IAC

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/04636/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reason Promulgated**
On 5 January 2016	**On 19 January 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL HUTCHINSON

Between

R. Y.
(ANONYMITY DIRECTION)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Jafar, counsel, instructed by Liyon Legal Ltd
For the Respondent: Mr Whitwell Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by Mr RY, against the decision promulgated on 4 September 2015, of First-tier Tribunal Judge Adio who dismissed the appellant's appeal.

2. **Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her 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.

3. The appeal by the appellant first came before me on 27 October 2015.

Background

4. The appellant is a citizen of Sri Lanka born on 15 October 1989. The appellant applied for a Tier 4 student visit on 11 July 2011 which was issued on 3 October 2011 and the appellant travelled to the UK on 15 October 2011. He applied for asylum on 19 March 2014. The respondent refused that application on 27 February 2015 and made a decision to remove the appellant by way of directions under Section 10 of the Immigration, Asylum and Nationality Act 1999.

5. The appellant's appeal against that refusal was considered by the First-tier Tribunal on 12 August 2015. The judge made a number of positive credibility findings in relation to the appellant's claim including in relation to the appellant's arrest and detention by the Sri Lankan authorities and the reasons for that. However the judge went on to find that the appellant would not be at risk on return to Sri Lanka. There were a number of reasons for that finding including that the appellant had not taken part in any diaspora activities in the UK and that the judge found that the authorities had not looked for him and therefore were no longer interested in him. The central reason however was that the appellant had submitted an arrest warrant which the judge did not accept, as the appellant had given oral evidence that he had not attended court, yet the arrest warrant stated that after the appellant was arrested on 28 December 2010 he was produced to the Magistrates' Court in Colombo to request 90 days' detention order from 29 December 2010. The judge found therefore that the arrest warrant had been produced with a view to bolster the appellant's claim.

6. The appellant was granted permission to appeal to the Upper Tribunal; there were two grounds of appeal: The first was that the appellant had obtained a letter from the translator who translated the arrest warrant which confirmed that he had made a mistake and that the relevant section should read that the 'suspect was referred to magistrate court, Colombo'. The translator confirmed that the Sinhalese version of the documents does not mention that the appellant was 'produced' to the court. It was also submitted that the judge erred in his general consideration of that document. The second ground related to the judge's consideration of whether the authorities had been looking for the appellant in Sri Lanka, specifically after the appellant left. Although a third ground argued that the judge erred in relation to his findings about the appellant's brother, that was not pursued before me and I was not satisfied that it had any merit.

7. I found that the First-tier Tribunal had erred in failing to make findings on the appellant's evidence, which it was not disputed was before the Tribunal, that the authorities had continued to search for him after he had

left Sri Lanka. This was arguably of particular significance if the arrest warrant were accepted as this was not issued until after the appellant had left Sri Lanka.

8. I was satisfied, notwithstanding the arrest warrant issue, that the judge erred in failing to refer to or make any findings in relation to the appellant's case that the authorities had continued to search for him after he had left Sri Lanka. Although I accepted that the judge found that the authorities were not interested in him when he was in hiding, I was not satisfied that the error in not considering the appellant's evidence about after he left Sri Lanka, was not material. In the absence of any findings on this point it was not possible to say that the judge would have inevitably reached the same conclusion as to interest in the appellant after he left Sri Lanka, particularly as the judge had made a considerable number of positive credibility findings in respect of the appellant's evidence generally.

9. On that basis I found a material error of law in the First-tier Tribunal's decision and set it aside. I noted however, in relation to ground 1, that the respondent had indicated in the Rule 24 response, dated 9 October 2015, that the 'veracity of the arrest warrant is highly likely to be determinative of the appellant's appeal' and that the respondent had 'taken urgent steps to verify whether the warrant is genuine'.

10. It was not disputed before me that the findings of fact of the First-tier Judge, other than in relation to the arrest warrant and whether or not the authorities were still looking for the appellant, should stand. That included the finding that there have been to date no *sur place* activities.

11. Having set aside the decision of the First-tier Tribunal (with findings preserved as noted above) I directed that there be a resumed hearing to consider the risk on return to Sri Lanka. At the error of law hearing, the appellant lodged with and served on the respondent a new translation of the arrest warrant, by a different translator together with confirmation from the original translator that he had made an error. The respondent was to file with the Tribunal and serve on the appellant the outcome of that verification no later than 4 weeks from the date of the Error of Law hearing, i.e., 24 November 2015 with the appellant to file any response, including their own verification if such was considered necessary and any further documents that the appellant sought to rely on in relation to risk on return, by 15 December 2015.

Resumed Hearing

12. Neither party complied with those directions. Mr Whitwell indicated at the resumed hearing that no response had been received. Although he was not able to point to any specific information in relation to the verification in the appellant's appeal, he provided an email another Home office official dated 4 December 2015. This letter related to 'Sri Lankan Attorneys' Letters' and indicated that the 'RALON team in Colombo' have finite

resources' and that 'their workload is increasing daily'. The email asked therefore that Attorneys' letters 'are not sent for verification where there are no other supporting documents that can be independently verified'.

13. Although Mr Whitwell was initially ready to proceed at the hearing, he then resiled from this position and made an adjournment request to allow the respondent to verify the arrest warrant. I considered the Tribunal Procedure (Upper Tribunal) Rules 2008 (the Procedure Rules), in particular Rule 5, Case Management Powers and Rule 2, the overriding objective and parties' obligation to cooperate with the Upper Tribunal. The overriding objective of the Rules is to deal with cases fairly and justly.

14. Mr Whitwell was unable to give any timescale as to when, if at all, the verification might be completed. I noted that although the generic information before me (in the email dated 4 December 2015) referred to the increasing workload of the RALON team in Colombo carrying out verifications, there was no specific indication as to either any backlog or any timescale for such verifications.

15. In addition to the relevant procedure rules, I also considered the guidance of Presidential Tribunal in Nwaige (adjournment fairness) [2014] UKUT 00418 (IAC) that the test is not reasonableness, but fairness. Although Mr Jaffar was neutral in relation to an adjournment I considered that an open-ended adjournment request, made belatedly on the day of the resumed hearing, with no indication as to when or even if the verification would be undertaken, would have resulted in unfairness to the appellant. Permission to appeal to the Upper Tribunal was granted on 30 September 2015 and the respondent indicated on 9 October 2015 that 'urgent steps' had been taken. Although I have no reason to believe that steps had not been taken by the respondent, Mr Whitwell accepted that there had been a complete failure to comply with directions. There was also no adequate explanation for that failure.

16. The reason given for the belated application for an adjournment was unpersuasive. As noted in the preceding paragraph there was no adequate information, either generic or specific in relation to why the verification had not taken place or as to when, or if, it would occur. Notably the email makes no reference to any delay. The reference to increasing workloads and prioritising work is not an adequate explanation and as noted this related specifically to Attorneys' letters and not arrest warrants. If the respondent still considered the verification of the warrant to be essential, there was no explanation as to why specific information was not provided in relation to any delay in this case, for example written confirmation explaining why the delay had occurred and/or the expected timescale for any verification.

17. I therefore concluded that the respondent had failed to give a satisfactory reason for the adjournment request and that it was appropriate considering the Procedure Rules including the overriding objective, for the hearing to proceed.

Risk on Return

18. Although the appellant was available to give evidence both parties were of the view that further oral evidence was not required.

19. Mr Whitwell relied on a generic letter dated 2 November 2015 to the respondent from the British High Commission in Colombo which indicated that approximately 130 verifications had been carried out in Sri Lankan asylum cases since June 2014 and 98.5% of these cases (which it was stated in almost all involved Sri Lankan Court or Police documents) the documents had been found not to be genuine. Mr Whitwell also relied on an extract from the Country of Origin Report dated 7 March 2012 which indicated that there was a high prevalence of forged and fraudulently obtained documents in Sri Lanka.

20. Mr Whitwell conceded that, as indicated in the respondent's Rule 24 response, if the arrest warrant and court documents produced were accepted these were likely to be determinative of the appellant's case. Although Mr Whitwell reminded the Tribunal that the documents produced by the appellant had to be considered in the context of the evidence of the prevalence of fraudulent documents in Sri Lanka, he also accepted that I had to consider this evidence in the context of the positive credibility findings made by Judge Adio.

21. Judge Adio made a number of positive credibility findings at [15], including that the appellant's brother owned a communication shop and that the appellant was engaged in this business which led to his arrest. He further found that the appellant was arrested by the authorities 'because of the business involvement with Abi and Siva which resulted in the authorities accusing him of being an LTTE supporter'. The judge found that there were no inconsistencies in the appellant's account in relation to not mentioning his brother's kidnap at his screening interview and no real credibility issues in relation to his passport not being found by the authorities in a search of the house.

22. The judge also found at [15] that ''the respondent accepts that bribery and corruption is rife in Sri Lanka and that in accordance with background information the appellant's account is consistent with regards to his release." It is therefore accepted that the appellant was detained by the authorities, was accused of being an LTTE supporter and was released on foot of payment of bribe by his family.

23. Mr Jaffa relied on the country guidance of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 and that the Tribunal (at paragraph 275) had endorsed the evidence of Mr Anton Punethanayagam in relation to the criminal processes in Sri Lanka and that 'the seriousness of any charges against an individual are not determinative of whether a bribe can be paid'. It was also Mr Punethanayagam's evidence as recorded at paragraph 146 that a detainee released on payment of bribe

would 'normally be recorded as escaped from detention in the database of the Police'.

24. There was no information before me that might displace the finding that there was no evidence that the authorities searched for the appellant when he was in hiding in Sri Lanka. However the appellant stated in his asylum interview (questions 25 and 112) that since leaving Sri Lanka 'unknown people' had been visiting his home looking for him and threatening his mother and his witness statement indicates that there was a visit by unknown people on 10 June 2015 looking for the appellant. There was no specific finding by Judge Adio in relation to this. Mr Whitwell did not challenge this evidence and on the basis of all the evidence including Judge Adio's generally positive credibility findings, I accept to the lower standard that the appellant was still being sought in Sri Lanka after his departure and in the context of all the evidence it is reasonably likely that these 'unknown people' are connected to the authorities.

25. The translation of the arrest warrant produced for the appellant's original appeal indicated at page 5 that after the appellant was arrested on 28 December he was produced to the Magistrate's Court in Colombo to request 90 days' detention order from 29 December 2010. However the appellant had given evidence at his first appeal that he had not attended court. Subsequent to the refusal of his first appeal the appellant produced a letter from the original translator indicating that he had made an error in his translation and that the original Sinhalese version of the documents did not say 'produced' but that it should read 'the suspect was referred to magistrate court, Colombo…'. It was the translator's evidence that there was no mention in the Sinhalese original of the appellant being 'produced' to the magistrate court. In addition the appellant, as noted above, lodged and served a further translation of the arrest warrant in question. The further translation indicates that the appellant was arrested on 28 December 2010 and that 'the suspect was referred to Magistrate Court of Colombo to request 90 days detention order from 29.12.2010.'

26. In considering the documents produced I have considered the case law including the starting point of Tanveer Ahmed [2002] Imm AR 318. It is for the appellant to demonstrate that the documents produced can be relied on as claimed. I do not accept as submitted by Mr Jaffar that this is one of the 'exceptional circumstances' referred to in PJ (Sri Lanka v Secretary of State for the Home Department [2014] EWCA Civ 1011, where the respondent should undertake a process of verification.

27. However I have considered all of the documents in the round in the context of all the evidence before me, including (as noted above) the background information indicating that a high proportion of documents relied on from Sri Lanka are not genuine. I have also taken into consideration that the first translation produced by the appellant indicated that he had been produced to the magistrate's court, in contradiction with his oral evidence. However, the appellant has now produced confirmation from both the original translator and a further independent translation

indicating that the arrest warrant in fact makes no mention of the appellant being produced to the magistrate's court and it was common ground before me that this was the only reason cited by Judge Adio for not accepting the arrest warrant as genuine. The respondent has not produced any further independent translation of the arrest warrant, which might suggest that the translations now relied on are incorrect. I accept that the translation of the document is as shown on the most recent translation and that there is therefore no contradiction between this and the appellant's oral evidence.

28. I have also considered the documentary evidence in the context of the positive credibility findings and an appellant who it is accepted was detained and released following a bribe. I have taken into account that the arrest warrant lists the appellant as an escapee which is consistent with the evidence approved by the Tribunal in GJ and others (as discussed above) in relation to those who leave detention following payment of a bribe, normally being recorded as an escapee. The appellant's evidence at interview and in his witness statement that 'unknown people' looked for him at his home in Sri Lanka after he left is also in my view consistent with an arrest warrant being issued after the appellant left Sri Lanka (the arrest warrant is dated 16 November 2011 and the appellant left Sri Lanka in October 2011). In this context I am satisfied, to the lower standard, that it is plausible that there may therefore have been no specific search for the appellant (or at least that the appellant was not aware of any) given that the arrest warrant was not issued until after he had arrived in the UK.

29. Notwithstanding the evidence that clearly the large majority court documents verified by the respondent in Colombo since June 2014 have not been genuine (and I note that a small minority 'appear to have been genuine' so it is not the case that no documents can be relied on) considered in the context of the entirety of the evidence and this appellant who has been found to be consistent and generally credible, I accept that the arrest warrant can be relied on as claimed.

30. The head note in GJ and others provides as follows:

> (1) This determination replaces all existing country guidance on Sri Lanka.
>
> (2) The focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself is a spent force and there have been no terrorist incidents since the end of the civil war.
>
> (3) The government's present objective is to identify Tamil activists in the diaspora who are working for Tamil separatism and to destabilise the unitary Sri Lankan state enshrined in Amendment 6(1) to the Sri Lankan Constitution in 1983, which prohibits the 'violation of territorial integrity' of Sri Lanka. Its focus is on preventing both (a) the resurgence of the LTTE or any similar Tamil separatist organisation and (b) the revival of the civil war within Sri Lanka.
>
> (4) If a person is detained by the Sri Lankan security services there remains a real risk of ill-treatment or harm requiring international protection.

(5) Internal relocation is not an option within Sri Lanka for a person at real risk from the Sri Lankan authorities, since the government now controls the whole of Sri Lanka and Tamils are required to return to a named address after passing through the airport.

(6) There are no detention facilities at the airport. Only those whose names appear on a "stop" list will be detained from the airport. Any risk for those in whom the Sri Lankan authorities are or become interested exists not at the airport, but after arrival in their home area, where their arrival will be verified by the CID or police within a few days.

(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

(a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.

(b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government.

(c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.

(d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

(8) The Sri Lankan authorities' approach is based on sophisticated intelligence, both as to activities within Sri Lanka and in the diaspora. The Sri Lankan authorities know that many Sri Lankan Tamils travelled abroad as economic migrants and also that everyone in the Northern Province had some level of involvement with the LTTE during the civil war. In post-conflict Sri Lanka, an individual's past history will be relevant only to the extent that it is perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan Government.

(9) The authorities maintain a computerised intelligence-led "watch" list. A person whose name appears on a "watch" list is not reasonably likely to be detained at the airport but will be monitored by the security services after his or her return. If that monitoring does not indicate that such a person is a Tamil activist working to destabilise the unitary Sri Lankan state or revive the internal armed conflict, the individual in question is not, in general, reasonably likely to be detained by the security forces. That will be a

question of fact in each case, dependent on any diaspora activities carried out by such an individual.

(10) Consideration must always be given to whether, in the light of an individual's activities and responsibilities during the civil war, the exclusion clauses are engaged (Article 1F of the Refugee Convention and Article 12(2) of the Qualification Directive). Regard should be had to the categories for exclusion set out in the "Eligibility Guidelines For Assessing the International Protection Needs of Asylum-Seekers from Sri Lanka", published by UNHCR on 21 December 2012.

31. Applying this guidance (and as conceded by the presenting officer) given that I have accepted that there is an arrest warrant for the appellant, I find therefore that the appellant would be at risk of persecution on return on the basis of his imputed political opinion.

Conclusion

32. The decision of the First-tier Tribunal contained a material error of law and I set it aside (to the extent set out at paragraph 10). I remake the decision as follows:

33. The appellant's appeal is allowed on asylum grounds.

34. I make no finding on humanitarian protection.

35. The appellant's appeal is allowed on human rights grounds (Articles 2 and 3)

Signed Date: 11 January 2016

M. M. Hutchinson
Deputy Judge of the Upper Tribunal