IAC-AH-DP/KRL-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06124/2014

THE IMMIGRATION ACTS

Heard at Manchester Upper Tribunal	**Decision & Reasons Promulgated**
On 17th November 2015	**On 5th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR ASHLEY MILROY JOSEPH
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Anzari, Counsel
For the Respondent: Miss C Johnstone

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 20th June 1982. The application for an extension of his student visa was refused on 16th March 2015 and renewals of his applications were both refused, the last one being on 3rd January 2014. On 7th May 2014 he claimed asylum and was issued with an IS151A as an overstayer. He has three dependants namely his wife and two children; the children being born respectively on 14th December 2011 and 22nd February 2013. His claim for future fear is that on returning to Sri Lanka he will be persecuted by the authorities as he left

the country whilst he was meant to be reporting to the police and was accused of helping the LTTE. The Appellant's application for asylum was rejected by the Secretary of State on 6th August 2014.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Herbert sitting at Taylor House on 3rd June 2015. In a determination promulgated on 19th June 2015 the Appellant's application was dismissed.

3. On 7th July 2015 Grounds of Appeal were lodged to the Upper Tribunal. On 20th July 2015 First-tier Tribunal Judge McDade granted permission to appeal. Judge McDade noted that the grounds of application for permission to appeal asserted that it was purely speculative for the Judge to have stated that it would have been well-known that the lawyer who verified the Appellant's documents had been suspended at the time, and that the Judge did not give anxious scrutiny to correspondence from the second lawyer, did not refer to the three relevant documents submitted by the Appellant and erred in his assessment as to whether or not the Appellant's name appeared on a stop list. Judge Herbert considered that those points were arguable in putting "the apparent absence of these issues being adequately reasoned in the decision". In addition he considered it was arguable that the Judge had erred in law when in his decision he applied the lower standard of proof required of the Respondent before finding a document was not genuine.

4. On 30th July 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24 contending the findings were perfectly open to the Judge and that it was for the Appellant to demonstrate the documents relied upon were reliable and that the Judge had properly considered in the round following *Tanveer Ahmed.* The Respondent concludes by contending that the grounds were a mere disagreement with the findings that were open to the Judge and that no material errors in law are disclosed.

5. It is on that basis that the matter comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Ms Anzari. Ms Anzari is extremely familiar with this matter. She appeared before the First-tier Tribunal and she is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer Miss Johnstone.

Submissions/Discussion

6. Ms Anzari relies on her typewritten Grounds of Appeal pointing out that there are four grounds and that the first two relate to evidence being produced from attorneys and that the documentation is to be found at pages 21 to 25 of the Appellant's bundle. It is accepted that the first attorney was subject to criminal proceedings in Sri Lanka and she refers me further to pages 21 to 29 of the supplemental bundle which was

produced before the First-tier Tribunal. It is her submission that the First-tier Tribunal Judge has erred in finding that the Appellant's reliance on a verification letter from a Sri Lankan lawyer who, to use the Judge's words:

> "On the face of it being suspended from practice substantially undermines the Appellant's credibility as suspension would have been well-known and occurred in 2011 some time before the letter from the lawyer was obtained."

7. Ms Anzari submits that the suggestion that the lawyer's suspension would be "well-known" is purely speculative particularly considering that the lawyer's name appears on the current register of attorneys able to practise in Sri Lanka despite the alleged suspension period continuing. She submits that to suggest that this substantially undermines the Appellant's credibility in these circumstances is unreasonable. She submits that the Judge has failed to engage with this evidence and to give any clear reasons. And that she further errs in suggesting that the

> "... subsequent correspondence from another lawyer does not get round the fact that the first lawyer engaged by the Appellant's family had no entitlement to practise at the material time that she wrote the letter authorising the court warrant".

8. She submits that the Judge has not looked at a genuine arrest warrant and that it was incumbent upon the Judge to apply anxious scrutiny to the assessment of the Appellant's appeal. She further contends that the correspondence provided from the second lawyer went to the issue of whether the warrant was genuine independent of any concerns surrounding the suspension of the first lawyer and that the Judge has applied the wrong standard of proof and has failed to provide reasons for placing no weight on the second lawyer's evidence. Further, she submits that that part of the determination headed "my findings of fact and credibility in relation to this application" is devoid of any reference or assessment of salient corroborative evidence specifically the receipt on arrest dated 20th October 2010, the report filed by TID, and the detention order and that the Judge errs in law in failing to provide sufficient reasons for dismissing these document stating that it is incumbent upon the Judge to provide reasons and to indicate what weight has been given to the documents and that that is starkly missing within this determination.

9. Further she submits that the Judge erred in his assessment of whether the Appellant's name will feature on a stop list and that the Rule 24 response provided is wrong given the Judge's findings in paragraph 53 of his determination which she submits is inconsistent with the principles set out in *Tanveer Ahmed*. In such circumstances she asked me to find that there are material errors of law in the decision, that it is unsafe and asked me to remit the matter back to the First-tier Tribunal for rehearing.

10. In response Miss Johnstone submits that the Judge's findings at paragraphs 47 to 59 are adequate and that he has looked at the warrants and the delay before the arrest warrant was obtained on 22nd July 2011. She submits that the position is summarised at paragraph 58 and that the

Judge has looked at all matters in the round. She argues paragraphs 54 to 57 effectively set out the Judge's reasons and looking at the chronology of the claim made the findings were open to the Judge and the Judge was entitled to reject these documents and does not need to give a reason for everything raised in the proceedings.

11. She points out that the Judge has noted at paragraph 60 whilst the Appellant claims to have been tortured in detention there is no evidence of the type of medical treatment he sought and that the Judge was entitled to conclude at paragraph 63 that the Appellant was not a person whose name would appear on a computerised stop list which would have to be accessible at the airport.

12. She takes me to paragraphs 27 to 29 of the decision. She submits that there is reference therein to the purportedly disbarred lawyer still being on the register of lawyers at the Sri Lankan Bar. She submits that the Judge is entitled to prefer the evidence that he did and that the burden of proof set out at paragraph 53 is correct and that the burden rests with the Respondent. She asked me to find there is no material error of law and to dismiss the appeal.

The Law

13. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

14. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings

15. I start by reminding myself that I am not retrying the issues, I am merely determining whether or not there is an error of law in the decision of the First-tier Tribunal Judge. For the reasons given below I conclude that there is. When looking at evidence in the round it is necessary for a Judge to make conclusions about individual documents or how they are obtained and to make findings in his conclusions that the evidence of an Appellant was or was not substantially credible. The problem with this determination is that there is a lacking of findings in the decision of the First-tier Tribunal Judge. I agree with Ms Anzari that the suggestion that the first lawyer's suspension would be well-known is purely speculative, particularly as the lawyer's name appears on the current registers of attorneys able to practise in Sri Lanka.

16. Further there are documents which, as mentioned above in her submissions by Ms Anzari, the Judge has failed to make findings on in his determination. Evidence is provided from a second lawyer and I agree with Ms Anzari that the decision of the First-tier Tribunal Judge provides insufficient reasons for placing no weight on the second lawyer's evidence. When all these factors are looked at in the round I am satisfied that the Grounds of Appeal reflect more than mere disagreement with the First-tier Tribunal Judge's decision and that a failure to show the relevant level of weight that was applied to documents is not apparent in the decision and that the decision is unsafe. This is not to say that on a rehearing of this matter a further Judge may not come to the same conclusion as the First-tier Tribunal Judge. There is however a requirement on the First-tier Tribunal Judge to give full reasons and these are not apparent.

17. In such circumstances I find that there is a material error of law in the decision of the First-tier Tribunal Judge. I set aside the decision and I remit the matter back to the First-tier Tribunal for rehearing. The directions for the rehearing are set out in the decision paragraph below.

Notice of Decision

(1) The decision of the First-tier Tribunal Judge contains a material error of law and is set aside.

(2) None of the findings of fact are to stand.

(3) The matter is remitted to the First-tier Tribunal sitting at Manchester to be heard on the first available date 28 days hence with an ELH of three hours.

(4) That the hearing is to be before any First-tier Tribunal Judge other than Immigration Judge Herbert.

(5) That there be leave to either party to file an up-to-date bundle of evidence along with any witness statements, skeleton arguments and authorities upon which they seek to rely at least seven days prehearing. Copies of such bundles are to be sent to the opposing parties' legal representatives.

(6) That there be a Sinhalese interpreter.

No anonymity direction is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT
FEE AWARD

No application is made for a fee award and none is made.

Signed Date

Deputy Upper Tribunal Judge D N Harris