



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07029/2016

THE IMMIGRATION ACTS

Heard at Field House
On 21 September 2017

Decision & Reasons Promulgated
On 03 October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MWE
(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr. I. Jarvis, Home Office Presenting Officer
For the Respondent: Mr. J. Martin, Counsel, instructed by Nag Law Solicitors

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Randall promulgated on 13 July 2017 in which he allowed MWE's appeal against the Secretary of State's decision to refuse to grant asylum.

2. For the purposes of this decision I refer to MWE as the Appellant, and to the Secretary of State as the Respondent, reflecting their positions as they were before the First-tier Tribunal.
3. As this is an asylum appeal, I make an anonymity direction.
4. Permission to appeal was granted as follows:

“It is clear from the judge’s decision that adverse credibility findings have been made in relation to the appellant’s claim. It does seem that the judge allowed the appeal on the documentary evidence from Sri Lanka, which the judge found to be genuine. Of course, it was open for the judge to find documentary evidence to be genuine but, in this case, it is at odds with other adverse credibility findings made by the judge.”
5. The Appellant attended the hearing. I heard submissions from both representatives following which I reserved my decision.

Submissions

6. Mr. Jarvis relied on the grounds of appeal. He referred to the case of JT (Cameroon) [2008] EWCA Civ 878, in particular paragraph 19. The assessment of credibility must be done in the round. He submitted that this was a fairly detailed decision. Near the end the judge had referred to the cases of Tanveer Ahmed [2002] UKIAT 000439, and PJ [2014] EWCA Civ 1011, but in the substance of the decision the judge had not applied either case lawfully.
7. In paragraph 26 the judge had set out how the Appellant had not made any reference to a fear on return in his previous appeal in November 2014 although the claimed events had taken place in 2010 and 2011. In paragraph 29 the judge made a finding that the Appellant’s asylum interview was not “a particularly impressive interview which, absent documentary evidence in support of the claim, or other live witnesses, would leave this appeal struggling to succeed”. In paragraph 30 the judge found that there was a significant delay in the Appellant claiming asylum from when he started to overstay in May 2014 to when his claim was made in January 2016. Again, the judge did not find his explanation adequate and made a finding that the Appellant’s credibility was adversely affected.
8. In paragraph 33 the judge referred to the letter from the British High Commission (the “BHC letter”) regarding documents from Sri Lanka, and then turned to consider the documents [34] to [41].
9. Mr. Jarvis submitted that, when reading through the findings, there was no explanation for why the Appellant had claimed asylum so late and not on entry to the United Kingdom in October 2010. His entry to the United Kingdom was some five or six years before the asylum claim was made. The Appellant had failed to give

a reasonable explanation. He questioned why these matters had not adversely affected the weight to be given to the documents provided. The Respondent was entitled to an explanation as to why the letters should be given weight in the light of these adverse credibility findings. He submitted that the judge had instead expected to see evidence from the Respondent that these particular documents were forgeries. In paragraphs 33 to 35 the judge referred to the fact that no checks had been made. In paragraph 35 the judge found that the Presenting Officer would have to allege that an extensive range of documents had been fabricated, but Mr. Jarvis submitted that this was not the case.

10. In paragraph 41 the judge referred to the only attack on the documents being the generalised assertions in the BHC letter but Mr. Jarvis submitted that this was not the only attack. There was an attack on the overall credibility of the Appellant. Overall no weight should have been placed on the documents.
11. The judge had found against the Respondent on the basis that checks had not been carried out on the documents. He had set out first the bad points and then the good points. At the end of the day, he had concluded that the documents should be given more materially important weight than the adverse credibility findings, but he had failed to give reasons for this.
12. In paragraph 35 the judge referred to “lawyer to lawyer” correspondence. Mr. Jarvis submitted that Nag Law had not verified the lawyer in Sri Lanka, but had taken the Appellant’s evidence that this was the person involved in his case in Sri Lanka. There was a presupposition that the person in Sri Lanka was a genuine lawyer. He questioned why the judge had considered this letter to be a genuine letter from a genuine lawyer. That was not Nag Law’s evidence. In summary, the judge had switched the burden of proof onto the Respondent and had not applied the case law correctly.
13. Mr. Martin submitted in response that it was a thorough decision, as had been pointed out by Mr. Jarvis. He referred me to paragraph 10 of SM (Section 8: Judge’s process) Iran [2005] UKAIT 00116. He submitted that, in asylum appeals, an individual’s account on its own may not be particularly persuasive for a number of reasons. In these cases, if a judge was to consider only the appellant’s testimony, the appellant would be found not credible. However, if these individuals could put forward other evidence, particularly given the burden of proof, it would be enough to find their accounts credible.
14. The judge had gone into great length and detail. He rejected the submission that there was an obligation on the Secretary of State to investigate the documents [39]. He had considered matters in the round, and having looked at the totality of the evidence, had assessed whether the negative had outweighed the positive [46].
15. Taking matters in the round and weighing them together, it was evident that he had not put undue weight on any particular part of the evidence but had maintained the

correct approach. If the judge had said, when making his adverse credibility findings at [26] to [30], that he could not believe a word the Appellant had said, it would clearly be inconsistent to put weight on the documents. However, this was not what he had found.

16. The judge had found the Appellant's interview not to be particularly impressive, and his answers on their own posed questions, but this did not mean that the judge was not entitled to consider the documents. He accepted that false documents are often presented in Sri Lankan appeals, but submitted that the standard of documents varies, and the documentation put forward by the Appellant was impressive. This was not a case where the documents were sent directly to the Appellant from Sri Lanka but they had been received by the Appellant's representatives.
17. Mr. Martin submitted that the judge was entitled to attach greater weight to the lawyer to lawyer correspondence. The correspondence was between the Appellant's representatives and an individual in Sri Lanka who had produced his Bar Association Card and a print-out of his Bar registration [34]. The documents from the court were date-stamped and had been certified as genuine. The judge found that, because the documents were so impressive, the Respondent has to do more than just point to the BHC letter.
18. On the face of it the documents are extremely impressive. He submitted that no allegation of forgery had been made in respect of the documents from the LLRC. The Appellant had been able to produce documents through his solicitors showing that he had made a complaint to the LLRC. This brought him within the risk categories set out in GJ.
19. It is clear that the judge was still troubled by the final assessment [46], but he concluded that the documents outweigh the negative points. He had given reasons for rejecting the submissions of the Presenting Officer regarding the documents at [31] and [32]. In summary he submitted that the judge did not place too much weight on the documents just because there had been no verification, but he found that he would need more to reject these documents than a generic letter.
20. Mr. Jarvis submitted that it was not purely an argument about the structure of the decision. He asked where the Respondent could see the light from the adverse credibility findings cast on the positive findings regarding the documents. The consequences of the British High Commission not checking each and every document did not change the way in which documents from Sri Lanka should be assessed. They should be treated no differently than documents from anywhere else. In relation to the LLRC letters, documents could be forged no matter what they were.
21. He submitted that Tanveer Ahmed was fair to both sides - the documents could not be condemned only because they were not corroborated, but the Appellant could not rely on them just because the Respondent had not checked them. There was no requirement on the Respondent to produce contradictory evidence regarding the

documents. The judge had to apply the consequence of finding against the Appellant under section 8 to the documentary evidence provided. He had rejected the Appellant's explanations as unreasonable but there was no consequence of this. He submitted that it was possible that the explanation for the delay was that the Appellant had been attempting to acquire these false documents. The Secretary of State simply did not know from the decision. The light of the adverse credibility findings had not been cast on the rest of the evidence.

Decision and reasons

22. I have carefully considered the decision and grounds. I find that there is no error in the way in which the judge has structured the decision. I find that he has considered first the evidence of the Appellant himself and then turned to consider the documents provided by the Appellant.
23. The judge does not find the Appellant to be completely lacking in credibility, but finds some of his explanations unsatisfactory. At [26] he considers the earlier appeal where the Appellant did not state that he was afraid of returning to Sri Lanka. He finds that the Appellant "will need to address why his fears were not raised earlier".
24. At [28] he considers the impact of section 8 of the 2004 Act on the Appellant's credibility. He finds that he has delayed in bringing his claim and that he did so only after the commencement of enforcement action. "I find that both these aspects have an adverse effect on the Appellant's credibility." However he does not find that his credibility is damaged completely.
25. At [29] he considers the Appellant's asylum interview. He finds the Appellant's representatives attempt to correct unclear matters with further representations to be unsatisfactory. "Generally, I find that this was not a particularly impressive interview, which, absent documentary evidence in support of the claim, or other live witnesses, would leave this appeal, struggling to succeed." He finds that it has been accepted by Mr. Martin that the Appellant would be in difficulty with regard to his claim, were it not for the complaint to the LLRC. It was submitted by Mr. Martin at the hearing of the First-tier Tribunal that in 2010 people did not realise that complaining to the LLRC could put them at risk. The judge is aware of the inadequacies of the Appellant's evidence alone as the basis for a claim.
26. At [30] to [32] the judge addresses the submissions of the Presenting Officer. He finds that there was significant delay in the Appellant's claiming asylum. He finds the Appellant's explanation for the delay to be inconsistent with his level of education or with his involvement with lawyers both in the United Kingdom and in Sri Lanka. He addresses the submissions made by Mr. Martin regarding the delay, but concludes that "his delay, and his inadequate explanation as to why it occurred, affects his credibility adversely". Again, importantly, he does not find that the Appellant's credibility is completely damaged.

27. Having made a finding that the Appellant's credibility is adversely affected but not completely damaged, at [31] the judge deals with the Presenting Officer's submissions regarding the arrest warrant. The judge finds that the Appellant would not necessarily know the procedures required to obtain various documents in Sri Lanka, and does not hold this point against the Appellant. At [32] he deals with further submissions of the Presenting Officer relating to the complaint to the LLRC. The judge states that these points have substance and cause him "some concern", but on consideration affords them "limited adverse weight". He deals with a further point made by the Presenting Officer, but finds that it has been addressed by the submissions of Mr. Martin. These are all findings in favour of the Appellant's case.
28. At [33] the judge turns to consider the BHC letter on which the Presenting Officer relied in relation to the abuse of lawyers' letters in Sri Lanka. He refers to the fact that the allegations in the BHC letter are "generalised", and finds that the BHC letter does not deal with the specifics of the Appellant's case, nor does it deal "in terms" with LLRC correspondence. These findings were open to him and have not been contested.
29. At [34] the judge deals with the correspondence between the Appellant's representatives and his lawyer in Sri Lanka. While noting the criticism made by the Presenting Officer that the Appellant's representatives not gone back to ask further questions of the lawyer, he notes that the Presenting Officer did not specify what it was that was missing from the lawyer's response. He notes that the lawyer has not explained how he accessed the documents, but also finds that he would not expect to see any involvement of the police stated on the face of the letter.
30. The judge finds the documents are generally consistent. He states that the Presenting Officer provided no "detailed analysis of the extensive and generally consistent documents". The judge then sets out the documents which he has before him including the Bar Association Card, and the printout of the online Bar registration. He refers to the fact that the documents have a date stamp, and that there is a letter from the court confirming that the documents are true copies. He finds that the reference is in common to all of the documents.
31. He then turns to consider the material relating to the LLRC. He notes that the Presenting Officer made no specific submissions about this material beyond stating that the Appellant's entire claim was a fabrication. At [35] he sets out his consideration of these documents. It is clear that he is aware of the possibility of forged documents from Sri Lanka, and notes the Respondent's statement that the "preponderance of documents submitted for verification are not genuine". However, he then gives reasons for giving the documents produced by the Appellant weight, that there is a very extensive range of documents to fabricate in the Appellant's case, that there are no quoted examples in the BHC letter of material from the LLRC failing verification tests, and that the documents were produced as a result of lawyer to lawyer correspondence.

32. I find that he was entitled to take these factors into account. It is the case that there were extensive documents produced, which the judge has found to be consistent. He was entitled to place weight on the fact that there are no quoted examples of LLRC letters failing verification tests. Given the significance of these letters, it is not unreasonable to expect that, were there to have been forged examples of these produced to the BHC, there would have been a reference to this in the BHC letter. Finally, the judge finds that he can place weight on these letters because they were produced as a result of lawyer to lawyer correspondence, and he has already referred to the fact that the Bar Association documents were provided.
33. However, the judge does not stop there in his assessment of the documents. At [36] it is clear that he appreciates that the focus is on the documents. Significantly he does not accept them just because there is no DVR. He rejects the submission made by Mr. Martin that the Respondent's failure to check the documents means that he must treat them as genuine. He sets out the principles set out in Tanveer Ahmed, and correctly states that he must consider the matter in the round before deciding whether he can place reliance on the documents. He then correctly states that, following the case of GI, if he accepts the documents, the Appellant satisfies risk categories (c) and (d).
34. At [39] the judge refers to the fact that the hearing had previously been adjourned on the request of the Respondent in order that she could check the documents. No such checks were carried out. However, the judge does not place undue weight on this failure. He rejects the suggestion made in the Appellant's skeleton argument that there was an obligation on the Respondent to investigate, with reference to the case law.
35. At [40] he gives further consideration to the weight to be given to the documents taking account of a discrepancy in a date. He accepts the submission that this could be for number of reasons, and finds that this alone is not a reason for all of the correspondence to be doubted. This finding was open to him.
36. At [41] he gives further consideration to the documents in the light of the BHC letter. He finds that the inference should not be made that all, and therefore these, documents are not genuine. This finding was open to him. He then states that the only attack on the documents is a generalised assertion in the BHC letters. Mr. Jarvis submitted that this was not the only attack, but that an attack had been made on the Appellant's credibility. However, the judge is aware of the attack on the Appellant's evidence in general, and addresses these submissions in the same paragraph [41].

"In effect, although Mr. Bassi submitted that this entire case was a fabrication, he provided no specific reasons as to why these documents should be found to be fabricated, beyond the generalisations from the BHC and the Appellant's evidence generally."

He has already given reasons for rejecting some of the Presenting Officer's specific submissions. It was not submitted that detailed and specific criticisms of the documents were made in the First-tier Tribunal, and it is open to the judge to find this in the absence of specific criticisms, he is left only with the general submission that the entire case was a fabrication.

37. I find that the judge is aware of the attack on the Appellant's credibility in general, and although he states that the only attack on the documents is the assertions in the BHC letter, he goes on in the same paragraph to acknowledge that another reason given by the Respondent as to why the documents should be found to be fabricated is the "Appellant's evidence generally". However, he is also aware that the submission made in respect of the Appellant's evidence is only a general assertion of fabrication.
38. The judge correctly states at [42] that he must consider matters in the round. He proceeds to address a number of subsidiary issues. These are all in the Appellant's favour and relate to his exit from Sri Lanka [43], discrepancies caused by sloppiness on the part of his solicitors [44], and the explanation as to why the police continue to visit his parents' house [45]. In the case of his exit from Sri Lanka and the police visits to his home, these are significant matters.
39. Having made all of the above findings, the judge then comes to his conclusion at [46]. Although he finds that the reasons for delaying his claim on asylum were "broadly unsatisfactory", he finds that the main issues arose "only as, and especially after" he left Sri Lanka. He does not find that the broadly unsatisfactory reasons damage his credibility completely. He finds, against the delay, that "the documentary evidence is impressive", and that there is nothing specific regarding the documents to suggest that they are forged. This finding was open to him on the basis of the evidence presented to him. He then states:
- "When I look at the evidence in the round, and take account of the lower standard of proof, by a narrow margin I find that the Appellant has established his account, and that the documents are genuine".
40. I find there is no error in the judge's consideration of the evidence. He has weighed up the unsatisfactory reasons given for the failure to claim asylum earlier, but he has balanced this against the documentary evidence provided to him, and having carefully considered the documents, together with all of the arguments both for and against their genuineness, he has decided that they are genuine and therefore, given the lower standard of proof, which he clearly sets out, he finds that the Appellant will be at risk on return. I find that the judge has not simply made adverse credibility findings and then forgotten them in his consideration of the documentary evidence, but he has made clear and detailed findings as to why he can rely on the documents provided to him. He has not decided that they are genuine simply because no document verification has been carried out, but he has given reasons for why he can place reliance on these documents in the light of the documents

themselves, and the evidence which was before him. Importantly he did not find the Appellant to be completely lacking in credibility, and has not found that he cannot believe anything that the Appellant says.

41. I find that the judge has considered the evidence in the round, but has found the documents can be relied on, and therefore he has found, to the lower standard of proof applicable, that the Appellant's claim succeeds.

Notice of Decision

42. The appeal is dismissed. The decision does not involve the making of a material error of law.
43. 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 2 October 2017

Deputy Upper Tribunal Judge Chamberlain