



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/01035/2016

**THE IMMIGRATION ACTS**

Heard at Glasgow  
On 14 May 2018

Decision & Reasons Promulgated  
On 5 June 2018

Before

UPPER TRIBUNAL JUDGE DAWSON

Between

JUDE ARJUNA CRIZANTHA LAZAROUS  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr E Mackay, Solicitor  
For the Respondent: Mr A Mullen, Senior Presenting Officer

**DECISION AND REASONS**

1. The appellant, a national of Sri Lanka where he was born on 2 March 1987, has been granted permission to appeal the decision of First-tier Tribunal Judge Kempton who dismissed his appeal on asylum, humanitarian protection and human rights grounds against the Secretary of State's decision dated 20 January 2016 refusing his protection claim. The appellant had first come to the United Kingdom on 1 May 2010 with his wife who had leave to enter as a Tier 4 student. The appellant's leave was extended as her dependant until 2015, however, this was curtailed on 9 December 2014. It was clarified before me that this was because the license for the course provider for the appellant's wife had been revoked. On 24 February 2015 the appellant and his wife made an application for leave on the basis of family life which was refused on 24 June

2015. There was an exchange of pre-action protocol letters but this did not result in judicial review proceedings. His claim for asylum was made on 6 October 2015.

2. In summary the appellant's case is that he had worked for the Minister for Land Development and Military Welfare for the armed forces as public relations officer. He was asked by the Minister in 4 October 2009 to drive four of his body guards to a particular location. The guards left the vehicle and later returned. The following day the appellant learned that a politician's home had been burned down the previous evening. The minister told the appellant that he had been betrayed as the politician knew the minister was behind the fire and advised him to leave and not return. The appellant went into hiding and left Sri Lanka. His fear is that he would be killed by the politician on return.
3. The Secretary of State did not accept that the appellant had worked for the Minister (Johnstone Fernando) nor was it accepted that the appellant had been involved with the starting of a fire at the property of the politician (Range Bandara).
4. The First-tier Tribunal Judge who proceeded in the absence of representation for the Secretary of State accepted the appellant may have been employed as a driver and reached these conclusions.

"32. It seems to me that the appellant may have been employed as a driver for Johnstone Fernando and to do some menial tasks. However, I do not accept that he was involved in any way in the reported arson attack on Range Bandara or that he could be linked to it in any way.

33. It was suggested that there are genuine reports to the police and that the letters in bundle 3 are genuine given that the letter at page 3 of bundle 5 was provided directly to the appellant's representative. The issue was that when the representative from the British High Commission came to the police station on 30 November 2016, to check the book of complaints made in 2009, the book was in the custody of the court for a legal procedure. If that were the case, then surely it would have been obvious to the police staff on that day that the book was out.

34. In any event, the first difficulty for the appellant is that of convention reason. Presumably it can only be imputed political opinion as he was working for a Minister. The second difficulty is that if he has indeed obtained a genuine report from the police, then, they have logged his complaints and without names they cannot do much more to investigate. There is no direct evidence of anyone from the Range Bandara team seeking the appellant. If he were being sought genuinely, I would have expected him to be mentioned by name in press coverage or for there to be an ongoing investigation being pressed by Range Bandara about the matter. The appellant's name appears nowhere in any publicly available document before me such as documents in the press.

35. I am not satisfied that there is a genuine current threat against the appellant. The letter at page 33 from Johnston Fernando is dated 16 February 2016, after the appellant claimed asylum. The same applies to the letter at page 35 from Neil Weerasinghe. The report at page 39 regarding a death threat and dated 13 December 2009 was issued on 2 May 2016. It is inexplicable that it would take the appellant so long to seek a copy of this document. The same applies to the affidavit of his mother at pages 43 and 45 dated 8 February 2016. It is all evidence produced

after the fact and not produced much closer in time to the events which the appellant alleges he was involved with on the periphery.”

5. Permission to appeal was granted by the FtT on the basis that:

“... the Judge [did] not pay heed to the appellant’s version of events or seemingly take it into account.

The remainder of the complaints concerning the credibility issues are similarly arguable. The Judge seemingly reaches conclusions at paragraphs 28 and 34 which do not reflect the full picture of the evidence given.”

6. The grounds are longer than the decision challenged taking account of the larger font of the latter. They begin with a summary but as was the case at the hearing the focus was on the substance which begins at paragraph 4. I take each in turn.

7. The first is that the judge had failed to have regard to all the relevant considerations illustrated by reference to paragraphs 29 to 32 of the appellant’s witness statement. The matter at stake was the delay in claiming asylum for five and half years. The complaint is that the judge had not referred to the explanation given for the delay.

8. The witness statement explains the position as follows:

“29. I did not claim asylum straight away as we were on a student visa and I thought if I have a three year visa I can safely stay here for three years and then go back. But I heard that another one of the bodyguards, Madushaka, had been killed. We were about to leave to go home but we heard this news and ended up applying to extend the visa one day or so before the visa expired. This was in 2013. I found out as my uncle Neil Weerasinghe told my parents what had happened. The bodyguard had been arrested in the north but was taken by the police and transferred to the police in the area where Range Bandara was from and after that no [one] heard another thing about him.

30. I contacted a lawyer in London who promised to find a new college for my wife. He didn’t tell me the name of the college, just asked me to sign the papers and then said he would sort the visa. Through him I got the visa until 2015. In February 2015, I applied for a provisional licence and I found out the Home Office had cancelled my visa. The problem is I hadn’t received any correspondence as it must have all gone to the lawyer. The firm was Theva Solicitors.

31. I was really worried I might be removed and sent back, because of my problems. I did not tell the full story to the lawyer but told him I had a difficulty in going back. So he advised me to make an FLR application. The decision came that it was rejected by the Home Office. I spoke to the lawyer and he said they could appeal. I paid for the appeal but after that I could not contact them again and did not hear anything more as he went back to Sri Lanka on holiday but I don’t know if he ever came back.

32. I didn’t know what to do. I was worried, but one of my friends said he knew an interpreter who would find me a [lawyer] who would be able to help. In September 2015 I got an appointment with a lawyer who helped me to make my initial claim and I claimed asylum.”

9. At the hearing it emerged that the application for further leave was in fact made in 2012 which Mr Mackay candidly accepted conflicted with the appellant's statement. The appellant applied as a dependant on his wife on 14 August 2012 before he became aware of further troubles in Sri Lanka for one of the bodyguards. The appellant's account shows that he was prepared to seek advice when he needed to and there is no explanation why he did not alert his lawyers in the UK of his concerns and take advice. Even when he was worried he might be removed in 2015, the appellant chose to apply for FLR in early 2015 when it was readily open to him to take advice and seek asylum. There is no doubt that the judge was aware of the reasons given for the delay and in my view entirely justified in drawing an adverse inference from him not applying earlier. I find no merit in this ground.
10. The second is that the judge erred by drawing adverse inference from the absence of the corroborative documents contemporaneous to the events in 2009 produced in support of the claim. It is argued that as appellant did not "need wish or intend" to claim asylum until 2015, there would have been no reason for him [to have obtained the documents earlier]. The judge had found it "inexplicable" that the appellant had taken so long to obtain a copy of a report issued on 2 May 2016 of death threat relating to 2009 and similar concerns over the timing of affidavit from his mother. Mr Mackay confirmed that this was not a rationality challenge and it is therefore necessary to see if there was a flaw in the judge's reasoning. In my view there was not. The judge was entitled to observe the less persuasive pull of material obtained some seven years after the event. There is no suggestion that she overlooked any of the material which is catalogued in paragraph 35 of her decision and the grounds do not argue a failure of any assessment of this material beyond her generally stated concerns. Mr MacKay sought to raise such a case but I reminded him that the grounds did not do so and with grounds of such length there had been plenty of opportunity to add this to the wide range of challenges delivered.
11. The third is a rationality challenge over the judge's apparent bafflement at the appellant being appointed to a post with the Minister with no experience whatsoever apart from sport and playing football. The job involved a number of relatively sophisticated activities including organising meetings and budgeting. The argument relies in essence on the culture of nepotism referred to in *GJ and others (post-civil war: returnees) Sri Lanka* CG [2013] UKUT 00319 (IAC). I see no merit in this ground. The judge was rationally entitled to question the appellant's limited skills for the job despite the background of nepotism implicitly acknowledged in paragraph 25 by reference to the help provided by his paternal uncle in the light of the detailed job specification. But as I reminded Mr MacKay she had accepted that he was taken on a more menial level and there is nothing in her conclusion which supports the serious allegation of irrationality.
12. The fourth is also a rationality challenge and it relates to the judge's adverse inference based on the appellant not having seen any smoke and on the absence of any burning smells, damage to clothing or any injuries to the four men. It is argued that this is not supported by the evidence. Coupled to this challenge is argument that the it could not be reasonably deduced from the attack that the appellant was aware two vehicles had been used. The judge said at paragraph 27:

“27. The appellant said at Q105 that the fact of driving the vehicle was sufficient to connect him to the incident. However, it was a private vehicle not a government supplied one. At Q102, the appellant said that Johnston told him that Range Bandara knew that the appellant was personally involved. However, there is no evidence that Range Bandara would know the names of the persons involved in the fire-setting. There is background evidence that such a fire did not take place. However, at S1 of the respondent’s bundle, being an article from the Sri Lanka Guardian, there is reference to the arson attack and that the group engaged in the crime used two vehicles for it. One of the persons sustained burn injuries and is being treated for his wounds. That person was admitted to hospital at 1.30 pm the following day, however, that man later slipped out of hospital about 3 pm without informing the hospital authorities. At S2, the article of 14 October concludes by saying that the police had not received a complaint from Range Bandara on such an individual.”

13. She then discussed the evidence of what the appellant saw and sensed at paragraph 28:

“28. In oral evidence, the appellant said that no one was injured when they returned to the car he had been driving. All he could say was that the yellow coloured can which they took with them when they got out of the vehicle was not with them when they returned. He said that the can was usually used by the minister to fill with liquor to give to the people who were helping him with his election campaign. He said that he smelled a petrol smell from the men once they returned inside the vehicle. He did not recall any injuries or damage to clothing. The appellant did not see anything go on fire. He did not see any smoke. Given that the document in the respondent’s bundle at S1 refers to two vehicles, I have great doubts as to the appellant’s credibility in relation to his account of being present at this incident. This is also coupled with the fact that he was not aware of burning smells, damage from burning to clothing or of injuries to any of the four men. He said he smelled petrol. However, there could be many other reasons for that. Potentially, the can which he guesses on that occasion could have had petrol in it rather than the usual liquor, could simply have been dropped off or given to other people. The men he drove may not have been anything to do with the arson attack or they might simply have supplied the flammable material. The matter is not conclusive. There is no evidence to link the appellant with arson attack.”

14. Helpfully Mr Mackay provided a copy of his note of the evidence from which the following is relevant:

Q: Any damaged or burnt thing you could notice?

A: Since I was ..... on duty, but I remember they had a yellow can when met by me, it was not with them on return journey.

Q: Writing on can? Size?

A: Plain. About 10 gallons. Usually they use for giving liquor to people pasting posters during election campaign.

Q: Notice any smell from can?

A: On journey there - No.

Return journey - smelt something from them, sitting behind the van.

Q: From them? The 4 people?

A: Some smell started on return, I presumed it came from them.

Q: Describe smell.

A: Foul smell.

Q: You're not aware of injuries or damaged clothing?

A: Since they came in, persuaded me to leave as quickly as possible, I don't remember anything. No injuries as far as I know.

Q: Other people involved?

A: I can't say other people joined, only know people who were with me took part. Keep everyone running.

Q: So would be case, they came from Bandara?

A: Didn't see, but I had shouted, let us go, go. I turned, they came rushing and got into vehicle.

15. The challenge is that there was a failure to have regard to the evidence and a finding was reached that no reasonable judge would have made. I reminded Mr MacKay again of the seriousness of a rationality challenge and referred him to *R (Iran) and Others v SSHD* [2005] EWCA Civ 982. In this case Lord Brooke commented at [11] and [12]:

"11. It may be helpful to comment quite briefly on three matters first of all. It is well known that "perversity" represents a very high hurdle. In *Miftari v SSHD* [2005] EWCA Civ 481, the whole court agreed that the word meant what it said: it was a demanding concept. The majority of the court (Keene and Maurice Kay LJJ) said that it embraced decisions that were irrational or unreasonable in the *Wednesbury* sense (even if there was no wilful or conscious departure from the rational), but it also included a finding of fact that was wholly unsupported by the evidence, provided always that this was a finding as to a material matter.

12. We mention this because far too often practitioners use the word "irrational" or "perverse" when these epithets are completely inappropriate. If there is no chance that an appellate tribunal will categorise the matter of which they make complaint as irrational or perverse, they are simply wasting time – and, all too often, the taxpayer's resources – by suggesting that it was."

13. In my view the judge endeavoured to analyse as best she could the incomplete evidence of what had occurred and to decide the facts based on that evidence. Whilst it is correct that the appellant's case is that he was not involved in the attack in the light of the scale of the fire, there is evidence that one of the arsonists had been burned, and evidence that the appellant was only required to wait a short time (twenty minutes) whilst his passengers were absent. It was entirely reasonable for her to note the absence of any corroborative clues on the returning bodyguards and decided the matter was not conclusive. The judge was evaluating the value of this evidence in the context of her credibility assessment as a whole.
16. The final ground is an additional rationality challenge to the judge's inference from there being no mention of the appellant's name in the press of any ongoing investigation. Here too an unsustainable challenge is being run. The ground contains an incomplete extract from paragraph 34 which reads as follows:

“34. In any event, the first difficulty for the appellant is that of convention reason. Presumably it can only be imputed political opinion as he was working for a Minister. The second difficulty is that if he has indeed obtained a genuine report from the police, then, they have logged his complaints and without names they cannot do much more to investigate. There is no direct evidence of anyone from the Range Bandara team seeking the appellant. If he were being sought genuinely, I would have expected him to be mentioned by name in press coverage or for there to be an ongoing investigation being pressed by Range Bandara about the matter. The appellant’s name appears nowhere in any publicly available document before me such as documents in the press.”

17. I agree with Mr Mullen that once the paragraph is considered in its entirety any force in the ground subsides. The judge was unarguably entitled to observe the absence of any mention of the appellant’s name in the materials and she gave sustainable reasons for this. There is no basis for asserting that her findings were irrational.

18. It is significant that there is no challenge to the implicitly adverse view the judge took of the appellant’s wife’s non-appearance and the absence of any from such a material witness who will have been aware of the claimed troubles from the outset. The considered approach and evident care the judge took is betrayed at paragraph 29:

“29. In his interview, the appellant was then asked about the people who subsequently came after him. At Q111, the appellant said that when he was at his uncle’s house the men caught him by his collar. However, the answer does not really make consistent sense, and I wonder if something has been lost in the translation, as the appellant was clear in his statement that he was at his wife’s uncle’s home and he escaped out the back before the men came in. The answer at Q111 does not read as if it is a correct translation of the appellant’s answer.”

Rather than taking a point on inconsistency the appellant was given the benefit of the doubt.

19. This is a case where the respondent was not represented. There is no suggestion that the questioning by the judge was for anything other than legitimate clarification. Even though the appellant was spared the rigour of cross-examination the judge found the appellant had not presented a credible claim. She gave sustainable reasons for her findings and her conclusions were rationally open to her on the evidence. I am not persuaded that she made the errors asserted in the grounds. This appeal is dismissed.

#### NOTICE OF DECISION

This appeal is dismissed.

No anonymity direction is made.

Signed

Dated: 25 May 2018

UTJ DAWSON

Upper Tribunal Judge Dawson