Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: PA/02026/2017**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 30 August 2017	**On 11 September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

ZA (SRI LANKA)
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, Counsel instructed by NAG Law Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge NMK Lawrence sitting at Hatton Cross on 24 March 2017) dismissing his appeal against the refusal of his protection claim. The First-tier Tribunal made an anonymity direction in favour of the appellant, and I consider that it is appropriate for this direction to be maintained for these proceedings in the Upper Tribunal.

Relevant Background

2. The appellant's case was that he was a student who shared accommodation in Kandy with Tamils who were, unknown to him, linked to

the LTTE. The authorities raided the property on 15 April 2009 and found a gun and other items connected to the LTTE. The appellant was taken into custody, detained for 14 days, assaulted and accused of being a supporter of the LTTE. He was taken to court and released on bail. A condition of his release was that he should report to a designated police station. He was sexually assaulted when he went to report on 10 June 2009, and so he stopped reporting.

3. Some six months later he fled Sri Lanka in fear of his life. He entered the UK as a student. He returned to Sri Lanka in December 2014 and got married. He thought that the charges brought against him in 2009 had been dropped, but he discovered upon his return to Sri Lanka that the charges were still outstanding and that he was still being hunted by the authorities. So he returned to the UK after his marriage.

4. The appellant's last grant of leave to remain as a student ran until 14 January 2016. On 22 August 2016 the appellant was encountered by Immigration Official and detained as an overstayer. At this point, he claimed asylum. His asylum interview eventually took place in January 2017, and the refusal decision was issued on 10 February 2017.

The Hearing before, and the decision of, the First-tier Tribunal

5. Both parties were legally represented before Judge Lawrence. The day before the hearing, the appellant's solicitors served an appellant's bundle containing a witness statement from the appellant, and various documents which had been recently sent from Sri Lanka. These included a letter dated 16 March 2017 from Vernon Gunasekera ("VG") who said he had been the appellant's defence solicitor in 2009; a photocopy of a certificate evidencing that VG was registered as a solicitor in Sri Lanka; a photocopy of a letter purportedly sent by the appellant's brother, F, to the Registrar at the Magistrates' Court in Kandy on 23 February 2017 requesting a certified copy of case number B1132/09; a document purportedly generated by the Sri Lankan Police in Kandy in respect of case number B1132/09 detailing the progress of that case; and a medical diagnosis ticket dated 10 June 2009 issued by a doctor in Sri Lanka.

6. At the outset of the hearing, Mr Murphy, Counsel for the appellant, sought an adjournment in order to obtain a psychiatric report for the appellant and so as to enable the Sri Lankan documents to be verified by the Secretary of State. The Presenting Officer opposed the adjournment request, submitting that the appellant had had ample opportunity to provide the documents in advance of the hearing. The Judge agreed with the Presenting Officer. He ruled against the adjournment request, observing (according to Mr Murphy's detailed typed note of the proceedings): "*App been in UK since 2009 - had plenty of time to get docs".*

7. In the course of his oral evidence, the appellant was asked about how and from whom he had obtained the documents from Sri Lanka. With reference to the diagnostic ticket, he said that he had obtained it from the

police at the time. The remaining documents had been obtained by his older brother, F. He was asked whether he knew where he had obtained them from, and he answered: "*From the Court.*" He was asked why he had only asked for these documents to be sent to him now. He said that he had not known what was needed. He had consulted his UK solicitors: they had asked him what evidence he had, and after that he had contacted his older brother.

8. In his closing submissions, the Presenting Officer submitted that there were discrepancies between the Sri Lankan documents and the appellant's oral evidence, and he invited the Judge to find that the appellant had manufactured the documents for the hearing. He submitted that, if the asylum claim was genuine, the appellant would have claimed asylum as soon as possible and he would have produced the Sri Lankan documents immediately.

9. In his subsequent decision at paragraphs [12]-[21], the Judge juxtaposed the appellant's evidence about the progress of his case in 2009 with some of the documentary evidence. He concluded, at paragraph [23], that the appellant's claim for protection was manufactured. There was no substance to the claim. He had not demonstrated, to the lower standard, that he was in need of international protection.

The Application for Permission to Appeal

10. Mr Murphy settled the grounds of appeal to the Upper Tribunal. Ground 1 was that the Judge had erred in law in not referring to the adjournment application in his decision, and as a result he had failed to provide any reasoning as to why the application was refused. Ground 2 was that the Judge had failed adequately or at all to state what he had made of the letter from the Sri Lankan solicitor, in breach of the duty to give reasons, following **MK -v- SSHD [2013] UKUT 641 (IAC**). Ground 3 was that the Judge had erred in not adjourning the case, as he had thereby denied the appellant a fair hearing, following **Nwaigwe [2014] UKUT 418 (IAC**).

The Reasons for Granting Permission to Appeal

11. On 16 May 2017 Judge Chohan granted permission to appeal for the following reasons:

> It is true that in the decision the Judge makes no reference to an adjournment application made on behalf of the appellant. It is established that on occasions the refusal of an adjournment application can amount to an error of law. The fact that the Judge has failed to mention the adjournment application certainly amounts to a procedural error. However, that, per se, does not mean that the judge's findings in respect of other aspects of the appellant's claim contain any errors. Nevertheless, the matter needs to be explored.

Discussion

Grounds 1 and 3

12. Grounds 1 and 3 can conveniently be taken together. The Judge made a procedural error in not referring to the adjournment request in the course of his account of the hearing which he gave at paragraphs [4] to [5], and in not stating briefly in his written decision his reasons for refusing the request. However, I am not persuaded that the error has resulted in material unfairness.

13. The first alleged unfairness is that the Judge's silence on the question of the adjournment means that the appellant is deprived of the ability to appeal the decision on the grounds that the Judge erred in law in not granting the adjournment. However, by serving Mr Murphy's typed note of the proceedings, the appellant was able to produce evidence of the adjournment request and the Judge's reasons for ruling orally at the hearing why he had decided to refuse it. Therefore the Judge's failure to make reference to the adjournment request in his decision has not deprived the appellant of the ability to argue that the Judge erred in law in not acceding to the adjournment request.

14. The second alleged unfairness is that the refusal of the adjournment request was wrong in substance. In her oral submissions, Ms Gherman highlighted the fact that the appeal had been listed for a substantive hearing within a very short time after the refusal decision and the subsequent lodging of the notice of appeal. However, I consider that the reason given orally by the Judge for refusing the adjournment request was adequate.

15. With regard to the documents emanating from Sri Lanka, the appellant had claimed asylum as far back as the end of August 2016. Moreover, on his account, the court and police documents had been in existence since 2009.

16. According to paragraph 5 of the grounds, Counsel submitted to the Judge that the Secretary of State should state what she made of the documents produced by the appellant; and in particular, in relation to the letter from the appellant's Sri Lankan solicitor, he submitted that the Secretary of State should confirm or deny whether VG was on the Solicitors' Register in Sri Lanka; and she should contact the solicitor to see if he was prepared to stand by his statement.

17. In oral argument, Ms Gherman accepted that the Secretary of State could not be compelled to agree to an adjournment in order to attempt to verify the credentials of a person putting himself forward as a *bona fid*e Sri Lankan solicitor; and nor could she be compelled to verify whether documents put forward as being on a court file in Sri Lanka were actually on the court file in question.

18. Mr Murphy pleaded that the other reason he gave for seeking adjournment was that it was the appellant's case that he had been physically and sexually abused whilst in detention, and he took the view that this case had the potential to be greatly assisted by a psychiatric and medical report. To be precise, it was the appellant's case that he had been

sexually abused when reporting at a police station on 10 June 2009. Although he had been physically abused while in detention, his case was that it was the sexual abuse on 10 June 2009 that had caused him to cease reporting, and thereafter to flee the country. The appellant did not claim that there had been any permanent scarring from his physical abuse, and so there was no occasion for a scarring report. It is also not suggested that in the run-up to the appeal hearing (or indeed at any time in the past) the appellant had displayed the signs and symptoms of PTSD. The appellant had at all material times been represented by competent solicitors in the UK, and they had not been prompted to seek a psychiatric report on the appellant.

19. Accordingly, I am not persuaded that the refusal of an adjournment on any of the grounds put forward by Counsel for the appellant resulted in material unfairness, or deprived the appellant of a fair hearing of his appeal in the Upper Tribunal.

Ground 2

20. Although not cited to me, I have had regard to **Muse and Others -v- Entry Clearance Officer [2012] EWCA Civ 10** on challenges to the adequacy of a judge's reasons. In **South Bucks District Council v Porter (2) [2004] UKHL 33**, cited with approval by the Court of Appeal at paragraph [33], Lord Brown said:

> The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need only refer to the main issues in the dispute, *not to every material consideration* (my emphasis)

21. The main issue in dispute in this appeal was what happened to the appellant in the spring and early summer of 2009; and whether his claimed problems with the Sri Lankan authorities had been satisfactorily resolved by his older brother, so as to enable him to go back safely to Sri Lanka in 2014; or whether they had not been resolved by 2014 with the consequence that the charges allegedly brought against him in 2009 remained outstanding, as did a warrant for his arrest allegedly issued in 2009.

22. In order to evaluate whether the judge erred in law in not making a specific finding on the letter from VG, it is necessary to consider the contents of the letter and the wider context.

23. VG does not claim in the letter to have inspected documents on a court file. He does not claim to have been instructed to inspect the court file

held at the Magistrates' Court in Kandy to ascertain what is held on the file in respect of the appellant, and to produce copies of the said documents. Instead, VG refers to a file "*maintained by me and the information I have gained*". However, VG does not list the documents on his file, or purport to produce them, and he does not state when the documents came into his possession.

24. As noted earlier, the evidence of the appellant at the hearing was that his older brother had been responsible for obtaining the documents from Sri Lanka, including documents from the court file.

25. VG only confirms appearing for the appellant at a hearing in the Magistrates' Court in Kandy on 15 April 2009 and securing the appellant's release on bail in the sum of 500,000 rupees. He does not mention any further court appearances, whereas the appellant gave oral evidence of further court appearances, as noted by the Judge.

26. Thirdly, while he confirms that an arrest warrant was issued by the Magistrates' Court in Kandy after his client failed to report to the police station after 10 June 2009, he does not produce a copy of the arrest warrant or an order of the court directing that the appellant should be arrested. He also does not confirm that any charges were brought against the appellant at the time, still less that any charges against the appellant remain outstanding. He says that he believes the charge against his client has become *"more severe"* because of him not following the bail conditions, but he does not identify what the charge is or was.

27. Although the Judge does not make a specific finding on the probative value of VG's letter, it is implicit from his other findings that he finds it to have little probative value.

28. Moreover, it is not true that the Judge fails to engage with the contents of VG's letter. As the contents of VG's letter partially mirror the appellant's account of how the case against him progressed, the judge engages with the account given by VG by engaging with the account given by the appellant, pointing up its inner contradictions and the respects in which it lacks credibility (such as the appellant obtaining the medical diagnostic ticket directly from the police in 2009) and the respects in which it is not consistent with documents allegedly on the court file – documents which were not said to have obtained from the court by VG, but which were instead purportedly obtained from the court by F, who is neither a professional nor an independent witness.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

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.

Signed Date 5 September 2017

Judge Monson

Deputy Upper Tribunal Judge