



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: PA/00935/2016
PA/00939/2016
PA/00940/2016

THE IMMIGRATION ACTS

Heard at Field House
On 22 November 2018

Decision & Reasons Promulgated
On 17 December 2018

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

AD
DD
ID

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms A Seehara, Counsel instructed by Nag Law Solicitors

For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Sri Lanka of Sinhalese ethnicity. They are husband, wife and daughter. Their respective dates of birth are 27 July 1975, 29 February 1980 and 3 July 2013. I understand that there is now a second child of the family. They made a claim for asylum and this was refused by the Secretary of State on 21 January

2016. Throughout this decision I shall refer to AD as the Appellant. His family is dependent on his application.

2. There is a history of litigation in this matter. The First-tier Tribunal dismissed the Appellant's appeal against the decision of the Respondent in 2016. This decision was set aside by the Upper Tribunal and remitted to the First-tier Tribunal. The First-tier Tribunal dismissed the appeal in October 2017. Permission was granted to the Appellant. I found that the FTT materially erred and set aside the decision to dismiss the Appellant's appeal. The matter came before me for a resumed hearing.
3. The error of law decision reads as follows:

"28. I have considered the decision as a whole to determine whether the judge erred in failing to give adequate reasons. The judge did not find the Appellant and his wife credible. She found their evidence vague and evasive. The reason given for this in respect of the Appellant's wife, was that she did not find her evidence about the Appellant's arrest credible. However, the evidence the judge referred to did not relate to the second arrest. It related to the first arrest and made more sense in this context because the Appellant was not married at that time and he and his wife were not living together. I conclude that this is an error of law. The Appellant's wife's evidence was material evidence supporting his claim; particularly about the second arrest and his state on release about which the judge did not make findings. Thus, ground 1 is made out.

29. There is merit in grounds 2 and 3. It is not necessary for me to engage with them in significant detail. Taken cumulatively the errors are material. The judge misunderstood the relationship between the Appellant and the surety. The judge did not engage with the Appellant's evidence in respect of his relationship with T which was capable of supporting the arrangements he made after T's death. There was no evidence that the owner of the nightclub did not want to be associated with Tamils. On the Appellant's evidence T's LTTE associations were not known until after his detention in May 2010. This undermines the judges' (sic) conclusions at [54].

30. The Appellant's evidence was that he had been falsely accused and it may not be that surprising that the investigation report would be at odds with the Appellant's evidence before the FtT. The judge attached weight to the DVR. This relied on information from CID in Sri Lanka that confirmed that the arrest relied on by the Appellant was false. Whilst the judge was entitled to attach weight to the delay in obtaining documents, she did not properly engage with the issue of reliability of the documents in the context of the method of enquiry; see *VT*.

31. For all the above reasons the judge materially erred. I set aside the decision of the judge to dismiss the Appellant's appeal. I have regard to Paragraph 7 of the Practice Statement of 25 September 2015. There have been two appeals in the FtT. The matter will be remade by the UT. I make the following directions:

- 1. The Appellant is to serve and file a paginated and indexed bundle not later than 14 days before the hearing.**
 - 2. The Appellant is to request the services of an interpreter if required not later than 7 days before the hearing."**
4. In response to my directions the Appellant served a consolidated bundle. He relied on a document not within that bundle, including a letter from his mother of 31 October 2018. There was also a bundle entitled "Background Evidence" for the hearing on 15 June 2016 on which Ms Seehara relied. Ms Seehara relied on her skeleton argument that was before the First-tier Tribunal Judge and submitted the case of PA (protection claim: Respondent's enquiries; bias) Bangladesh [2018] UKUT 0337.
5. The Appellant relied on the evidence that was before the FTT which is found in the consolidated bundle. It became clear at the hearing that this bundle was not consolidated. In addition to the evidence that was before the First-tier Tribunal the Appellant relied on a evidence from his mother, a medical certificate relating to his wife and further background evidence relating to Sri Lanka. I expressed concern at the manner in which the Appellant's solicitors prepared their client's case for the substantive hearing.
6. The Appellant's evidence is in his witness statement at page 61 of "consolidated" bundle. In addition, he gave evidence in Sinhalese through an interpreter. His evidence can be summarised. He is from Colombo. His mother and sister live in Colombo. His father is deceased. The Appellant worked in various jobs in Sri Lanka in the hospitality industry. He has qualifications up to A level and he completed a diploma in Computer Studies and Hotel Management. In May 2002 he was employed in a managerial role in a nightclub in Colombo called "Royal Boss". He had 30 to 40 members of staff working under him. He would from time to time recruit new members of staff by advertising in newspapers. He asked applicants to send their CVs and interviews would be arranged. There would be security checks. A check would be made with the village headman of a village where an applicant came from and that person would be asked to provide a character certificate. An applicant's national ID card was checked to ensure that they were over 18 and nationals of Sri Lanka. In December 2009 or early January 2010 the Appellant placed advertisements for various positions. A person came forward, TG. He was from a village in Vavuniya. An interview took place and security checks completed. TG was hired as a cleaner on a three- month probationary period.
7. In April 2010 TG asked for a week off work to visit his family. The Appellant agreed to him having three days off because it was a busy time. TG did not return after three days. On the fifth day the Appellant called him on his mobile but was unable to contact with him. The day after that the Appellant called a landline number having checked his file. He made contact using this number with TG's parents. They informed the Appellant that they had seen TG two days earlier, but that they had not seen his since then. The Appellant called again on 2 May 2010 and spoke to TG's father. He told the Appellant that TG's body had been found in a well.

8. TG was a hard worker and the Appellant had helped him when he needed money. TG had come to the Appellant's home and done some painting for him. The Appellant thought that he was a trustworthy and genuine person. Following the news of his death, the Appellant arranged to visit TG's home and the hospital where TG's body was. This was a five-hour journey. He saw that TG had been shot in the head. The Appellant gave money to his family to help with the funeral arrangements. TG's father told the Appellant that the funeral was on 5 May 2010. The Appellant was told by his boss to give the family some money. Around 25 people from the nightclub went by coach to the funeral.
9. On 7 May 2010 four CID officers attended the Appellant's workplace and showed him their ID. He was questioned for about two hours in a room at the nightclub. He was asked how he knew TG, how he had been hired and what checks had been done on him. The Appellant told them. On 10 May 2010 six different CID officers attended the Appellant's home and they searched the property. They did not find anything. However, the Appellant was taken away in a van, beaten and accused of being an LTTE supporter. He was blindfolded and held down. He did not see where he was taken. They told him that he was a dirty, Sinhalese person who had helped the LTTE. He was accused of being an LTTE member and of sending money to the LTTE from the nightclub. He was accused of allowing LTTE members to come to the club and giving them jobs at the club. He was detained for seven days. After seven days on 17 May 2010, he was taken to Fort Magistrates' Court in Colombo. The Appellant did not have a lawyer. He denied the allegations, he was remanded in custody, handcuffed by prison officers and taken to Wellikada Prison where he was detained for fourteen days. He was able to bribe one of the prison guards to allow the Appellant to contact his mother and on 18 May 2010 his mother, brother-in-law and friend came to visit him in prison. His friend returned with a lawyer. During his stay at Wellikada Prison he was told that if he told the truth about the LTTE they would help him. He was not beaten during his time there. He returned to the Magistrates' Court on 31 May 2010. He was represented by his lawyer who helped him get bail. A surety of 3 lakhs was paid and his fingerprints were taken. He was released subject to reporting at his local police station on the first Monday of every month. His lawyer told him that the case against him would continue. When the Appellant was interviewed by the Home Office he did not have court documents. He has since obtained these with the assistance of his lawyer.
10. The Appellant's employment was terminated. The Appellant approached an agent with a view to leaving Sri Lanka. The agent said that he would not be able to get a visa for the Appellant in his own right, but if he was able to marry an application could be made for his wife to study in the UK and the Appellant could be her dependant. The Appellant did not explain to his girlfriend what the agent said, but she consented to go abroad in any event. She had been planning to study abroad. She told him this before they were married. They have known each other since 2005. The Appellant's wife applied for a passport which was issued on 5 July 2010. They married on 21 July 2010. His wife was working before they married. They gave the

agent their marriage certificate and wife's education certificates so that an application could be made.

11. On 2 August 2010 the Appellant reported at the police station. He was detained and transferred to another detention centre where he was held for 53 days and questioned on average four times a day. He was told that he had weapons and that he had sent money to the LTT. He was accused of helping LTTE members from abroad. He was tortured daily. This included having a rope tied around his wrists and being dragged across the floor. He was kicked, hit and burned with cigarettes. He still has burn marks on the back of his left hand. Most of the injuries did not leave permanent scarring, although the Appellant described having to struggle when lifting with his right shoulder and pain in his lower back. On 24 September 2010 he was taken to court. His lawyer was there. His family paid 5 lakhs and his brother-in-law had to sign before bail was granted on the same conditions as before, to report on the first Monday of every month.
12. The Appellant's student application was successful. Visas were received in December 2010. Because there was a pending court case the Appellant could not go through the airport without help. The agent said he knew someone at passport control at the airport and this person met the Appellant at the agent's office. For payment he told the Appellant to come to his counter at the airport and he would let him through. There was no problem going through the airport at Colombo. They arrived at Heathrow Airport on 26 December 2010. The Appellant did not claim asylum at the airport because he did not know about the process. He was focused on getting to safety. He knew that they had visas valid until 8 May 2013. His wife enrolled at Fulham Chelsea College and the Appellant secured employment for the Slug & Lettuce Restaurant and later DHL. Their daughter was born on 3 January 2013. The Appellant made a claim for asylum on 25 August 2015.
13. The Appellant's evidence is that the police have been to his house asking about his whereabouts. A warrant has been issued for his arrest and it is not safe for him to return to Sri Lanka. The Appellant clarified his evidence relating to these visits. The first visit took place at his mother's home in March 2011. Two people in civilian clothing came to the home asking his mother about the Appellant's whereabouts. He was not in the country at that time. There was a second visit but he cannot remember when this took place. He describes his mother being "scolded" by the visitors. They asked about the Appellant's whereabouts and said he was an LTTE supporter. The second visit took place about five to six months after the first. The visitors were different to those who visited on the first occasion. Between 2011 and September 2018 when the last visit took place, there were a number of visits. As a result of this his mother went to live with the Appellant's sister. She returns to the family home from time to time. She was present during approximately six visits. Neighbours report visits when she has not been there.
14. The nightclub closed down about a year ago and the Appellant believes that whoever took over from him must have had a similar problem. He has not been in contact

with anyone other than his mother and sister in Sri Lanka. He came to the UK in order to hide because there was a threat on his life and does not want to make public his whereabouts.

15. The Appellant's wife, DD, gave evidence. Her evidence is contained in her witness statement of 8 June 2016. She adopted that statement as her evidence-in-chief and was asked supplementary questions and was cross-examined. Her evidence can be summarised. She has read her husband's statement and insofar as matters are within her knowledge, they are correct and true. They first met in 2005 when the Appellant was working at a nightclub called "Royal Boss". In May or June 2010 the Appellant suggested that they should go abroad. They were planning at that time to get married. She agreed to this. She was not aware of his problems with the authorities. After the marriage on 21 July 2010 the Appellant was arrested on 2 August 2010. His family were able to secure bail for him on 24 September 2010. She received a student visa in the first week of December 2010. They arrived in the UK on 26 December 2010. Since they have been in the UK the authorities have been looking for her husband and a warrant has been issued for his arrest.
16. In oral evidence she described the Appellant after his arrest on 2 August 2010 and how he was in pain, anxious and scared. The Appellant's mother says that there are frequent visits from the authorities looking for the Appellant. She did not know about her husband's problems until after they married. She confirms that her passport was issued on 5 July. At the time she consented to go abroad she was not aware of the Appellant's problems. Her family in Sri Lanka has not been approached concerning her husband's whereabouts. Her husband's sister's husband stood as surety.
17. I heard submissions. Mr Walker relied on the Reasons for Refusal Letter confirming that this was the refusal of 21 January 2016 (and not a letter which he referred to dated 22 January 2016). He submitted that there were concerns about the Appellant's credibility because of the delay in making the application. The Appellant has never been linked to the LTTE. He is not a member or supporter. His claim is without merit.
18. Ms Seehara relied on her skeleton argument and she made further submissions. She said that the Appellant has complied with his duty under paragraph 339L of the Immigration Rules. She referred to the what she described as limited Reasons for Refusal Letter. She submitted that it was accepted by Ms Ahmad at the error of law hearing that the FTT erred in attaching weight to the document verification report relating to the documents submitted by the Appellant in support of court proceedings in Sri Lanka. She referred me to the case of VI (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 00368 and the more recent case of PA (protection claim: Respondent's enquiries; bias) Bangladesh [2018] UKUT 0337. She submitted that no weight could be attached to the document verification report because to verify the documents the Respondent made enquiries with the actors of persecution. She referred me to a document at pages 48 to 52 of the Appellant's

bundle and a document which shows that the Appellant's solicitors invited the Respondent to go through a lawyer appointed by the High Commission to verify the documents. She referred me specifically to paragraphs 86, 87, 90, 91 and 92 of VT. She referred me to the evidence of the Appellant's lawyer at page 73 of the bundle and submitted that this has not been challenged by the Secretary of State. She referred me specifically to the documents that have been submitted by the Appellant including a detention order at page 82 of the Appellant's bundle and the arrest warrant at page 103. She drew my attention to the evidence from family members at pages 109 and 111 of the Appellant's bundle and a document at page 135 of the Appellant's bundle concerning background evidence relating to exiting Sri Lanka. She submitted that the Appellant left Sri Lanka before the issue of the warrant. The warrant of arrest is at page 103 and is dated 17 January 2011, by which time the Appellant was in the UK.

19. In terms of the delay in making a claim, Ms Seehara submitted that the Appellant had lawful leave here until 2015. It is credible that he did not have to focus on a protection claim. He did not need to worry about it. She referred to the Appellant's mother's letter which corroborates continuing interest and what the Appellant said in his asylum interview about post-flight visits to his mother's home. She relied on the Court of Appeal case of ME (Sri Lanka) v The Secretary of State for the Home Department [2018] EWCA Civ 1486 with specific reference to paragraph 16 which reads as follows:-

"The following are, in my judgment, the pertinent points. ME's arrest took place long after the cessation of the conflict in Sri Lanka. That led (or ought to have led) to the conclusion that he was perceived at that time as being of significant interest to the authorities. He was therefore a person who had fallen into category (a) of the risk categories identified in *GJ*. It would have needed an exceptionally strong case to persuade the FTT that he had now ceased to be at risk. The mere fact that he was released without charge and without reporting restrictions was not enough, because the authorities not only made two subsequent visits to his home; but they also searched it. The conclusion that should be drawn from that is that ME was still a person of significant interest; and moreover, that the authorities perceived that he might have more to tell them. Mr Jolliffe, in support of the FTT's decision, submitted that ME was no longer a person of interest because the authorities had got what they wanted from him. But that does not explain why, having obtained the information from ME about the location of one arms cache, the authorities nevertheless twice visited his home and searched it. Thus, the FTT was right to proceed on the basis that there was a real risk that the authorities would wish to question him further."

20. Ms Seehara referred me to the background evidence, specifically that at 155 of the Appellant's bundle, namely, the US Department of State 2017 Country Reports on Human Rights Practices: Sri Lanka, 20 April 2018 and the Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Special Rapporteur on the promotion and protection of human rights while countering terrorism: Mission to Sri Lanka (Advance Unedited Version); 23 July 2018 at page 163 of the bundle.

Conclusions

21. This case turns on credibility. The Secretary of State made a number of significant concessions in the decision letter. It is accepted that he was employed as claimed by the nightclub and that in respect of his employment he gave a “detailed account” which is “internally consistent.” The same is said about his evidence concerning TG. It is accepted that the Appellant hired TG and that he was found dead.
22. In relation to the Appellant’s arrest and detention the Respondent said this:

“It is also noted you were asked whether you had any supporting evidence and you stated that you would try to obtain it from Sri Lanka (AIR q. 107). However, to date, no such supporting evidence has been received. Consequently this aspect of your claim has been found uncertain and consideration will be given to whether the benefit of the doubt should be applied in the light of your general credibility and other factors, under paragraph 339L of the Immigration Rules” (see paragraph 26 of the Reasons for Refusal Letter).
23. Later in the letter the Respondent under the heading “Benefit of the doubt” concluded at paragraph 27 that the Appellant had failed to satisfy paragraph 339L (iv) which reads:

“... the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so;”

The Respondent took into account that the Appellant did not claim asylum at the earliest opportunity when he arrived in the UK on 21 July 2010. He did not claim asylum until 25 August 2015. The reason given in his interview was that he did not know anything about asylum and this was not considered to be a reasonable explanation bearing in mind that the Appellant is an educated man. It was thus concluded that the Appellant was not at risk on return to Sri Lanka.
24. It is agreed by the Respondent that a significant part of the Appellant’s account is credible up until his initial arrest on 10 May 2010. Looking at the Reasons for Refusal Letter the Respondent accepted TG’s connection with the LTTE and that after his death CID officers attended the nightclub and questioned the Appellant for two hours. The Appellant and his wife have given broadly consistent evidence about the second arrest. The Appellant’s evidence about both arrests is internally consistent. In addition, to support his evidence he has submitted a significant amount of documentary evidence relating to court proceedings in Sri Lanka and an arrest warrant. Mr Walker did not draw my attention to any inconsistencies in those documents and in terms of their reliability and the document verification report he drew my attention to what Ms Ahmad said at the error of law hearing.

25. I asked Mr Walker whether his position is that no weight could be attached to that document in the light of VT and what Ms Ahmad stated at the error of law hearing. He did not make clear to me the Respondent's position about this piece of evidence. Equally he did not however seek to argue that I should attach weight to the document verification report.
26. The document verification report on which the Secretary of State relies relates to the arrest warrant and not the other documents relied on by the Appellant. Checks were made by the Respondent directly with the CID in Sri Lanka and it was argued that there was a breach of confidentiality and that in any event the checks were not impartial. Ms Ahmad's position at the error of law hearing is set out at paragraph 27 of my decision as follows:
- "... She [Ms Ahmad] accepted following *VT* that the judge erred when considering the reliability of the DVR but that this was not a matter that I needed to consider unless I find that the judge had erred in respect of credibility."
27. In the light of the evidence as a whole and taking into account VT, I have to consider what weight can be placed on a document emanating from an alleged actor of persecution. In the light of the circumstances of this case, I conclude that the document verification report is not reliable and the arrest warrant and other documents (which are not the subject of the report) are. I take into Ms Ahmad's concession (which Mr Walker did not seek in any meaningful way to go behind) and that the Appellant and his wife's evidence is broadly consistent. I take into account all material circumstances including the delay in making a claim (which I deal with below). I accept the evidence of the Appellant and his wife and the supporting evidence from his mother and lawyer. There was no challenge of substance to this evidence.
28. The main attack to the Appellant's credibility on which Mr Walker focused was Section 8 of the 2004 Act. There has, by any account, been a significant delay by the Appellant in making a claim for asylum. I remind myself that when Section 8 applies, as it does in this case, I should look at the evidence as a whole. I can understand that he felt safe in the knowledge that he had leave to remain here. However, I am not particularly impressed by the Appellant's explanation, namely that he was not aware of asylum. However, this in my view is the strongest part of the Respondent's case (indeed it was the focus of Mr Walker's submissions before me) and it should not be treated as the starting point of an assessment of credibility: SM (Section 8: Judge's process) Iran [2005] UKAIT 00116. Having taken into account all of the evidence, I conclude that the delay is not fatal to the Appellant's credibility. Having accepted the Appellant's credibility I find that he was arrested and detained on two occasions. I accept his evidence that there is a warrant outstanding for his arrest and that CID officers have since he fled Sri Lanka attended his mother's home to look for him. It follows that the Appellant should he return to Sri Lanka would be at risk of arrest on the basis of his perceived support of the LTTE as a result of his involvement with TG. He falls into the risk identified in GJ (Post -civil war: returnees) Sri Lanka CG [2013] UKUT 319 because there is and extant arrest warrant and so it is likely that he will be on a stop list accessible at the airport. Having

accepted the Appellant's account in its entirety and that he is in fear of the authorities, there would be no sufficiency of protection and relocation would not be a viable option for him. Ms Seehara stated that there was no discrete Article 8 claim

Notice of Decision

The Appellant's appeal is allowed on protection grounds.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date

Upper Tribunal Judge McWilliam

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award / to make a reduced fee award of £ / to make a whole fee award of £ / to make a fee award of any fee which has been paid or may be payable (adjusted where full award not justified) for the following reason.

Signed

Date

Upper Tribunal Judge McWilliam