he left the country to come to the United Kingdom.
15. The grounds of appeal state that "in the attorney's letter, he attests to having appeared on behalf of the appellant before Galle Magistrate's Court. He attests to having obtained certificate copies of case number D2408/12 which pertains to the appellant". I note here that there was no credible evidence before the Judge that if the arrest warrant was issued after the appellant left the United Kingdom, the police would not have been able to execute the warrant. There was no explanation from the attorney as to how the matter reached the Magistrates Court, without execution of the warrant and especially given that the police could not arrested the appellant as he was in the United Kingdom.
16. The Judge made many detailed adverse credibility findings against the appellant in respect of which there cannot be any possible error. The Judge did not misinterpret the evidence as to whether the authorities perceived the appellant was also being involved in giving the LTTE support. The Judge took into account the appellant's evidence at the Asylum interview that he, personally, had not been accused of supporting the LTTE but in his statement he said that the authorities accused the whole family of supporting the LTTE.

17. The appellant's evidence was that it was the appellant's father's conduct which was the catalyst for the authorities' adverse interest in the appellant's father. It was also his evidence that his father travelled from Galle to Vavuniya accompanied by a man called Siva and his two friends who happened to be Tamils but could speak Sinhalese. According to the appellant's evidence, these friends who came to Vavuniya at the end of August 2006, went to see a fortress which happened to be next to a Navy base. The appellant's evidence was that his father's friends took photographs of the fortress and this is how the appellant's father came to the adverse attention of the authorities. In his witness statement, the appellant said that the Sri Lankan authorities suspected the entire family but did not say why.
18. If, as the appellant says, that his entire family were suspected of assisting the LTTE, he has not credibly explained what was his conduct which attracted the adverse interest of the authorities.
19. The Judge was entitled not to find credible that the appellant who was questioned at the airport for about two hours, on arrival, would be released at the airport by the authorities but arrested whilst travelling in a taxi to Galle. The Judge found that the authorities would not have done this, if they genuinely suspected the appellant of assisting the LTTE or if he was wanted by them. These are perfectly reasoned and sustainable findings.
20. If the appellant had assisted the LTTE when he was in Sri Lanka, it is not credible that he would have returned to Sri Lanka when he was not able to make contact with his parents living in a safe country, the United Kingdom. This also does not accord with the appellant's evidence and which the Judge found that the appellant did nothing to assist his parents, in any event but instead returned to the United Kingdom. There would therefore have been no purpose in the appellant returning to Sri Lanka because he could not contact his parents.
21. Therefore, even if the Judge's stated in his determination that the appellant's evidence was that the authorities did not have an interest in him which was in his statement, it is not a material error. It also does not accord with the appellant's evidence that he was never individually suspected by the authorities for assisting the LTTE but it was his father's actions which invited the adverse attention of the authorities.
22. The Judge took into account the country guidance case which stated that low-level LTTE supporters do not attract the adverse attention of the authorities in Sri Lanka. It was also stated that the Sri Lankan government's objective now is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan State. There was no evidence before the Judge that the appellant is a Tamil separatist. Even according to the appellant's own evidence, it was his father who brought his friends to the area and not him. The Judge found that the appellant was not a Tamil separatist and the appellant has

not disputed this. The Judge was therefore entitled to find that the appellant could return to Sri Lanka and did not have the necessary profile that the authorities were looking for.

23. On the evidence in this appeal, I find that the differently constituted Tribunal would not come to a different conclusion. In **PJ v Secretary of State for the Home Department [2014] EWCA Civ 1011** Fulford LJ held that there was no general principle that the involvement of lawyers creates a rebuttable presumption that such documents are to be accepted to be reliable. I do not understand **PJ** to be an authority for the proposition that if an appellant seeks to rely upon court documents from Sri Lanka which were obtained and provided by lawyers, there is a presumption that there are genuine. The documents must be considered in the round which the Judge has done.
24. I find that the grounds of appeal are no more than a quarrel with the Judge's findings. I find that the Judge's reasoning is understandable, and not perverse. I find that the grounds of appeal and no more than a disagreement with the Judges findings of fact and the conclusions that he drew from such findings.
25. For each of these reasons given by the Judge in his determination he was not satisfied, even to the lowest standard, that the events of which the appellant speaks are credible.
26. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:
 15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original Judge's thought processes when he/she was making material findings.
27. I find that I have no difficulty in understanding the reasoning in the Judge's determination for why he reached his conclusions. I find that no error of law has been established in Judge's determination. I find that he was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold the decision of the First-tier Tribunal.

DECISION

Appeal dismissed

Dated this 13th day of December

2015
Signed by,

Deputy Judge of the Upper Tribunal

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Mrs S Chana