



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/01334/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17 October 2017**

**Decision & Reasons Promulgated
On 27 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**D C
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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.

Representation:

For the Appellant: Ms S Anzani, Counsel, instructed by Nag Law Solicitors
For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Wylie (the judge), promulgated on 7 April 2017, in which he dismissed the appeal on all grounds. That appeal had been against the Respondent's decision of 17 September 2015, refusing the protection and human rights claims of the Appellant and his two dependants (they being his wife and child). The essence of the Appellant's case was somewhat unusual in nature. It was said that he had been the joint owner of a security personnel firm in Sri Lanka and that his firm had had links with another company. In turn, this company had been linked to the Rajapakse family, a powerful political dynasty in that country. Corruption allegations were circulating around the company, the Appellant claimed that his own business had become involved, and as a result he was of adverse interest to the Sri Lankan authorities now. Part of his claim was that there was an extant arrest warrant against him and that that would of itself place him at risk on return. In addition, he had been taken in for questioning in 2015 and that his own business activities put him at risk of being detained on, or after arrival, and ill-treated.

The judge's decision

2. Relying upon a documentation verification report (DVR) produced by the Respondent, the judge concludes that the warrant was not a reliable document (paragraphs 54 to 57). The whole issue of the Appellant's ownership of the security business and any links with the company are dealt with very briefly in a single paragraph [59], the judge concluding that there was nothing to suggest that the Appellant was concerned in any proceedings.

The grounds of appeal and grant of permission

3. The grounds of appeal challenge the judge's assessment of the warrant, asserting that the DVR's reliance upon the Sri Lankan CID as a source of information was problematic, and that the judge had failed to deal with this issue. Further the judge had not dealt adequately with the evidence from two Sri Lankan attorneys as to the reliability of the warrant.
4. The second ground asserts that paragraph 59 of the judge's decision is inadequate given the large amount of evidence adduced by the Appellant to establish not only his joint ownership of the security business but the links between that and the company. There is also the assertion that the judge has failed to consider the claim that the Appellant had been taken in for questioning once before in 2015.
5. Permission to appeal was granted by First-tier Tribunal Judge McGinty on 16 August 2017.

The hearing before me

6. At the outset of the hearing Ms Anzani clarified that the Respondent had conceded at the hearing that the Appellant was in fact the joint owner of the security personnel business. There had been no concession as to the links of that business with the company, however. As to the challenge relating to the warrant, Ms Anzani submitted that the judge had simply failed to deal with the Appellant's case against the reliability of the DVR, in particular the use of the CID as a source of verification and the competing evidence from the two Sri Lankan attorneys. As to the more general issue of links between the Appellant's business and the company Ms Anzani submitted that there were no findings on this and no consideration of the evidence about the questioning by the CID in 2015.
7. Ms Ahmad acknowledged that the judge's treatment of the warrant was somewhat thin in its reasoning and that it had not dealt with the substance of the Appellant's arguments or evidence, particularly that relating to the two attorneys. In respect of the wider issue, Ms Ahmad acknowledged that paragraph 59 was very limited and that there were no findings on relevant evidence.

Decision on error of law

8. As I announced to the parties at the hearing, I conclude that there are material errors of law in the judge's decision and I therefore set it aside. My reasons for this conclusion are as follows.
9. It is of course the case that a judge need not specifically address each and every item of evidence and/or submission made by an appellant in any given case. We have been reminded of this recently by the Court of Appeal. However, matters relating to the core of the claim must be adequately dealt with by way of sound approach, clear findings and adequate reasons.
10. In respect of the arrest warrant I am satisfied that there have been material errors. I am satisfied that before the judge the Appellant asserted that the Sri Lankan CID were not a reliable source of information on which to base the DVR, and that there was also a potential breach of confidentiality by the Respondent in using this source in the Appellant's case. The judge has not dealt with this point. There is no consideration as to whether the CID were a reliable source, whether the weight attributable to information from this source should be reduced or at least treated with caution, or whether the Respondent had indeed potentially breached a duty of confidentiality in respect of making enquiries with the security services of the Appellant's home country.
11. There is also the evidence from the two attorneys. Having read this evidence for myself, it is clear that it was potentially highly material to the

issue of the reliability of the warrant. This is not to say that it was bound to be preferred to the evidence originating from the Respondent, but it clearly required substantive consideration. The only reason seemingly provided by the judge for rejecting the attorneys' evidence entirely is generic evidence from the British High Commission in Colombo asserting that a large number of letters from lawyers were found, "not to be credible on verification". This by itself was inadequate by way of assessment and/or reasoning given the particular nature of the evidence from the two different attorneys.

12. In respect of the bigger picture, as it were, the judge simply does not engage with the evidence adequately. Paragraph 59 is very brief and there is clearly a failure to make findings on the claimed links between the Appellant's business and the company, the allegations being made against the company, the potential consequences this might have upon the Appellant, and his claim that he had already been taken in for questioning by the CID in 2015.
13. As a consequence of these two errors the assessment of risk on return is flawed.
14. I therefore set aside the judge's decision.

Disposal

15. There was a discussion as to whether this case should be remitted to the First-tier Tribunal or retained in the Upper Tribunal. Ms Anzani suggested that retaining it might be appropriate in this case because issues of potential breaches of confidentiality by the Respondent in another Sri Lankan case are currently being considered by the Upper Tribunal. She indicated that these other proceedings may be set down before a panel in the near future for consideration of issues which have a bearing on the appeal before me. I indicated that there might be logistical difficulties in seeking to link the Appellant's case with these other proceedings but I suggested that I would reserve my position on disposal and await updated information from the Appellant's solicitors as to what was happening with the other case. In default, I would remit this case.
16. At the time of writing up my decision, there has been no correspondence from the Appellant's representatives.
17. I therefore remit this appeal to the First-tier Tribunal for a complete re-hearing.
18. The issue of the use of the Sri Lankan CID as a source of information will need to be considered in light of the recent decision in VT (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 00368 (IAC). The evidence from the two attorneys will require careful analysis. Even if the warrant is deemed to be unreliable, the First-tier Tribunal will also

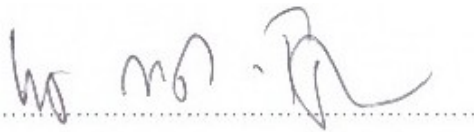
need to address the wider picture relating to the Appellant's circumstances. It is to be noted that the Respondent has conceded that the Appellant was joint owner of the relevant business.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.



Signed

Date: 26 October 2017

Deputy Upper Tribunal Judge Norton-Taylor