**Upper Tribunal**
**(Immigration and Asylum Chamber)** **Appeal Number: AA/03420/2015**

**AA/06169/2015**

**AA/03426/2015**

**AA/03424/2015**

**THE IMMIGRATION ACTS**

| **Heard at Field House** | **Decision & Reasons Promulgated** |
|---|---|
| **On 18th July 2016** | **On 27th July 2016** |

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**Between**

**MR A D D**
**MRS DMD**
**MISS H SD**
**MASTER RDD**
(ANONYMITY DIRECTION MADE)

Appellant

**And**

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

Respondent

**Representation:**

For the Appellant: Ms Malhotra instructed by Marsh and Partners, Solicitors
For the Respondent: Mr P Duffy, Home Officer Presenting Officer

## DECISION AND REASONS

### The Appellants

1. The appellants appeal with permission against the decision of First-tier Tribunal Thew. She dismissed their appeal against the refusal dated 13th February 2015 by the Secretary of State of their claim for asylum, humanitarian protection and protection under the European Convention.

2. The appellants are a family of Sri Lankan nationals. The first appellant left Sri Lanka on 11th June 2012 using his own passport and a valid family visit visa and claimed asylum on 5th July 2012. The second appellant claimed to have arrived in the UK on 25th November 2013 with their two dependant children on a direct flight from Sri Lanka and she attended the Asylum Screening Unit Croydon on 11th December 2013 with her two children as dependants. The children were born on 20th May 2006 and 23rd September 2011 and are 10 and 4 years old respectively.

3. At a hearing on 21st September 2015 a direction was made to the respondent to serve a document verification report (DVR) relating to an arrest warrant document which had been provided by the first appellant. The DVR was to be provided no later than eight weeks from 21st September 2015.

4. At the commencement of the hearing before Judge Thew on 27th January 2016 (clearly later than 8 weeks from 21st September 2015), the appellants' representatives made an application for an adjournment because the document verification report provided by the Home Office had been served on the day before the hearing. The application was not opposed by the representative for the Secretary of State but the judge considered that there was no unfairness to the appellants in proceeding with the hearing and refused the application. She put the matter back in the list to allow the appellants' representative to take instructions from his client and proceeded with the appeal at a later stage. So much was recorded in the First-tier Tribunal Judge's decision at paragraph 4.

5. That decision was challenged by the appellant's representative. It was submitted that the authenticity of the arrest warrant produced by the appellants was such that it was either genuine or not and that should be established and appropriate weight assigned. The decision of the judge for not accepting the arrest warrant was based on that document not matching the subjective judgments of what the judge would expect to see in a Sri Lankan arrest warrant. The perception relied on by the judge was at no point raised against the appellants by anyone and his views were speculative. The judge gave no reasoning for her decision other than

"*there is no evidence to suggest that the Sri Lankan system would be any different from any other system"* and she determined that

> *"The problem with a warrant is simply that the court directs someone to arrest the appellant i.e. in this case where it says the person to whom the warrant is directed that should be quite clearly be logically be a person/a body who has that authority".*

6. The judge, it was contended by the appellants, was bringing no special knowledge to her assessment of the veracity of the arrest warrant document and her assessment was contrary to the principles enunciated in **Kasolo v Secretary of State for the Home Department 1310**. The judge had applied her own knowledge from a British system to a Sri Lankan arrest warrant. The appellants were never fully or properly told the case against them. The respondent was given a deadline to report back to the court and the appellants to allow the appellants to make further enquiries. The DVR, the respondent's evidence, was only served the afternoon before the hearing and they were unable to properly address the issues in the DVR. Fairness dictated the concerns that the learned judge had should have been pointed out further to **Nwaigwe (adjournment: fairness) [2014] UKUT 418 IAC**.

7. In addition there were concerns expressed with regards to Section 55 of the Borders, Citizenship and Immigration Act 2005.

8. I have taken account of the submissions of both Ms Malhotra and Mr Duffy in respect of this case. **Nwaigwe** is clear that the essential principle to be addressed in relation to an adjournment request is whether it is fair not whether it is reasonable.

9. **Nwaigwe** confirmed

*'If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284.*

10. The judge clearly sets out the case in relation to the application for adjournment at paragraphs 54 to 58 and she recorded

*"54. The warrant document provided by the appellant with the translation was the subject of the DVR which states that the warrant was verified as not genuine, that information coming from Colombo. Mr. Garrod objected to the admission of the DVR requesting an adjournment and said that the appellant could obtain further evidence about this. I do not consider the DVR to be of real assistance as the problem with it is that there is nothing to indicate the experience of the person who verified the arrest warrant. However, when looking at the arrest warrant itself and the translation it simply does not make sense. There is no evidence to suggest that the Sri Lankan system would be any different from any other system in that an arrest warrant is what it is, that is a warrant to enable the authorities to arrest an individual. The translation shows that the name of the person in respect of whom the warrant is issued gives the details of the appellant, i.e. he is the person whom the authorities are expected to arrest. The particulars are given that the reasons for the issue of the warrant are for contempt of court and aiding the LTTE, but the warrant then goes on to state that it is directed to a person and again the appellant's own details are entered in that section. It then continues, "You are hereby required and authorised to arrest the above named person and to produce him before this court" and there is then a signature said to be a registrar of a magistrates' court. The problem with the warrant is simply that the court directs someone to arrest the appellant, i.e. in this case where it says the person to whom the warrant is directed that should quite clearly logically be a person/a body who has that authority. It makes no sense at all for that part of the warrant to have the appellant's name and not a person to whom it is directed by the court to arrest the appellant.*

*55. The Respondent provided a letter dated 3 July 2015 from the British High Commission Colombo identified as coming from the Second Secretary, a named individual dealing with migration, this letter being addressed to the Presenting Officer's Unit at the Home Office. The letter stated that 80 cases had been checked since January 2014, 30 of them relating to attorney endorsed documents from Sri Lanka. The letter sets out full details of checks made on letters from attorneys compared with checks made with the Police Station or courts that purportedly issued warrants and the conclusion was that in the vast majority, 86.7% of letters provided by Sri Lankan attorneys were verified as not credible. The conclusion that, "Where there are no supporting documents to verify, our findings incline us to be cautious about accepting the assertions in the letters of Sri Lankan attorneys".*

*56. In* ***PJ (Sri Lanka –v-SSHD) [2014] EWCA Civ 1011*** *the Court of Appeal considered the question of when the Respondent might*

*be expected to verify appellant's documents and Lord Justice Fulford at paragraphs 30-32 said as follows,*

> *30. Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, 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 – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see Singh v Belgium [101] – [105]). I do not consider that there is any material difference in approach between the decisions in Tanveer Ahmed and Singh v Belgium, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations when national authorities should undertake a process of verification.*
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> *31. In my view, the consequences 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. It follows that if a decision of the Secretary of State is overturned on appeal on this basis, absent a suitable investigation it will not open to her to suggest that the document or documents are forged or otherwise are not authentic.*
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> *32. Finally, in this context it is to be emphasised that the courts are not required to order the Secretary of State to investigate particular areas of evidence or otherwise to direct her enquiries. Instead, on an appeal from a decision of the Secretary of State it is for the court to decide whether there was an obligation on her to undertake particular enquiries, and if the court concludes this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation (see NA (UT rule 45: Singh V Belgium) [2014] UKUT 00205 IAC). If court finds there was such an obligation and that it was not discharged, it must assess the consequences for the case.*

*57. I declined the application for an adjournment by the appellant to provide further information from Sri Lanka following the DVR. I have not placed weight on the DVR in my assessment of the*

*evidence because as I have said there is no information provided as to the experience of somebody verifying the document. However my own conclusion is that the warrant itself simply does not make sense for the reason that I have set out above relating to its contents. Further I take into account that the appellant has known since the refusal letter that his account was challenged and that his wife's account was challenged. They have had ample opportunity to provide additional evidence from Sri Lanka concerning the documents which lie at the core of the appellant's case that he is wanted by the authorities in Sri Lanka. That particularly takes into account that the appellant's wife said in her oral evidence that the extract from the Police Station register relating to the fact that the appellant was requested to report to the Police Station on 25 June 2012 and that he did not do so, was obtained from the Police Station by her with her lawyer present at the same time. She confirmed that she obtained that document at the same time as the arrest warrant with the lawyer present with her. Evidence from the Sri Lankan lawyer supported by the confirmation of the authenticity of that lawyer as to the process of obtaining the documents would have greatly assisted but such evidence has not been provided by the appellants.*

58. *Although the appellant said that he had been contacted by J in 2009 to say that he was going into hiding after the raid on the property in Church Road the appellant in his appeal statement said that when J was re-arrested on 27 June 2012 J revealed the appellant's name to the authorities and that was when his problems started and the arrest warrant was issued. The appellant's account is therefore that there was no interest in him at all by the authorities in 2007 when the attack on the harbour took place or in 2009 when the house in Church Road was raided, that it was only in 2012 that he was being sought. I do take into account the timing of that because that happened after the appellant arrived in the UK on the visit visa. It was said that the visit visa was issued after an appeal and he came to the UK with the two older children for a family celebration in January 2012 returning in February 2012 and then coming again in June 2012. His wife stayed behind with the younger daughter because she was pregnant at the time, the youngest of their four children being born in September 2011. The expiry date for the visit visa was 12 July 2012 and it was on 5 July 2012 that he attended the ASU intending to claim asylum and was given an appointment a week later. The timing of his application is relevant but only in the context of considering this with all of the evidence in the round. What is clear is that he had obtained a passport and left Sri Lanka using the visit visa on two occasions in 2012 without any difficulties concerning his travel."*

11. The judge was aware of the relevant test in relation to the adjournment and she properly directed herself as to whether it entailed unfairness or not and that was recorded at paragraphs 4 and 57 of her decision. She did put the matter back in the list to enable counsel to take instructions from his clients (the appellants) in relation to the DVR.

12. There is no mileage in the contention that the appellant was not aware of the case made against him. The reasons for refusal letter was issued by the Secretary of State in February 2015 and clearly set out that the documentation including the arrest warrant was not accepted by the Secretary of State as being genuine. The First-tier Tribunal hearing was dated January 2016. The arrest warrant was the document produced by the appellant and the appellant was fully aware of what was both in the document itself and in the translation and indeed there is a note on the translation which identifies that the translation was made in November 2013.

13. The Secretary of State clearly rejects the authenticity of the arrest warrant and the judge did not accept the DVR which in turn stated the warrant was verified as not genuine because he could not be sure of the experience of the person who verified the arrest warrant. As can be seen from above the judge stated that she did not consider the DVR to be of real assistance as the problem with it was that there was nothing to indicate the experience of the person who verified it.

14. The judge did however decline to acquiesce to an adjournment because she placed no weight on the DVR itself because the expertise of the authenticator was not given. That was to the benefit of the appellant.

15. It was always open to the appellants, as the arrest warrant document was their own, to consider the problem in the arrest warrant document for themselves. The judge took into account and placed reliance on information that was on the face of the arrest warrant itself, for its rejection. The judge specifically states that she took into account that the appellant had known since the refusal letter the account was challenged and they had ample opportunity to provide further evidence from Sri Lanka concerning the documents which “lie at the core of the appellant’s case that he is wanted by the authorities in Sri Lanka.” The judge also took into account that “evidence from the Sri Lankan lawyer supported by the confirmation of the authenticity of that lawyer as to the process of attaining the document would have greatly assisted but such evidence has not been provided by the appellants.” The judge correctly applied **PJ (Sri Lanka v SSHD)** EWCA Civ 1011. It is not an obligation for national authorities to verify documentation.

16. I find there was no unfairness visited on the appellants. The judge did not bring a perspective merely from the British legal system but looked at the document as produced by the Sri Lankan authorities. On the face of the document it is clear that the appellant is directed to arrest himself.

Two and four are entirely separate sections of the document and four clearly states that the person to whom the warrant is directed is the appellant and underneath states "You are hereby required and authorised to arrest the above person and to produce him before this court. That document is dated 15th November 2013." The judge is not obliged to give reasons for her reasons.

17. The judge made a full analysis of the evidence giving her assessment from paragraphs 20 onwards and relied on a multiplicity of difficulties with the appellant's case not least at paragraph 36 whereby she recognised the difficulties of the appellant's accounts and the inconsistencies therein. There was reference to Tanveer Ahmed in the decision by way of **PJ**. It is quite clear that the judge made numerous credibility findings against the appellants when taking into account all the evidence including, declined to place weight on the DVR for valid reasons, and declined to place weight on the arrest warrant for valid reasons. In the circumstances there is no material error and no material error in her approach to the adjournment request.

18. A further criticism of the decision is that there was a lack of assessment in relation to Section 55. I find that is a baseless assertion. The judge from paragraphs 66 to 84 sets out the relevant caselaw and addresses in detail the best interests of all of the children. She records that the first appellant and two older children came to the UK using a visit visa in a temporary capacity and the second appellant and the two younger children arrived illegally. The judge found they would be returning to Sri Lanka as a family unit where they still have relatives. Specifically at paragraph 77 that the judge did not minimise the impact on the children and the disruption on their education. The judge cited **SS Congo [2015] EWCA Civ 387** in relation to the proper approach and noted that none of the children had any special needs. The judge had considered the factors cumulatively and attached the relevant weight to the public interest. In the light of Section 117 of the Nationality Immigration and Asylum Act 2002 (referred to by the judge) and **EV Philippines** [2014] EWCA Civ 874 I fail to see how this challenge has any force.

19. Finally, at paragraph 54 the judge states that she had considered all of the factors that she had set out in her consideration of the appeals in respect of the particular circumstances relating to the parents and children and finally concluded that the appellants have established that there were no compelling circumstances not sufficiently recognised under the Rules. I find there is no error in law in relation to Section 55

20. There is no error of law in the decision which is material and the decision of First-tier Tribunal Judge Thew shall stand.

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings. This direction is made as there are minors involved.

Signed Date **27th July 2016**

Upper Tribunal Judge Rimington