



IAC-HW-MP-V1

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

Appeal Number: AA/05148/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 19th November 2015**

**Decision & Reasons Promulgated
On 21st December 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**M A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Burrett, Counsel

For the Respondent: Mr Kotas, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka, born on 2nd October 1987. He appealed against the decision of the Respondent dated 6th February 2015, refusing him asylum or other protection in the United Kingdom. His appeal was heard by Judge of the First-tier Tribunal Geraint Jones QC on 19th August 2015. The appeal was dismissed in a determination promulgated on 3rd September 2015.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Landes on 30th September 2015.

The permission states that it is arguable that the judge failed to take into account that the First-tier hearing had previously been adjourned because the Presenting Officer had said the Respondent would seek to verify certain documents, being a solicitor's letter and an arrest warrant. The permission refers to the case of **PJ (Sri Lanka) [2014] EWCA Civ 1011** which states that it is for the court to decide whether there was an obligation on the Respondent to undertake particular enquiries and if the court concludes that that was the case it will resolve whether the Respondent sustainably discharged her obligation. The permission states that the judge erred in failing to consider this point at all. The grounds state that the Appellant relied on the fact that the Respondent was verifying the documents but it is not stated that the Appellant's legal representatives would have sought themselves, to verify the lawyer's credentials or verify that the document came from the lawyer, had the Presenting Officer not said the Respondent would verify the documents. The grounds assume that it has been proven that the document emanated from a lawyer and there has been no suggestion that the lawyer had engaged in discreditable conduct, however unlike the facts in **PJ** it was not the Appellant's representative who had instructed the lawyer but the Appellant's mother and there were good reasons given for the judge not accepting that the letter did indeed come from a lawyer. The permission does not restrict the grounds which may be argued.

3. There is a Rule 24 response on file opposing the Appellant's appeal. This states that the Respondent, having sought an adjournment to attempt to verify the documents, was not giving an undertaking that the verification results would be available to the Tribunal for the substantive hearing. The response states that the Respondent was doing no more than attempting to assist the Tribunal to reach a conclusion about the veracity of the documents and the burden of proof remains with the Appellant. They state that the grounds are nothing more than a disagreement with the reasoned conclusions of the First-tier Judge.

The Hearing

4. A document has now been produced by the Respondent, being a verification report on the warrant of arrest provided by the Appellant from Colombo Magistrates' Court. The date of the document is 28th September 2015 and the date of the hearing was 19th August 2015. This document, therefore, was not before the First-tier Judge.
5. The Appellant's representative submitted that the verification report cannot be taken into consideration at this error of law hearing. He submitted that what has to be decided is whether the judge made an error of law based on what was before him.
6. The Presenting Officer submitted that the verification report should be considered as it goes to the materiality of the claim and could be relevant to a continuance hearing and it took longer for the Respondent to obtain

this report than anticipated. He submitted that the Respondent had stated that she would get the document verified in good faith.

7. The Appellant's representative submitted that the Presenting Officer at the First-tier hearing had stated that he was prepared to go ahead with the appeal without the verification document. I was asked to consider the terms of the said case of **PJ (Sri Lanka)**. The representative submitted that in our case the Appellant had provided documents to the Tribunal which he stated were genuine and what was before the judge was not sufficient for him to state that the warrant was not genuine. He submitted that the First-tier Judge because of this was wrong to make the comments he did about the solicitor who had provided the warrant. He submitted that the judge should have taken into account the fact that the Respondent had stated that the documents would be verified for the date of the hearing but were not. He submitted that the judge failed to consider the said case of **PJ** which was referred to at the First-tier hearing.
8. The Presenting Officer submitted that there is no material error. He referred to the Presenting Officer's notes from the First-tier hearing and the fact that the appeal had been adjourned previously to enable the Respondent to obtain a verification report relating to the warrant and the solicitor's letter. He submitted that the Respondent was entitled to be given an opportunity to verify the letter and the warrant but unfortunately this was not done on time. He submitted that the notes of the Presenting Officer at the First-tier hearing do not indicate that there was a further adjournment request made by the Appellant because the Respondent had been unable to obtain the verification report. He submitted that these documents go to the heart of the case and I was referred to paragraph 30 of the said case of **PJ (Sri Lanka)**. This states that because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step but it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document, depending always on the particular facts of the case.
9. I was referred to the original refusal letter which makes it clear that these documents were only produced a few days before the hearing so the Respondent had not had much time before the first hearing date to obtain the report. In the case of **PJ** the Home Office had had the documents and had made an adverse credibility finding. There were two independent lawyers corroborating the evidence so there was transparency in the said case of **PJ**. I was referred to paragraph 29 of **PJ** which states that the involvement of lawyers does not create the rebuttable presumption that the documents they produce are reliable. He submitted that the situation in this case was different from that in **PJ**. He submitted that the documents cannot be viewed in isolation. All the evidence needs to be considered in its entirety. The Presenting Officer referred to paragraph 31 of **PJ** which states that the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process of verification, is that the Secretary of State is unable thereafter to mount

an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper enquiry.

10. I established that at the First-tier hearing the Home Office had stated that they did not require another adjournment but were prepared to go ahead with the hearing without the verification document and the Appellant had not asked for an adjournment for the reason that the Respondent had not produced the verification report. The Presenting Officer submitted that it had been open for the Appellant to ask for this but as he did not and as the Home Office did not seek a further adjournment, the judge was entitled to go ahead with the hearing. I am considering this claim based on what was before the First-tier judge and I am not taking into account the verification report which has now been produced. The Respondent had not made a formal undertaking to produce the verification report.
11. The Presenting Officer referred me to the First-tier Tribunal's decision which raises serious adverse credibility issues. The judge refers to the evidence given at the appeal hearing at paragraphs 17 to 21 of his decision. At paragraph 19 the judge refers to the Appellant at interview, stating that there was no arrest warrant against him in Sri Lanka and then giving confusing information about the messages he had received from Sri Lanka. At paragraph 20 the judge refers to the Appellant stating, when he was cross examined, that an arrest warrant had been issued in February 2014. However at interview he had said that the arrest warrant had been issued on 10th August 2013. At paragraph 19 the judge refers to the Appellant's evidence about messages being given to him from home which he thought were an arrest warrant but this is not an explanation of why the Appellant said, during his screening interview, that there was no arrest warrant against him. At paragraph 22 of the First-tier Judge's decision he states "I do not accept that any arrest warrant has been issued for the Appellant or that the photocopy letter at page 12 of the Appellant's bundle contains reliable information". He submitted that this finding of the judge was made based on what was before him and this finding has been properly explained in his decision. He submitted that there is no material error of law in the First-tier Judge's decision.
12. The Presenting Officer referred to the grounds for permission, which state that it was unfair of the First-tier Judge to come to negative credibility findings without examining the past conduct of the Respondent and this led to unfairness against the Appellant. He submitted that the judge has given adequate reasons for his findings about the warrant and the solicitor's letter. He submitted that the facts are different in the case of **PJ** and the judge only required to refer to the case of **PJ** if he was making findings purely on the documents but his findings were based on all the evidence in the round, not just the warrant and the solicitor's letter.
13. The Appellant's representative submitted that the Appellant was relying on the Respondent verifying the documents, so the Appellant was disadvantaged when she did not do so, as his solicitors had not carried out any checks on the documents because of this undertaking by the

Respondent. He submitted that the Appellant is relying on the case of **PJ** and because the Respondent had not requested a further adjournment to enable the verification to take place, this had gone against the Appellant.

14. The Presenting Officer submitted that even if the case had not been adjourned on the first occasion to enable the Respondent to verify the documents, the judge would have come to the same conclusion as he did, so even if I find that there is an error of law in the judge's decision it cannot be a material error of law.

Decision and Reasons

15. The facts are clear in this case. The First-tier hearing was originally adjourned to enable the Respondent to verify an arrest warrant and solicitor's letter. There was no formal undertaking by the Respondent and when the new date for the hearing arrived the verification report had still not been received. At that stage the judge decided to hear the case without the verification report. It seems that the Appellant's representative did not seek an adjournment because there was no verification of the documents and the Presenting Officer felt that he could go ahead without the verification.
16. I have to decide if, based on what was before the First-tier Judge, there is a material error of law in his decision.
17. The permission states that the judge made an error because he failed to consider whether there was an obligation on the Respondent to undertake this particular enquiry and failed to consider this point at all.
18. Reference has been made to the case of **PJ (Sri Lanka)** relating to verification of documents. The situation in this case is very different to the factual position in the said case of **PJ**. In the case of **PJ** the Appellant's representatives instructed a lawyer but in this case the Appellant's mother instructed a lawyer. In this case there were good reasons for the judge not accepting that the letter did indeed come from a lawyer. The First-tier Judge refers to this at paragraph 22 of his decision. At this paragraph the judge clearly explains why he does not accept that an arrest warrant has been issued for the Appellant or that the letter in the Appellant's bundle contains reliable information. The judge has not based his decision solely on the validity of these documents, he has based his decision on all the evidence taken in the round and the reasons for his decision have been properly narrated in the determination.
19. The judge finds there are serious credibility issues throughout this appellant's evidence. At paragraph 29 he refers to material inconsistencies, finds the appellant's *sur place* claim to be self-serving, finds that the appellant's account does not stand up to scrutiny at paragraphs 22-24 and at paragraph 28 finds his evidence about his father's rice mill to lack credibility.

20. As the Respondent did not verify the documents he cannot depend on them and cannot state that they are not genuine. The Respondent does not depend on them and the judge does not depend on them when making his decision.
21. The judge should have mentioned this issue and could have mentioned the said case of **PJ** but he made his decision based on the Appellant's lack of credibility and on the totality of the evidence before him so he did not require to refer to **PJ**. The respondent did not challenge the authenticity of the documents and had the case not been adjourned to enable the Respondent to verify the documents I find that the judge would have reached the same decision.
22. There was no obligation on the Respondent to undertake enquiries about these documents. The background evidence makes it clear that false documents are widely available in Sri Lanka. The burden of proof was on the appellant and he could have made his own enquiries, regardless of what the respondent said at the First-tier hearing.
23. There is an error of law in that the First-tier judge did not mention this particular issue but there is no material error of law in his determination.

Notice of Decision

24. The First-tier Tribunal made no material error of law and the First-tier decision must stand. This appeal is dismissed.
25. Anonymity has been directed.

Signed

Date

Deputy Upper Tribunal Judge I A M Murray