



Upper Tier Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01160/2015

THE IMMIGRATION ACTS

Heard at Field House
On 8 January 2016

Decision Promulgated
On 12 January 2016

Before

Deputy Upper Tribunal Judge Pickup

Between

Kevin Rukshan Anthony
[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Mr A Jafar, instructed by Liyon Legal Ltd
For the respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Kevin Rukshan Anthony, date of birth 10.5.82, is a citizen of Sri Lanka.
2. This is his appeal against the decision of First-tier Tribunal Judge Greasley promulgated 17.9.15, dismissing on all grounds his appeal against the decision of the respondent to refuse his asylum, humanitarian protection and human rights claims. The Judge heard the appeal on 9.9.15.
3. First-tier Tribunal Judge Nicholson granted permission to appeal on 20.10.15.
4. Thus the matter came before me on 8.1.16 as an appeal in the Upper Tribunal.

Error of Law

5. At the conclusion of the error of law hearing I reserved my decision, which I now give.
6. I find that there was no material error of law in the making of the decision of the First-tier Tribunal such as to require the decision of Judge Greasley to be set aside.
7. In granting permission to appeal, Judge Nicholson found it arguable that the photocopied bundle submitted to the First-tier Tribunal at the appeal hearing, claimed by the appellant and his representative to be court-certified documents, were 'original' documents provided by the court and that they were court-certified. Judge Nicholson noted that it is not uncommon in many countries for courts to photocopy a set of documents, authenticate them with an original stamp and provide them to the parties. Judge Nicholson thus found it arguable that the judge erred in rejecting these documents on the basis that they were neither originals nor court certified.
8. However, that is not a strictly accurate summary of the judge's findings at §40 and §47 of the decision. At §40 it is clear that this 'original' bundle was handed in at the appeal hearing and that it was accepted that these were not original documents, as is obvious from the bundle itself, now with the case file. However, I can see from the bundle that whilst each page is a photocopy of some other document, each page contains a separate purple stamp with a penned signature. The translation provided suggests that this stamp, each dated 25 May 2015, is a seal of the high court, Negombo and signed illegibly by the Registrar of the High Court. The appellant's only explanation for the production of these documents was that they had been obtained from his father, who had secured their release through a lawyer. There is no other explanation of their provenance from the court.
9. Judge Greasley considered these documents at §47 of the decision, noting first that no original documentation has been produced, as was accepted by the appellant's representation. Second, the judge noted that whilst the bundle was described as 'court-certified' that description does not appear on the bundle and was no more than the description provided by the appellant and his representative. The judge also accurately noted that each page has a date stamp on it of 25 May 2015 (wrongly described by the judge as 25 May 2010), "with untranslated writing on each stamp, and an un-translated cover sheet." Strictly speaking, the judge was correct. Whilst there is a purported translation of the cover sheet, it does not contain a translation of all that appears on the 'original' cover sheet. Further, it follows that the signature is untranslated. It is not known who signed the stamp. It follows that there was no reliable evidence that the signature was that of a registrar of any court, or indeed that the stamp is a genuine stamp of the court. Given the absence of explanation of how these documents came to be stamped, and absence of any evidence that the person signing the stamp made any comparison to genuine original documents, the judge was entitled to be somewhat sceptical as to whether these were genuine, 'original' or court-certified copies of such genuine or original documents.

10. Further, it is clear from the decision that the judge considered the reliability of these so-called 'original documents in the light of the evidence as a whole, including concerns about the content and context of the statements contained in the documents, particularly in the light of the appellant's evidence that he was aware that an arrest warrant had been issued in May 2010.
11. The judge found this evidence "wholly unsatisfactory," a description which I find the judge was entitled to apply and for which cogent reasons were given. On the basis of the consideration of this evidence, together with other concerns about the contents and dates of the documents, set out at §48-50, the judge reached the following conclusion: "Considering the well-know principles in Tanveer Ahmed, given the absence of any original court documentation, I find when considering the evidence in the round that the copy documentation I have been provided with is not credible and I therefore place no reliance upon it."
12. I find, for the reasons set out in the decision of the First-tier Tribunal and those elaborated herein, the judge was entitled to attach little or no weight to the purported court documents.
13. First, the bundle itself does not claim on its face to be court certified. The sum total of the claim of authenticity is that a photocopied bundle of documents has been date stamped with a rubber stamp and signed illegibly, the stamp purporting to be that of a register of the high court. Judge Greasley was evidently not satisfied, and nor am I, that this stamp renders these copy documents 'original' or 'court-certified.' There is no independent evidence that they were stamped or signed by the high or any other court registrar, who remains unidentified, or on what basis they could be certified as accurate some 5 years or so after alleged creation. The COI Report for Sri Lanka dated March 2012 at section 27 refers to the ease with which forged and fraudulently obtained official documents can be produced in Sri Lanka, explaining that there is such a high level of corruption and the unscrupulous actions of government officials at all levels that it undermines the issuing process for many official documents. It is apparently rare to see forged documents, because genuine documents are so easy to obtain fraudulently. It would, of course, be a relatively easy matter to apply a rubber stamp to any documents. There is no evidence that even if the stamp was genuinely applied, the person doing so had compared the copies being stamped with the originals.
14. I have carefully considered the supposed translation and note that there are several sections not translated, or which are inaccurately translated. For example, the translation of the release on bail document at A55 purports that it has been signed by a Magistrate (Sign/Mag). However, the so-called original bears no such signature, indeed no signature or space for a signature at all. Why (Sign/Mag) was added to the translation at all is a mystery.
15. The grounds of appeal refer to the COI Report at 10.16, which state that whilst it is common practice to be released on bail without being charged, "there are however certain offences considered unbailable and the Bail Act (No 30 of 1997) stipulates a person suspected or accused of being concerned in committing or having committed,

an offence punishable with death or with life imprisonment, shall not be released on bail except by a Judge of the High Court..." The grounds at §7 suggest that a high court judge could release someone accused of having committed an offence punishable with death or life imprisonment. However, there is no credible evidence that the appellant was so released by a high court judge. It is not clear to me at all that this case was ever before the high court. The Warrant of Detention, the translation of which appears at A53, lists a number of different courts at Negombo "Magistrate's Court/District Court/ High Court," none of which have been indicated. At the end of the translation, the document is said to have been signed by a Magistrate. The entire document has not been translated, including, for example, the text that follows the date of 10.1.2010. There are other anomalies on this document. For example, whilst it is apparently dated 10.1.2010, which is supposed to be the date of commencement of detention, the reverse of the page also has a section with a commencement date of 15.2.10, after the date the document was purportedly created. It also suggests that the detention order was cancelled and "produced to the court. Bail out." If that refers to the release on bail, the document translated at A55 suggests that took place on 15.2.10. It is not clear to me that these dates are consistent with the creation of the document.

16. The documents suggest that an arrest warrant was not issued until April 2011, when the appellant was supposedly bailed to sign on weekly from 22.2.10 (curiously the date in the translation is given the other way round to all other dates in the translations). The appellant's account is that he used an agent to leave Sri Lanka in June 2010, using his own passport. If no arrest warrant had been issued at that time, it seems unlikely that the authorities would not have been looking for him.
17. Another curiosity in these documents is that the last page of the bundle of translated documents, at A56, purports to certify that these are a "True English Translation of the certified copy of the entire Case Record of High Court, Negombo, Case No. B 0137/2010 issued by the Officer-in-Charge, Terrorist Investigation Division, Negombo." One has to query how an independent translator would know that this is the "entire" case record, and more significantly that the case file had been issued by the officer-in-charge of the Terrorist Investigation Division in Negombo. No such explanation of origin has been provided by the appellant, or his father, or his representative. It is not clear from where this information has been derived and it is not clear that such information appears on any of the so-called 'original' documents translated.
18. Judge Greasley also expressed some doubt as to whether the appellant would have been bailed because the authorities had failed to provide sufficient evidence against the accused, when the documents themselves contain his own confession that for financial reward he helped a known LTTE member to import medicine and weapons from foreign countries for the benefit of the LTTE. The judge found it not credible that he would have been released on bail in such circumstances. Whether that is right or not, it is a factor which the judge was entitled to consider when assessing the reliability of the so-called original documents and the credibility of the appellant's account.

19. In the circumstances, in light of the concerns self-evident on the face of these documents and for the reasons set out by Judge Greasley, the judge was entirely justified in considering the documents in the round in the context of the evidence as a whole, including that of the appellant who claimed that the arrest warrant was issued in May 2010, when the documents suggest a date of 4.4.11. At §50 the judge noted that the appellant was asked to explain this discrepancy but was unable to do so. I note that the grounds attempt to introduce further evidence not placed before the First-tier Tribunal, suggesting the appellant has now produced “a statement of truth explaining this mistake,” and suggesting “... it could be possible that the appellant was confused about this aspect rather than trying to hide anything about his claim.” That is mere speculation. The appellant is simply trying to explain away the discrepancy in a manner he was manifestly unable to do when questioned about the discrepancy at the appeal hearing. Such evidence is not admissible when considering whether there was an error of law in the decision of the First-tier Tribunal and to his credit Mr Jafar did not attempt to rely on this post-hearing evidence.
20. I find that none of the above discloses any material error of law in the judge’s consideration of the documentary evidence in the context and light of the appellant’s case and evidence as a whole.
21. A further ground of appeal, which Judge Nicholson suggested lacked merit, is that the judge erred in considering the expert medical evidence. For the reasons set out, I also find no error of law in this regard.
22. Before addressing this ground of appeal, I observe that there is no merit in the related ground of appeal suggesting that the judge reached conclusions on credibility without taking the medical evidence into account. It is clear from §42 of the decision that the judge made his findings only after considering the evidence in its totality, looking at the evidence in the round and taking into account all relevant circumstances, considering discrepancies and taking care to accommodate possible reasons for discrepancies. The judge also noted at §44 that he was not required to deal expressly with every point, but to demonstrate that he has given reasons for his decision so that parties to the decision can understand why one has won and the other has lost.
23. In the circumstances, I am satisfied that the judge made his adverse credibility findings in the light of the evidence as a whole, including the medical evidence.
24. It is clear from the decision that the judge gave anxious scrutiny to the expert medical evidence. The decision sets out in some detail from §25 a summary of that evidence from Mr Mason, dated 15.6.15. The judge considered not only the scarring but the appellant’s explanation that he had been struck on the face with a rifle butt and later beaten with iron rods, assaulted on three or four occasions to the extent that he lost consciousness. From §29 the judge summarised Mr Mason’s opinion as the causation.
25. At §51, as part of his findings, the judge found the report of limited evidential value, noting the description of Mr Mason that various injuries “might” have resulted from actions described by the appellant. Such descriptions appear inconsistent with the

conclusion at 6.2 of the report that on the Istanbul Protocol the numerous scars were “highly consistent” with the appellant’s claimed account. The judge was entitled to conclude at §51 that the report “is not clear or helpful in its assessment as to likely causation of such injuries to the extent that I place limited evidential value upon its contentions. Equally, it would appear that the report has failed to consider causation of injuries by proxy.” In essence, the judge has carefully considered the medical evidence but did not accept that the conclusions of ‘highly consistent’ matched the earlier narrative of examination and findings, giving clear reasons. I note that Mr Jaffar did not address the failure of the medical expert to consider self-infliction of injury by proxy, a serious shortcoming of the report. In the circumstances, I find no error of law in the treatment of the medical evidence and the grounds of appeal in this regard are no more than a disagreement with the findings.

26. One issue that may have some force is that at §54 the judge doubted that appellant would have been able to leave Sri Lanka on his own passport and without difficulty if he had effectively failed to comply with his bail reporting conditions when facing what on any account must be regarded as very serious offences. The judge did not mention the country guidance case of GJ, which makes it clear that it is possible even for persons wanted by the authorities to leave Sri Lanka using their own identity through the airport. On the appellant’s account at the First-tier Tribunal he believed that a warrant had been issued for him in May 2010, before his June 2010 departure. However, Mr Jafar suggests that the documents show the warrant was not issued until April 2011, some 10 months after he left. It is also pointed out that it is claimed that an agent was used to assist the appellant’s departure.
27. An examination of the decision reveals that the judge was fully aware that it was claimed that an agent had been used. At §23 the judge also noted that the appellant remained indoors before departure from Sri Lanka, except to submit his application to the British High Commission, and to collect his visa.
28. However, I find that in the context of the findings as a whole, particularly as to the appellant’s credibility, any error on the part of the judge to take account of the possibility of the appellant being able to leave Sri Lanka using his own identity, through the services of an agent, cannot be more than of marginal relevance to the outcome of the decision. The other findings of fact supporting the adverse credibility findings are substantial and can stand independently of this possible error so that the adverse credibility conclusion is unassailable.
29. In my view, and for the reasons set out above, none of the other grounds of appeal disclose any material error of law.

Conclusions:

30. For the reasons set out above, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.



Signed

Deputy Upper Tribunal Judge Pickup

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

In the light of my decision, I have considered whether to make a fee award.

I have had regard to the Joint Presidential Guidance Note: Fee Awards in Immigration Appeals (December 2011).

I make no fee award.

Reasons: No fee is payable in this case and thus there can be no fee award.



Signed

Deputy Upper Tribunal Judge Pickup