



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

Appeal Number: AA/02116/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 13 January 2016**

**Decision Promulgated
On 3 February 2016**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

E S

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P. Turner, Counsel instructed by Greater London Solicitors

For the Respondent: Mr C. Avery, Home Office Presenting Officer

DECISION AND REASONS

Background

1. The appellant appealed against the respondent's decision to refuse asylum. First-tier Tribunal Judge Cassel ("the judge") dismissed the appeal in a decision promulgated on 07 July 2015.
2. The judge outlined the appellant's immigration history and the background to her asylum claim [1-4]. She entered the UK on 26 March 2014 with

entry clearance as a Tier 1 Dependent Partner. She claimed asylum on 19 August 2014. He went on to summarise the issues, the evidence and the submissions made at the hearing [5-13]. Under the heading “Findings of Fact” the judge went on to make “findings based on the standard of proof” [14]. He outlined her family history [15] and then went on to state: “There are reports of her arrest and the attack on her father’s shop and his abduction and injury” [16]. The judge then outlined the dates when her husband came to the UK and his immigration history. He noted her husband had leave to remain as a Tier 1 (Post Study Work) Migrant but when he applied to vary and extend his visa to that of a Tier 1 (Entrepreneur) it was refused in July 2014. It was only after the refusal of her husband’s application for leave to remain that the appellant claimed asylum [17-18].

3. The judge directed himself correctly to the relevant legal framework [19-24]. Under the heading “Appellant’s Credibility” he outlined the factors contained in section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 and found that there was no credible explanation for the appellant’s delay in claiming asylum. He concluded that the claim was made in response to the refusal of her husband’s application “and not because she truly feared for her life and safety” [30].
4. The judge then went on to make further findings relating to particular aspects of the appellant’s claim. He noted that the appellant relied on a newspaper report as evidence to support her claim that her father had been kidnapped. He noted that there might be some difficulty in obtaining evidence from Sri Lanka but observed that there would be no such difficulty in obtaining other evidence “for example, from her mother who has remained safely in India”. He observed that the newspaper report gave little detail of the circumstances of her arrest but made no particular finding on the evidence, simply referred to it as a “brief report to which I will refer later” [32]. The judge then went to conclude that, at its highest, all the appellant could say was that she suspected that there was a link between her arrest and her father’s kidnapping. It was only her belief that he was kidnapped because of his links to the LTTE. She had no links to the LTTE herself [32].
5. Under the heading “Arrest Warrant” the judge noted once again that the appellant relied on the newspaper report and confirmation of the authenticity of that report from a Sri Lankan lawyer. Again, he seemed to place some weight on the fact that there was no evidence from the appellant’s mother [33]. He recorded that the appellant had said in evidence that she was not the subject of an arrest warrant and noted that in interview she said that she was not given a court date. However, in the very next answer in interview she said that she was told the next hearing would be on 24 April. For this reason the judge concluded that her account had been inconsistent and lacked credibility [33]. The judge then referred to the decision in *Tanveer Ahmed v SSHD* [2002] UKIAT 00439 and concluded that he could place no reliance on the documents produced by the appellant. At their highest they referred to the kidnapping and injury of

her father and, as quoted from the translation, the fact that she had been “taken for enquiry by terrorism prevention group” and that “no further details were known”. The judge concluded that “there is no supporting evidence she was detained, placed on bail or required to attend Court.”[35]. He went on to say that she had failed to produce a copy of the arrest warrant. Having considered the evidence before him he concluded the appellant was entirely lack in credibility [36] and that she would not be at risk on return [39].

6. The appellant seeks to challenge the First-tier Tribunal decision on the following grounds:
 - (i) The First-tier Tribunal failed to give adequate reasons for rejecting the evidence of the Sri Lankan lawyer. The First-tier Tribunal ought to have adopted the approach in *PJ (Sri Lanka) v SSHD* [2014] EWCA Civ 1011.
 - (ii) The First-tier Tribunal failed to give adequate reasons for rejecting the documents that supported the appellant’s account of detention and release on bail and applied too high a standard of proof.
 - (iii) The First-tier Tribunal erred in placing too much weight on the absence of corroborative evidence from the appellant’s mother.

Decision and reasons

7. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision involved the making of an error on a point of law.
8. The First-tier Tribunal’s findings of fact are unclear, incomplete and in places fail to take into account evidence that was material to a proper assessment of the appeal. In paragraph 16 the judge noted that there were reports of the appellant’s arrest and of her father’s abduction. He also took them into account in paragraph 35 of the decision but found that he could place no weight on them “because there is no supporting evidence she was detained, placed on bail or required to attend Court.” Having acknowledged that there was evidence that might support the appellant’s account he failed to give clear reasons for rejecting that evidence and for concluding that her account was “entirely lacking in credibility” [36]. In appearing to require additional corroboration it is at least arguable that the judge also erred in applying too high a standard of proof.
9. In any event, the judge erred in stating that there was no supporting evidence to show that she was detained. He failed to take into account, or make any clear findings in relation to, material evidence from a Sri Lankan lawyer who stated that he had made enquiries at the relevant police station. The officer in charge was able to confirm that she was arrested on 05 December 2013 and released on 19 December 2013 by the court. On the face of it the letter was capable of verification because the lawyer had provided his full contact details. The letter was also addressed directly in

response to an enquiry made by the appellant's solicitors. This evidence was material to a proper assessment of credibility and risk on return.

10. It is not necessary to make detailed findings as to whether the judge placed too much weight on the absence of evidence from the applicant's mother save to say that no doubt any such evidence might be given little weight. It is also difficult to see how she could have been expected to produce a copy of an arrest warrant if her mother now lives in India. It is also unlikely that an arrest warrant would be served on a person who is the subject of the warrant or any member of her family. In the circumstances the judge also erred in apparently requiring additional corroboration in the form of a copy of an arrest warrant.
11. For the reasons given above I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside and the appeal remitted to the First-tier Tribunal for a fresh hearing.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

I set aside the decision and remit the appeal to the First-tier Tribunal

Signed 

Date 01 February 2016

Upper Tribunal Judge Canavan