Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/08353/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 3 March 2016	**On 7 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

MP
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss. K. Chandrasingh, Duncan Lewis & Co Solicitors
For the Respondent: Mr. I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Shergill, promulgated on 8 October 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.

2. I have made an anonymity direction continuing that made in the First-tier Tribunal.

3. Permission to appeal was granted as follows:

"The grounds challenge the judge's credibility findings. It is claimed that the judge made findings based on his assumptions; placed too much weight on the discrepancies in the appellant's screening interview and asylum interview; and erred in relying on the evidence in the COI report of 7 March 2012 about the procedure used by the Sri Lankan authorities in issuing a summons and an arrest warrant. I find that all the grounds raise an arguable error of law."

4. The Appellant did not attend the hearing. I heard submissions from both representatives following which I reserved my decision, which I set out below with reasons.

Submissions

5. In relation to the first ground of appeal, that the judge had made findings based on his own assumptions, I was referred by Miss Chandrasingh to paragraph [44] of the decision. The judge had considered only the earlier points when making this finding. He had not considered the further evidence provided by the Appellant. I was referred to paragraph [12] of the Appellant's statement regarding how he had found out about B's involvement. The judge had not considered the letter from the Appellant's uncle (page 38). He had not considered the evidence in the round and his findings were based on his own assumptions of how the police would act in Sri Lanka.

6. In relation to the second ground of appeal, that the judge had erred in placing too much weight on discrepancies between the interviews, it was submitted that too much weight had been put on the absence of information in the screening interview. I was referred to paragraphs [45] to [52] of the decision. I was referred to question A2 of the screening interview - the Appellant had only been required to give brief details. He had been heavily criticised for not mentioning his brother-in-law at the screening interview and undue weight had been placed upon this. I was referred to the Appellant's statement, [16] to [18], and his asylum interview, Q62. I was also referred to the case of YL (Rely on SEF) China [2004] UKIAT 00145.

7. In relation to the third ground relating to the summons and arrest warrant, the judge had referred to the evidence in the reasons for refusal letter regarding the court summons, paragraphs 20 and 21. It was submitted that the way a summons was issued in Sri Lanka was not specific, and the evidence on which the judge had relied which set out the procedure did not describe a mandatory procedure. The judge should not have relied on this.

8. In relation to the fourth and fifth grounds of appeal Miss. Chandrasingh relied on the grounds of appeal.

9. In response Mr. Jarvis submitted that the grounds were little more than a disagreement with the findings of the judge. In relation to the first ground, when challenging the factual findings, it was necessary to identify

perversity, illogicality, or a material error of fact. This was a high hurdle. The judge had not applied his own assumptions separate from the evidence. Looking at the judgement as a whole it was a careful judgement with a structured approach. I was referred to paragraph [70] where there was a global assessment of credibility. He submitted that it was not necessary for the judge to proceed to consider section 8 in the light of these findings.

10. It was submitted that the judge understood that he needed to approach each matter separately. I was referred to paragraphs [25] to [27] of Y [2006] EWCA Civ 1223. The judge could look at the plausibility of an account but must avoid putting his own cultural or national concept onto the evidence. It was necessary to look at the context. I was referred to paragraph [44] of the decision. The judge had put it into context and had found that on the Appellant's own evidence it was difficult to see why the police would have acted in that way. This alone was not determinative of the appeal but was one aspect which was considered in line with the Court of Appeal in Y.

11. It was submitted that the judge was aware of the Appellant's evidence and had not missed anything. He had considered the Appellant's father-in-law's letter, [61], and found that it was more problematic than beneficial to the Appellant.

12. In relation to the second ground of appeal, a screening interview always formed part of the evidence. YL held that the judge must direct his mind to the context of the interview and must take into account that claimants were giving brief responses. He submitted that the judge had understood the context of the screening interview. I was referred to paragraphs [46] to [52]. His findings were lawful in line with the case of YL.

13. In relation to the third ground of appeal, he submitted that there was nothing in this. I was referred to paragraph [21] of the reasons for refusal letter. The judge had not acted in a way which was irrational or perverse. The complaint was that the evidence was vague but this was not an error of law, and there was no material error of fact. The judge was entitled to draw on that evidence. Where the judge had talked about forgery that should be read as a reference to weight. The judge had taken the proper approach set out in Tanveer Ahmed by not affording weight to the documents.

14. In relation to the fourth ground, this was just a disagreement and the findings were open to the judge. In relation to the fifth ground, section 8, I was referred to paragraph [70]. Given his earlier findings in this paragraph, it was arguably not necessary for the judge to proceed to address section 8.

15. It was submitted that the case of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) did not bite. The judge had found that the Appellant had not told the truth to the lower standard of proof.

Being Sri Lankan in and of itself was not enough. There was no sur place claim.

16. In response Miss. Chandrasingh submitted that the grounds pleaded collectively showed a material error of law. The judge had relied on drawing adverse credibility findings from the screening interview. At the first opportunity in his asylum interview the Appellant had given all the details. The judge had erred in giving too much emphasis to the screening interview to make a finding of adverse credibility which made the whole determination unsafe.

Error of Law

Ground one

17. I have carefully considered paragraph [44]. This states as follows:

> "The interpretation I make when considering these points alone is that the alleged police interest in the appellant seems somewhat misplaced. Objectively, it is difficult to understand why the police consider the appellant to be implicated in supporting B's alleged LTTE activity if the appellant had complied with registering B's residency from as long ago as 2008. That fact alone would seem to suggest the opposite; that the appellant was innocent in any involvement with B. If the appellant was giving refuge to the LTTE one would have thought this would have been clandestine rather than in plain sight. I find it difficult to understand the police's logic in pursuing the appellant in those circumstances. These are observations as of course the appellant cannot answer for the police but they are important observations in the background context of the claims made."

18. I find that the judge has not made findings based on his own assumptions. As he states in the last sentence of this paragraph these observations are made "in the background context of the claims made". They are based on the Appellant's own evidence. When the judge states that he finds it difficult to understand the police's logic in pursuing the Appellant in those circumstances, the circumstances are those which the Appellant himself has described. The judge is not making assumptions based on what he considers the police would do but against the background of the claims before him. He has not applied his own assumptions separate from the evidence before him.

19. Further, it is necessary to look at the decision as a whole. I have considered paragraph [70] in this context. This states:

"I have taken a global assessment of credibility (see *R (Sivakumar) v Secretary of State for the Home Department* 2003 UKHL 14, [2003] 1 WLR 840). I do not consider that it is necessary to further undermine the accounts given by the appellant in light of all of my negative findings above. However, given the delay in claiming asylum this further moves the appellant's accounts away from any grain of truth and would meet the condition under paragraph 339L (iv). As I am obliged to consider issues relating to section 8 of the Asylum (Treatment of Claimants) Act 2004 I note the following. There is a significant delay between the events in 2011 and the claim for asylum. I do not consider that a reasonable explanation has been put forward by the appellant as to why he did not claim asylum earlier. He was, so it is claimed, so concerned by the events of June 2011 that he was unable to complete his course. The police continued to pursue him during the ensuing time period. He was here studying so must have some degree of intelligence, common sense and general knowledge. His wife would have had contact with United Kingdom health workers and other officials when the children were born - either of them could have tried to find out what to do. It is highly implausible that the appellant did not have an understanding of how to look for help from a lawyer or otherwise seek assistance in claiming asylum."

20. The judge has not just made his credibility findings based on paragraph [44]. He has considered all of the evidence in the round from paragraphs [35] to [72] and made important credibility findings in paragraph [70]. He has considered aspects of the claim separately, and his findings in paragraph [44] are just one aspect of the claim which was considered. I have considered paragraphs 25 to 27 of Y. I find that the findings in paragraph [44] are in line with the case of Y. I find that the judge has "looked through the spectacles provided by the information he has about conditions in the country in question" [27]. His findings are made against the context of the Appellant's own claim and I find that there is no error of law in the judge's findings in paragraph [44].

Ground two

21. I have carefully considered paragraphs [46] to [52] of the decision under the heading "Discrepancies in the interviews". It is clear from paragraphs [46] and [47] that the judge was aware of the context of the screening interview. The judge quotes question 4.2 from the screening interview. The judge notes the response that is recorded to question 4.2, and finds in paragraph [48] "Even taking account of the matters that I have noted in the two paragraphs above I have concluded that the omission relating to X is significant, even when assessed at the lower standard".

22. In paragraph [49] the judge gives further reasons for why he considers the omission relating to X to be significant. He states that one of the reasons is because of the seriousness of what the appellant alleges has happened to X. He states in paragraph [51] that he was satisfied that the Appellant would have been aware of X's disappearance very shortly after it had happened. He states "I am satisfied that this would have been a key part of the fear on return to explain at the screening interview" [51].

23. In paragraph [52] the judge considers the explanation given by the Appellant as to why X's disappearance was not mentioned, but he states that he is not satisfied by the explanation and does not accept that there was a plausible reason for not mentioning the disappearance at the screening interview. I find that the judge does not give this issue undue weight but gives careful and considered reasons for why he does not accept the Appellant's explanation for his failure to mention X's disappearance during his screening interview. I find that the judge has not erred in placing too much weight on the discrepancies. He is fully aware of the context of a screening interview and makes his findings against the background of that context. There is no error of law in the judge's treatment of the screening interview.

Ground three

24. In paragraph [56] the judge states:

> "In terms of the summons, the appellant relies on there only being two summons served. That was confirmed in oral evidence. They were served by the police. I have taken into account the matters set out at paragraph 20 and 21 of the refusal. No other objective information has been provided to counteract the legal process evidence relating to summons in Sri Lanka. I am satisfied that the objective evidence shows that a summons has to be issued three times before an arrest warrant is issued".

25. I have considered the reasons for refusal letter, paragraphs 20 and 21. This sets out evidence from the British High Commission in Colombo. One of the questions asked is "how many summonses are issued before a warrant for arrest is issued?" The judge finds that he is satisfied that this evidence shows that a summons has to be issued three times. I find that there is no material error of fact in the judge drawing this conclusion from the evidence at paragraph [21]. I find that he was entitled to find in paragraph [57] that "the lack of a third summons leads me to find that an arrest warrant was not issued as claimed". The judge also states in paragraph [56] that he was not provided with any information to counteract this evidence. I find that the judge was entitled to make these findings with respect to the number of summonses.

26. It is further submitted that the judge erred in rejecting the summons. The judge states that he has considered the objective evidence relating to the fraudulent obtaining of summons. He refers to the inconsistencies in the Appellant's accounts and the lack of plausible explanations to conclude that the summons are not genuine "when looked at in the round with all the other evidence". He has afforded no weight to these documents, which he is entitled to do, having placed the documents against the background of the rest of the Appellant's account and the lack of plausible explanations. I find that his approach is not contrary to Tanveer Ahmed. The judge is not satisfied that the Appellant has shown that the documents on which he seeks to rely can be relied on, and he gives reasons for this finding. I find that there is no error of law in his consideration of the summons and arrest warrant.

Ground four

27. It is submitted in the grounds of appeal that the judge's findings "are contrary to his own findings" with reference to paragraphs [63] and [64]. I have found above that the judge has not made findings based on his own assumptions in paragraph [44] and I find similarly that the judge has not made findings based on his own assumptions in these two paragraphs. In paragraph [63] the judge considers the newspaper articles relating to an attack in 2009. He considers the evidence provided by the Appellant and finds that this aspect of the Appellant's claim "is highly implausible when assessed at the lower standard looking at all of the evidence in the round". It is clear that the judge has considered this aspect of the claim against the background of all of the evidence in the Appellant's case.

28. In paragraph [64] he considers the claim that B was in the LTTE at a senior level. Again he considers this claim"looking at all of the evidence in the round". I do not find that there is any merit in the claim that the judge has made findings on his own assumptions. Neither do I find that these findings are contradictory to the judge's other findings.

Ground five

29. It is submitted that the judge erred in law in making credibility findings based on the Appellant's delay. I find that a reading of paragraph [70] indicates that this is not the whole picture. I have set out paragraph [70] in full above (see paragraph 19). Prior to considering section 8 of the judge states:

    "I do not consider that it is necessary to further undermine the accounts given by the appellant in light of all of my negative findings above."

    He proceeds to consider section 8 as he is obliged to do. He considers section 8 only after making findings based on the Appellant's account. Prior to considering section 8 he refers to "all his negative findings above".

30. I find that there is no error of law in the judge's consideration of the Appellant's delay in claiming asylum. He is obliged to consider this and he has done so only after he has made credibility findings based on the Appellant's own account.

31. In relation to the case of GJ, given that the judge did not accept the Appellant's account, and given that the Appellant has not claimed to take part in any sur place activities, the judge was entitled to rely as he did on the part of the reasons for refusal letter which addressed the risk on return to the Appellant, [73]. Given that he has not accepted the Appellant's account, he is entitled to find that his profile does not meet any of the categories set out in GJ by reference to the reasons for refusal letter. Given that the account has been rejected, the part of the Appellant's claim which is accepted is that he Sri Lankan and this is not in itself a reason to be granted asylum.

Notice of Decision

32. The decision does not involve the making of an error of law and I do not set it aside.

33. The decision of the First-tier Tribunal stands.

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 his 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.

Signed Date 29 March 2016

Deputy Upper Tribunal Judge Chamberlain