



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/02021/2017

THE IMMIGRATION ACTS

Heard at Royal Courts of Justice
On Monday 3 September 2018

Decision and Reasons Promulgated
On Tuesday 11 September 2018

Before

UPPER TRIBUNAL JUDGE SMITH

Between

A R S
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel instructed by KQ Solicitors

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

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

An anonymity order was not made by the First-tier Tribunal. However, as this is an appeal on protection grounds, it is appropriate to make that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

DECISION AND REASONS

Background

1. The Appellant appeals against the decision of First-tier Tribunal Judge John Hillis promulgated on 15 May 2018 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 9 February 2017 refusing his protection and human rights claims. The appeal before me concerns the protection claim.
2. The Appellant is a national of Sri Lanka. On 15 December 2004, he was convicted of murder and damaging property. He was sentenced to life imprisonment for murder with a minimum term of fourteen years and three years for damaging property to run concurrently. He claims to be at risk on return to Sri Lanka from the family of his murder victim. He also claimed that he would be at risk from his co-defendants in his crime. Mr Paramjorthy confirmed that this aspect of the claim did not form part of the challenge before me. He accepted that the Judge was entitled to reach the findings he did that the Appellant would not be at risk from this source.
3. The Respondent certified the protection claim under Section 72 Nationality, Immigration and Asylum Act 2002. The Appellant did not contest the certification. Mr Paramjorthy confirmed that this was the case and that the Appellant could not therefore succeed in a protection claim under the Refugee Convention. He confirmed that the only issue is whether the Judge was entitled to reach the findings he did on the evidence that the Appellant would not be at risk under Article 3 ECHR from the family of his murder victim.
4. There are two grounds of appeal, one procedural and one substantive. The procedural ground is that the Judge failed to appreciate the scope and nature of the appeal and had indicated at the outset that he considered he had no jurisdiction to hear the appeal because of the Section 72 certificate. It is said that, due to the error in failing to recognise that there remained an appeal on human rights grounds (including Article 3 ECHR), the Judge had not considered the documents until after the hearing and therefore made findings which were based on issues not put to the Appellant or his witnesses.
5. The substantive ground takes issue with the Judge’s findings in relation to a letter from Mr P Navaraj LIB dated 12 April 2018 (“the Attorney’s letter”) written in support of the Appellant’s claim to be at risk from the family of his victim.
6. Permission to appeal was refused by Designated First-tier Tribunal Judge Manuell on 6 June 2018 but granted by Upper Tribunal Judge Lindsley on 17 July 2018 in the following terms so far as relevant:

“... [3] The grounds of appeal contend, in summary, that firstly the First-tier Tribunal Judge did not understand that he had jurisdiction to hear the appeal due

to the s72 certification at the hearing so had not read the papers in full and so had raised matters in the decision which were not challenged by the respondent or put to the witnesses. Secondly, it is argued that the letter from P Navaraj, attorney was not given proper weight at paragraphs 31 to 34 of the decision due firstly to spelling issues when the respondent did not challenge this matter, and it was not put to Counsel at the hearing. The spelling differences are in fact commonly, if mistakenly, used variants. Secondly it is unclear what the contended discrepancy is between the letter and the evidence about when the appellant's mother received threats in Sri Lanka. The oral evidence of the appellant's father was that these happened two weeks after she arrived there.

[4] The grounds are arguable."

7. The matter comes before me to assess whether the Decision does disclose an error of law and to re-make the Decision or remit to the First-tier Tribunal for re-hearing.

Discussion and conclusions

8. Mr Paramjorthy did not pursue ground one as he accepted that ground two was the more persuasive. In circumstances where there is little detail about what of the issues taken were not put to the Appellant and in circumstances where the Judge did in fact go on to consider the question whether the Appellant would be at risk in Sri Lanka, Mr Paramjorthy was right to limit his submissions as he did.
9. The focus of the grounds is therefore on [31] to [34] of the Decision which reads as follows:

"[31] I have carefully read the contents of the letter from Mr P Navaraj LIB dated 12th April 2018 which was written by him at the request of the Appellant's uncle, Mr [M I], dated 3rd April 2018 as confirmation that the author had contacted the TID Department in relation to "Mr [A R S]'s case". The author confirmed that the "TID Department had received a complaint from Mr [T S] and family that Mr [A R S] is a LTTE member, and he has involvement with LTTE groups abroad and he was supporting LTTE groups. The TID had taken this complaint seriously and made further investigation, according to their intelligence information they believe that Mr [A] was already on the stop list to be questioned in relation to the conviction in the UK. The effort to prevent any further terrorist activities and for security reasons Mr [A R S] will be detained for further investigation". I have taken into account, as one factor to be weighed in the balance, that the author of the letter has not been consistent in the spelling of the Appellant's first name and remind myself that this fact alone is not determinative of the authenticity of the letter.

[32] The author of the letter in the fourth paragraph states "I was also requested to obtain information from Wellawatta police in relation to Mr [A R]'s mother's complaint which was made on the 1st February 2005 under reference 328/03. I visited the Wellawatte police to make enquiry about this complaint. I had been informed that so far no arrests had been made but the police believe that the [S] family had paid a group to attack his mother, as they have no evidence or witnesses they could not arrest anyone in this matter." I have taken into account that the author of the letter is inconsistent in his spelling of the police station as shown above and I remind myself that this fact alone is not determinative of the authenticity of the letter or its contents.

[33] I have also compared the contents of the fourth paragraph of the letter with the oral testimony and witness statements of the Appellant's father and the Appellant's mother. The contents of the letter are inconsistent with that evidence which is that it was the Appellant's father who was attacked by the deceased victim's relatives in Sri Lanka on 1st February 2005 and this was what caused him to leave the country. The Appellant's mother claimed in her oral testimony that she was threatened by "an old woman" during telephone calls she received two weeks after she had returned to Sri Lanka in February 2012. At paragraph 7 of her witness statement she stated that she travelled to Sri Lanka on 1st September 2012 for a one month visit and it was two weeks after her arrival that she received a threatening telephone call from an unknown person that the father of the deceased victim was looking for her. During cross-examination the Appellant stated at his mother returned to Sri Lanka possibly in 2007 or 2009 and not after that date.

[34] The above inconsistencies are not insignificant and I conclude cannot be overlooked as mere typographical errors or misspellings. Mr P Nararaj [sic] in the last paragraph of his letter stated that "this is a serious matter" and, in my judgment, as a lawyer who appreciates the seriousness of the situation he would have very carefully read the contents of that letter prior to signing it and sending it to the UK for such an important purpose, namely, the possible killing or torture or ill-treatment of this Appellant on removal to Sri Lanka. Additionally, a competent lawyer who was fully aware of the gravity of the Appellant's circumstances would have been very careful to ensure that he gave the correct details of the enquiry at the Wellawathe [sic] Police station. I have taken into account that he states the complaints made by the Appellant's mother were on 1st February, 2005 and were given the reference number 328/03. In my judgement, if he had genuinely enquiry of that police station giving the identity of the complainant and the specific reference number he could not have made the mistake that it was the Appellant's mother who had made the complaint of being attacked by the deceased victim's family rather than his father."

10. I accept, as did Mr Bramble, that typographical errors in a letter, unless they are particularly numerous or egregious is not sufficient, taken alone, to cast doubt on the genuineness of a document. Mr Paramjorthy confirmed that the Attorney's letter was written in English and not translated and so this is not an error in translation. However, he pointed out that the errors were minor, that the Attorney's first language is unlikely to be English, and that at least one of the errors may be due to a difference in spelling between the Tamil and Sinhalese languages as they relate to place and other names. Mr Paramjorthy also pointed out that the Judge had himself made typographical errors (as I have identified above).
11. However, as Mr Bramble also pointed out, the Judge has not focussed on those errors alone. He has reminded himself that those could not be determinative of the authenticity of the Attorney's letter. As both representatives submitted, and I accept, therefore, it is necessary to look carefully at what is said at [33] of the Decision as those are the only other reasons given for not accepting the Attorney's letter as authentic.
12. As Mr Paramjorthy pointed out, it is not necessarily inconsistent with the Appellant's father having been attacked in 2005 that the Appellant's mother would be the one to

report the attack to the police. As he also pointed out, that the police may have wrongly reported that it was the Appellant's mother who was attacked (or the Attorney had misunderstood what he was told) might not necessarily undermine the Appellant's case that it was the Appellant's father who was attacked.

13. I would be prepared to accept both submissions were it not for the fact that, as the Judge says, what is reported in the Attorney's letter is in both regards inconsistent with the statements of the Appellant's father and mother. They both confirm that (a) it was the Appellant's father who was attacked in 2005 and (b) that it was he who reported the attack. As such, there is a fundamental discrepancy between the Appellant's case as set out in his parents' statements about the attack in 2005 and what is reported in the Attorney's letter. That is the point which the Judge makes at [34] of the Decision. I should add (although the point is not taken by the Judge) that the document said to be a translation of the complaint which confirms the date as 1 February 2005 and which was filed with the Attorney's letter gives a name for the complainant which is not that of either the Appellant's mother or father (it is said to be "Ilamthambi Shanmunandan" which is not the name or even a similar name to either of them). However, this may be a mistranslation and I do not therefore give that point any weight in my consideration whether the Decision contains a material error of law.
14. Taken alone, I would not have accepted as sufficient the other point made at [33] of the Decision that the discrepancy between dates given by the Appellant and his mother as to when she was in Sri Lanka (in 2012) when she claims to have been threatened by the family undermines the Appellant's case in this regard. The Appellant was after all still in detention at the time and might not necessarily have been made aware of his mother going to Sri Lanka. However, the Judge was entitled to rely on that discrepancy as further reason to reject this aspect of the claim.
15. As the Respondent also points out (and as recorded at [22] of the Decision) it would be surprising if the Appellant's mother returned to Sri Lanka alone if, as is the Appellant's case, the Appellant's father had been attacked in 2005 to such an extent that he left Sri Lanka and in circumstances where there was not apparently any reason to believe that circumstances had improved (it being the Appellant's case that nothing had been done by the authorities about the attack). Although Mr Paramjorthy said that the Appellant's mother has now demonstrated via production of her passport that she was in fact in Sri Lanka in 2012, that does not undermine the point that her willingness to return is inconsistent with a fear of the family of the Appellant's victim based on the claim that an attack was perpetrated on the Appellant's father in 2005.
16. Therefore, although I do not consider that the typographical errors were sufficient to reject the Attorney's letter as not authentic, the fact that the report of the enquiries made of the police in relation to the 2005 attack is inconsistent with the evidence of the Appellant's parents was sufficient for the Judge to reject that evidence as holding any weight.

17. The Judge was also then entitled to reject as he does at [36] of the Decision the claim that the Appellant is at risk from his victim's family. Particularly of note in this regard is the Appellant's failure to mention the attack on his father at an earlier stage. As is noted in the Respondent's decision, the Appellant's case at that stage was only that his father had been threatened, causing him to leave Sri Lanka, that further threats were received when the Appellant's mother returned to Sri Lanka to sell the family business in 2010 (not 2012) and that it was then when the Appellant's mother made a complaint to the authority. That is a very different account to the one now given, the evidence of the Appellant's parents and that contained in the Attorney's letter. As the Judge points out, there is no reference in the Appellant's grounds of appeal to those matters as evidence of a risk at all.
18. For those reasons, the Judge was entitled to reach the conclusion which he did about the Attorney's letter and the claimed risk from the family of the Appellant's victim. Since that is the only basis of challenge to the Decision in ground two and Mr Paramjorthy did not pursue ground one, it follows that the Appellant has not shown that there is any material error of law in the Decision. I therefore uphold the Decision.

DECISION

I am satisfied that the Decision does not involve the making of a material error on a point of law. I uphold the Decision of First-tier Tribunal Judge John Hillis promulgated on 15 May 2018 with the consequence that the Appellant's appeal remains dismissed.

Signed
Upper Tribunal Judge Smith



Dated: 6 September 2018