



**Upper Tribunal**

**(Immigration and Asylum Chamber)** Appeal Numbers: AA/ 06600 /2015, AA 06776 2015,  
AA/ 06790/ 2015 & AA/ 06803 /2015

**THE IMMIGRATION ACTS**

**Heard at Centre City Tower  
On 24 August 2017**

**Decision & Reasons Promulgated  
On 26 September 2017**

**Before**

**UPPER TRIBUNAL JUDGE PERKINS**

**Between**

**K B**

First Appellant

**S K**

Second Appellant

**S K**

Third Appellant

**T K**

Fourth Appellant

**(ANONIMITY ORDER MADE)**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms R Manning, Counsel instructed by Staffordshire North and  
Stoke on Trent Citizens Advice Bureau

For the Respondent: Ms H Aboni, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellants. Breach of this order can be punished as a contempt of court. I make this order because the appellants are asylum seeker and publicity about their cases could itself put them at risk.
2. This is a challenge to a decision by the First-tier Tribunal dismissing the appeals of the appellants against a decision of the respondent that they are not refugees or otherwise entitled to international protection. The appeals were dismissed under the Refugee

Convention, on humanitarian protection grounds and under the European Convention on Human Rights.

3. The appellants are all citizens of Sri Lanka. The first appellant is the father of the other three appellants who were born in 2007, 2011 and 2014 respectively. The asylum appeal turned on credibility and the First-tier Tribunal Judge did not believe the appellants' evidence, particularly the evidence of the First Appellant and of his wife.
4. It is Ms Manning's case that the judge gave wrong reasons for disbelieving the appellants so that the adverse credibility findings are unsound with the result that the appeal has to be determined again. This appeal has already been determined twice in the First-tier Tribunal.
5. The grounds seeking permission to appeal do not challenge the decision to dismiss the appeal on human rights grounds. It follows that the decision to dismiss the appeals on grounds relying on Article 8 of the European Convention on Human Rights shall stand.
6. Ms Manning's grounds are commendably brief and make the best point first.
7. The grounds challenge particularly paragraph 40 of the First-tier Tribunal Judge's decision. I set it out below:

"I have considered the amended letter of complaint and I have taken into account it is signed by the returning officer and dated 7 November 2011 but what the Appellant has failed to address is the Respondent's point that he was in the UK with his passport at this time. I appreciate that the Appellant has said that the CID officers took a photocopy but again it is not clear how they could have taken a copy if the passport was with the Appellant in the United Kingdom. Therefore while the Appellant may have written a letter of complaint I am not satisfied that this aspect of his claim is credible given the fact his passport could not have been with his mother in Sri Lanka when he was in the United Kingdom."
8. The point being addressed here was the first appellant's claim, now established, that although present in the United Kingdom he stood for election at a local election in Sri Lanka and that there was significant harassment during that election which prompted him to complain.
9. I am uneasy with the judge's consideration of the letter of complaint. Whilst it is clearly a self-serving document in the sense that it is only another version of the first appellant's case emanating from him that his family members were subject to harassment as a result of his standing in the election, if it is believed it shows that the story being told now was devised as long ago as November 2011. Whilst that does not mean it is a true story it is something that should be considered when the credibility of the case as a whole is evaluated.
10. The big problem for the Secretary of State is that this paragraph clearly shows that the judge was minded to disbelieve the appellant because he had claimed improbably that his passport was in Sri Lanka when as a matter of fact it was with him in the United Kingdom. If the appellant had been caught out telling inconsistent stories in that way it may very well have been a devastating adverse credibility point. The difficulty is the point is not established. A hint of the problem comes in the judge's own appreciation that the appellant said that the CID officers had *taken* a copy but the judge clearly understood that

to mean they had *made* a copy else the judge would not have said “it is not clear how they could have taken a copy if the passport was with the appellant in the United Kingdom”.

11. The first reference to the documents that I can see is in the screening interview at page A4 in the respondent’s bundle. When summarising his claim the claimant is recorded as saying:

“Then the army investigation came to our house and took some documents – passport copies and national ID to send to the airport. I don’t know why.”

12. It cannot be said with certainty if the appellant had said then that the copy passports already existed or if the document was there to copy. The point was revisited in the appellant’s asylum interview and he said in answer to question 79 that:

“The police they wanted my passport copy and they asked for my UK address and they wanted my other family details, sister’s details and where are they staying and they asked my mother about my friends so when mother asked them why do they want passport copy and they replied we want to give it to the airport and they hope to arrest when I return to the election.”

13. This does not advance things any further. It is certainly not an admission that the passport was there to be copied or taken. In his witness statement at paragraph 68 the appellant said:

“They refused to show any ID but forcibly collected a copy of my passport and details of other family members and friends.”

14. Whilst a fair-minded reader might think that the appellant was describing a process whereby the police officers made a copy of a passport, that is not what the appellant said. On each of the three occasions when the appellant mentioned the passport he was clear that it was a copy that was required and gave no indication that the copy had to be made. I find this significant. Nobody thought to ask the appellant where his passport was at the time. The answer might have been the very obvious one that it was with him in the United Kingdom or with the immigration authorities in the United Kingdom. The appellant has not explained how his mother came to have a copy of his passport. I imagine that in Sri Lanka, much as in the United Kingdom, there are people who routinely copy important documents, people who might have had occasion to have copied an important document and people who would never think of doing such a thing. Paragraph 40 of the judge’s decision reveals a misunderstanding in the evidence. It was never the appellant’s case that a copy had to be made by the visiting police. It has always been his case that a copy was removed. It is unsafe to assume that he had been caught out telling a lie. Rather I am driven to the conclusion that the judge took a bad point and has disbelieved the appellant in an important aspect of his case where the evidence does not support the conclusion that the judge reached. This rather illustrates the danger of making findings on points that were not put directly to witnesses.

15. This case will have to be heard again and no doubt the point will be put but there is no escaping the fact that the appellant will have had a long time to have worked out a dishonest answer if that is what he wanted to do. That is not his fault and it may be that it would be impossible to reject any cogent explanation that he gives.

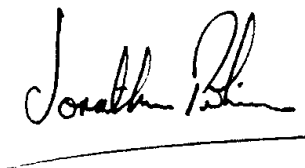
16. Reluctantly I have to accept that undermining this part of the adverse credibility finding undermines the Decision and Reasons as a whole. Ms Aboni, correctly and forcefully, pointed out that a mistake on this part of the evidence does not lead to the conclusion that the appellants are at risk now. The difficulty is that he gave evidence that he is presently at risk in Sri Lanka. The evidence was described, with some justification, as being rather vague and was disbelieved. The decision to disbelieve it was influenced by the bad point that was taken and cannot be relied upon. At point "d" in her grounds Ms Manning complains that the judge has not made clear findings on the appellant's wife's claim that she was interrogated in her return to Sri Lanka and told that the authorities knew about the first appellant's activities in the United Kingdom (or words to that effect - that is my paraphrase). Whilst it is possible to make out a case that the first appellant's wife was disbelieved for other reasons and there was no need to comment expressly on this point it is at least undesirable that there have been no clear findings on that part of the first appellant's wife's case where she claimed, as she does at paragraph 14 of her witness statement, that the police told her that they "believed that [the appellant] was working as a shadow member of the LTTE and had moved to the UK to work out her future LTTE plans in the UK and abroad".
17. Whilst not strictly determinative this is a point of such importance it is undesirable that it has not been addressed specifically in the decision.
18. The case has to be heard again and it is better that it is done in the First-tier Tribunal and so I remit the case to the First-tier Tribunal for the protection claim to be re-determined. The positive findings made have not been undermined and should be taken as a starting point.

Decision

I set aside the decision that the Appellants are not refugees or otherwise entitled to international protection.

I direct that the case is heard again in the First-tier Tribunal.

Signed  
Jonathan Perkins  
Judge of the Upper Tribunal



Dated 25 September 2017