



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07123/2017

THE IMMIGRATION ACTS

Heard at Manchester
On 3 August 2018
Given orally at hearing

Decision & Reasons Promulgated
On 6 September 2018

Before

THE HON. MR JUSTICE LANE, PRESIDENT

Between

JK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Harris, Counsel instructed by Nag Law Solicitors
For the Respondent: Mr Bates, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against the determination of the First-tier Tribunal in which that Tribunal dismissed the appellant's appeal against a refusal of the respondent to accede to his protection claim. Permission was granted by the First-tier Tribunal on four grounds which were drafted by Counsel who is not Miss Harris, the Counsel who appears before the Upper Tribunal today. Nevertheless Miss Harris relies on three of those grounds. The first is that the appellant provided the Tribunal with documentation which it is asserted objectively demonstrated that he used the

assistance of a qualified lawyer in Sri Lanka to procure copies of an arrest warrant in relation to him. Reference is then made to the documentation in question which includes a page said to be a photocopy of a bar identification of the Sri Lankan lawyer in question. There were also copies from the Magistrates' Court in Colombo of what was said to be arrest warrants that had been procured by the Sri Lankan lawyer.

2. The second ground is that judge failed to provide any reason as to why the late disclosure of these documents might diminish their relevance.
3. The third ground which is not relied on by Miss Harris contends that the judge made a finding that went beyond the scope of the decision in Tanveer Ahmed [2002] UKIAT 439 and amounted to a finding a forgery on the part of the appellant. Quite rightly that ground was not pursued. The judge made no finding of forgery.
4. The fourth ground is that there is an alleged inconsistency in the judge's finding regarding when it was that the appellant knew the authorities in Sri Lanka wished to arrest him.
5. With those grounds in mind, it is necessary to look in some detail at the decision of the First-tier Tribunal Judge. That decision runs to some 79 paragraphs. It is on any view detailed. The judge noted at paragraph 4 of the decision the chronology which culminated in the bringing of the protection claim. That claim had come only after the appellant had made an unsuccessful application for leave to remain as a dependent spouse, and had unsuccessfully appealed the refusal.
6. The judge then set out in some detail the issues relating to the appeal in terms of the country guidance on Sri Lanka and also various legal self-directions. The appellant's claim is dealt with beginning at paragraph 29. The appellant claimed to fear the police and to have been told by his father that the police were looking for him because he had made statements to the LLRC and the HRC, bodies investigating the activities of the government during the civil war between it and the LTTE.
7. At paragraph 31 the judge made findings in relation to an incident when the appellant was involved with the army, and when certain individuals had been killed. This was an incident that was said to have arisen at the time of a funeral. The judge found that the date of funeral as given by the appellant was somewhat confusing. The judge gave reasons at paragraph 31 for finding there were problems with this aspect of the evidence. The judge found that it was strikingly inconsistent of the appellant to have given different dates as to when the funeral was supposed to have taken place. At paragraph 33, the judge found that the appellant was also inconsistent as to the location of the funeral. In one account, he had referred to it as being in the Eastern Province; but in his asylum interview he referred to it as being in the north of the country. He then said that he had been misinterpreted and that the actual location was in the Eastern Province. The judge, beginning at paragraph 34, noted the number of inconsistencies between the appellant's account of the incident from what was recorded in various media reports put forward on behalf of the appellant. At paragraph 36 the judge considered it problematic that a letter of condolence from a

local human rights manager would have been written in 2000 in English. It was from someone who may have some knowledge of English but his first language was Sinhalese or Tamil. The judge also noted a rental agreement of December 1979, which had also been written in English. That was some ten years before the appellant had come to the United Kingdom. Overall, the judge decided to put no weight on those documents.

8. At paragraph 38, the judge returned to the issue of the press coverage of the killing of the individual named K and whether or not K had been married. The judge found that there was an inconsistency between what the press reports recorded and what the appellant had said.
9. The judge found that the documentary evidence undermined the appellant's evidence as to K's marital status and called into question the amount of weight he could place on the letter of condolence. It also undermined the appellant's account in respect of whether a funeral had taken place or was due to occur at the time of the incident with the army. It also in the judge's view fundamentally undermined the appellant's claim to have given evidence to the LLRC at the request of K's wife; the point being that, according to the other material, K did not have a wife.
10. At paragraph 42, the judge turned to the documents said to emanate from the Sri Lankan lawyer. The judge recorded the appellant as being asked why it had taken him more than a year to obtain these documents and that he said "Don't know exact reason. Important to the case, I informed my Dad to take from lawyer". The question was put to him again and he said "I wanted that sort of document. When I heard I decided to bring them here". The judge was not satisfied that the appellant had been able to explain the delay in producing what appeared to be significant documents.
11. The judge then examined the appellant's history of employment in Sri Lanka and South Korea. At paragraph 44, the judge noted that the appellant was not arrested or taken in for questioning in the six months or so before he left for South Korea. That had been after the alleged incident relating to the funeral.
12. At paragraph 45, the judge noted that the appellant had not claimed any difficulties in leaving the country or for that matter returning after eight years in South Korea or in leaving again to go to the United Kingdom. There was no suggestion that the appellant and his wife negotiated a passage through the airport as a result of bribery. He had left on his own passport.
13. At paragraph 48, the judge identified difficulties relating to the evidence given by the appellant's wife. At paragraph 49, he regarded as significant that the appellant's wife made no mention of the threat to arrest her husband in the course of her own appeal, which had been heard in March 2016.
14. Further reference was made, beginning at paragraph 50, to the time at which the appellant became aware of the intention to arrest him in Sri Lanka. At paragraph 54, the judge noted the correction in the appellant's evidence, that it was not in 2015 that this occurred but that the government wanted to arrest him in 2016.

15. At paragraph 55, in view of the overall concerns that the judge had about the veracity of the appellant's account, the judge placed no weight on the documents that the appellant had produced. The judge said the burden was on the appellant to show that the various documents were reliable and that he had not considered these in isolation but within the context of the evidence as a whole. He reminded himself that when a person seeks to rely upon a document, the burden lies on him to show it can be relied upon. The judge then referred again to the case of Tanveer Ahmed.
16. At paragraph 57 and following, the judge placed the appellant's account in the context of events in Sri Lanka. In particular, it was not clear to the judge why the LLRC would refer to a statement given to the Human Rights Commission in 2003 in a later piece of documentary material.
17. The judge sought to place the claim in context of the country guidance as set out by the Upper Tribunal in GJ. That case noted the relevant category of those found generally to be at risk; namely, individuals who had given evidence to the LLRC implicating the Sri Lankan security forces or armed in alleged war crimes. Overall, the judge did not consider that the appellant's account, as he had found it, fell compatibly with the country guidance on Sri Lanka. If the appellant was the subject of an arrest warrant, then the judge held, following GJ, that he would be likely to be on a stop-list and noted the difficulties that would arise as a result. For the reasons he had given, however, the judge concluded that the appellant's account of being subjected to arrest was false.
18. I shall deal first with the issue of the lawyer's letters (ground 1). Miss Harris submits that it was not enough for the judge to say that, in the light of the manifold findings regarding the appellant's credibility, he could place no weight on these letters. In Miss Harris's submission the letters were of a qualitatively different nature, such as to require the judge to give some discrete reason for their rejection.
19. The fact of the matter is, however, that the letters do not have such a degree of independence as to call for that approach. The letters are not in any way compatible with material emanating, for example, from the Red Cross. The letter from the Sri Lankan lawyer was written, as Miss Harris points out, following the intervention of the appellant's father. When Nag Law Solicitors wrote to the Sri Lankan lawyer in October 2017, they noted that they had been instructed by what they described as their "mutual client", who had given them the authority to reveal certain details. It is not, therefore, the case, nor was it suggested by Miss Harris to be the case, that Nag Law Solicitors were instrumental in searching out the lawyer in Sri Lanka and asking him various questions. All of that had been dealt with at the Sri Lankan end.
20. The grounds refer to such matters as the headed notepaper used by the lawyer as being something meriting respect. I find myself unable to accept that submission. All we have is a letter from someone, who has annexed a fairly poor photocopy of a Bar Association card, who says he is a lawyer in Sri Lanka. I am not prepared purely on this to assume that the standards of probity which apply to the Bar in England and

Wales apply to lawyers in Sri Lanka or, if they do, that they are enforced with the same rigour as in England and Wales.

21. In essence, this material in practice emanated from a source that could not be described as independent. It emanated from someone with whose account the First-tier Tribunal Judge had found a great many significant adverse credibility issues. Applying Tanveer Ahmed, the judge was in my view entitled to come to the conclusion that no weight should be placed on the material relating to the lawyer.
22. Criticisms were made of the fact that the judge remarked adversely upon the length of time it had taken to obtain this material. Read overall, I do not consider that this particular remark of the judge played any material part in his overall conclusions.
23. There had in any event been considerable cross-examination about why it was that the letters had not come earlier. In the circumstances, the judge was merely making his own observations on this strand of cross-examination. There is accordingly no merit in ground 2.
24. Ground 4 relates to an alleged inconsistency in the judge's findings as to when the appellant found out that he was at risk of arrest in Sri Lanka. As I have ready recorded, however, the judge was aware of the change of evidence on the part of the appellant during the hearing. The judge was entitled as a matter of law to conclude that this change of evidence raised a problem for the appellant. On this basis, what the judge said about the appellant's wife makes sense. It was for the judge to decide what significance to attach to the change of evidence. A judge might in the circumstances have considered that it was of little significance and that a genuine mistake had been made. But, read in the light of the enormous credibility problems that the judge had identified with the appellant's claim, there was no obligation on the judge to take such a benign view.
25. For all these reasons, this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

Anonymity

Unless and until a court or tribunal directs otherwise, no report of these proceedings shall directly or indirectly identify the appellant or any member of his family.

Signed

Date

The Hon. Mr Justice Lane
President of the Upper Tribunal
Immigration and Asylum Chamber