



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/07910/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 March 2018**

**Decision & Reasons  
Promulgated  
On 23 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**v**

**MR V M J  
(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms Z. Ahmad, Home Office Presenting Officer

For the Respondent: Ms P. Solanki, counsel instructed by Greater London Solicitors

**DECISION AND REASONS**

1. The Respondent, to whom I shall refer as the Claimant, is a national of Sri Lanka, born on 29 August 1981. He claimed asylum on 7 February 2017 and this application was refused in a decision dated 2 August 2017. His appeal to the First tier Tribunal came before Judge Robinson for hearing on 15 September 2017 and in a decision promulgated on 3 October 2017, the appeal was allowed.

2. The Secretary of State sought permission to appeal, in time, to the Upper Tribunal on the basis that the First tier Tribunal Judge had materially erred in law in failing to give adequate reasons:

(i) when considering the documentary evidence from Sri Lanka in respect of which he failed to give adequate consideration to and make clear adverse findings in respect of the submission on the part of the Home Office Presenting Officer, which required such consideration given that there are discrepancies between the lawyers' letters and the attorney directory and the chain of contact between the UK solicitors and the Claimant's representative was missing;

(ii) in failing at [62] to give adequate reasons for concluding that the documents did originate from a Sri Lankan court;

(iii) in failing to make a specific reasoned finding as to the credibility of the Claimant's claimed detention, interrogation and torture in 2009 and November 2015;

(iv) in failing to give adequate reasons at [54] for finding that the Claimant's account that the authorities came looking for his brother is plausible, based on the fact that he had been granted refugee status in Canada and given that his brother left Sri Lanka in July 2009, it does not follow that he would still be a person of interest to the authorities *cf. GJ* [2013] UKUT 319; and

(v) in failing to assess the claim in the absence of any evidence that either the Claimant or his brother were Tamil activists working to destabilise the unitary Sri Lankan state.

3. Permission to appeal was granted by Upper Tribunal Judge Kekic in a decision dated 18 January 2018, on the basis that it was arguable that when the judge placed weight on the evidence purportedly emanating from two lawyers in Sri Lanka, he failed to address adequately or at all the concerns raised by the Secretary of State as to the substantial similarities in the phraseology of the letters said to be prepared by two different lawyers and that it was also arguable that the judge failed to give adequate reasons for accepting the claimed detention in 2009.

### *Hearing*

4. At the hearing before me, Ms Ahmad on behalf of the Secretary of State sought to rely on the grounds of appeal. It is the case at [52] that the Judge referred to the correspondence submitted but did not complete his sentence. It is thus difficult to see what assistance the Court was provided with. She sought to rely on the decision in VT [2017] UKUT 00368 (IAC) and the fact that there is lawyer to lawyer correspondence does not mean it should not be accepted without

question. There is no proper consideration of the evidence and the criticisms made by the Presenting Officer and given that the evidence was in dispute the Judge needed to provide reasons in coming to his conclusion.

5. Ms Ahmad further submitted that the Judge failed to make any findings as to the Claimant's detention in 2009, which could have lead to a different ultimate conclusion. Ms Ahmad submitted that the errors were material given that the Judge needed to provide reasons for his findings. Whilst Ms Ahmad sought to rely on the remainder of the grounds of appeal, she submitted that these were self-explanatory.

6. Ms Solanki sought to rely on a skeleton argument dated 11 March 2018. In respect of the first ground of appeal she drew my attention to the letter from the attorney L. George at page 79 of the Appellant's bundle and the letter from attorney K. Poobalasingham at page 9 of supplementary bundle. She submitted that, contrary to the assertion in the grounds of appeal, the contents do not appear to be the same, as the letter from Mr George is much more extensive and the letters are not strikingly similarity.

7. In respect of the assertion that there has been a lack of consideration of the Presenting Officer's points, she sought to rely on *Shizad* [2013] UKUT 00085 (IAC) and the fact that there is a legal duty to give a brief explanation on the conclusions but reasons need not be extensive if the decision as a whole makes sense. Ms Solanki submitted that the arguments being advanced by the Secretary of State are met by *Shizad*. At [33] of the decision the Judge sets those out and did not ignore the case put forward by the Presenting Officer. At [50]-[52] the Judge has in a detailed way looked at the letter from the British High Commission as to the assessment of the genuineness of documents.

8. In relation to the other submissions made, Ms Solanki submitted that a Judge does not need to make findings on all submissions made by the parties which is illustrated by the fact that submissions were made by the Appellant's counsel which are recorded at [36]-[39] yet the Judge has not felt it necessary to address those points. When one looks at the attorneys' letters it is ultimately subjective and what it comes down to are criticisms of emails, phone numbers and addresses.

9. In respect of the point made about an email or fax chain of correspondence, the original documents were sent to the Secretary of State and certified copies of the Court files had been received. Ms Solanki submitted that, given that the solicitors in the UK are officers of the court and provided letters stating that they have sent documents to the solicitors in Sri Lanka, that that is enough.

10. She further submitted that, in any event, the criticisms raised were not of the kind that would have destroyed the credibility of the Claimant. What appears to be being suggested is that the Judge has failed to apply *Tanveer Ahmed*, however, certified copies of court records were sent and were expressly accepted by the Judge at [60]. The Judge correctly applied *Gj* and UNHCR eligibility guidelines, which are relevant to his findings at [58] and [59]. She submitted that these were adequate findings for the purposes of finding the documents reliable.

11. In respect of the decision in *VT* (op cit) the Judge did not find lawyer to lawyer correspondence enough but goes further than this and also takes account of the fact that the Claimant's brother is recorded to have absconded and this is in the court documents. It was clear the Judge had in mind *Pj (Sri Lanka)* [2014] EWCA Civ 1011 when assessing the documents. In *VT* reason the appeal was dismissed was that investigations carried out at the Magistrates Court showed that they were not genuine. .

12. In respect of the failure to make findings in respect of the 2009 detention, the Judge made a finding at [63] and accepted the Claimant's core account is credible and based this on the objective evidence before him. The Claimant's claim is really based on his detention and ill-treatment in 2015 and thereafter. At [54] the Judge's finding regarding the Claimant's brother was open to him in light of the evidence and the court documents regarding the brother.

13. In respect of *Gj* and the implication in the grounds of appeal that the Claimant's case would not fall within the guidelines, Ms Solinka submitted that it was clear from headnote 6d that the Claimant would appear on a stop list because there is an extant arrest warrant. She submitted that there were very detailed findings on risk at [64] and [69] and a finding that he has been detained previously. In light of the court documents, the Claimant would be perceived as someone who would be at risk to the State and may be perceived as trying to revive the LTTE *cf. Gj* at 7(a) and 9. She further submitted that arguably he also falls within [289] of *Gj* which was endorsed by the Court of Appeal in *MP* [2014] EWCA Civ 829.

14. Ms Ahmad did not seek to reply.

15. I reserved my decision, which I now give with my reasons.

### *Decision*

16. I have given careful consideration to the submissions made by both parties; to the decision and reasons of First tier Tribunal Judge Robinson and to the evidence underlying the appeal, in particular, the documents said to emanate from a Sri Lankan court and letters from two Sri Lankan attorneys, Mr Poobalasingham and Mr George. I have

concluded that the decision of the First tier Tribunal is not vitiated by error of law. My reasons are as follows:

16.1. Whilst Ground 1 of the grounds of appeal on behalf of the Secretary of State asserted that the Judge failed to give adequate consideration to the submission on the part of the Home Office Presenting Officer, as to discrepancies between the Sri Lankan lawyers' letters and the attorney directory and the chain of contact between the UK solicitors, I do not find that this is borne out in the decision. At [33] and [50] the Judge recorded the submission on the part of the Presenting Officer that this evidence was unreliable, in part based on a letter from the British High Commission dated 3 July 2017, asserting that 86.7% of letters claimed to have been written by Sri Lankan attorneys were false. The Judge sets out the salient contents of this letter at [51] of his decision. However, at [52] the Judge noted that no checks had been made in this particular case by the British High Commission and that the Claimant had filed additional information from the Bar Council list which indicates that the names of the two attorneys are genuine and that the Claimant's solicitors had exhibited correspondence between themselves and Mr George. At [53] the Judge directed himself to "*consider the evidence as a whole in accordance with the Tanveer Ahmed principles.*" At [60] the Judge noted that the Claimant's solicitors had been in direct contact with Mr George and it had been established that he is on the Bar Council list and that another attorney, Mr Poobalasingham, had sent certified copies of the court records to the Claimant's solicitors. The Judge went on to conclude at [61] and [62] that, despite that the fact that "*it is clearly the case that false documents, including attorneys letters, are widely available in Sri Lanka*" the "*inescapable conclusion to be drawn from the documentary material retrieved by two lawyers in Sri Lanka ... is that the appellant will be arrested on his return to Sri Lanka as a result of perceived links to the LTTE and their activities.*"

16.2. I find that the Judge correctly directed himself in law and that he took fully into account the position and evidence submitted by the Secretary of State in respect of the assertion that there is a prevalence of false attorneys' letters emanating from Sri Lanka, but gave clear and adequate reasons for concluding that in this Claimant's case, he was satisfied that the attorneys' letters were genuine. In so doing, the Judge also took into consideration certified copies of the Sri Lankan Court file and arrest warrant in respect of the Claimant. It is clear from [62] read with [61] that the Judge's reasons for accepting that the Court documents were indeed from Colombo Magistrates Court were both adequate and sustainable in light of the evidence as a whole and his consideration of this aspect of the appeal which is set out at [49]-62]. I find that grounds 1 and 2 of the grounds of appeal amount to no more than a disagreement with the Judge's findings of fact which were open to him on the evidence before him.

16.3. The Secretary of State further asserts that the Judge failed to make a specific reasoned finding as to the credibility of the Claimant's claimed detention, interrogation and torture in 2009 and November 2015. At [63] the Judge noted the background evidence, specifically the Home Office Country Information & Guidance report on "Tamil Separatism" as to the detention and torture of suspects in Sri Lanka. The Judge went on to hold: *"I take the view that the appellant's account of his arrest, detention and ill treatment is supported by documentary evidence on which reliance can be placed and I accept his core story on this basis."* I find that it is clear from this finding that, in light of the fact that the Judge had considered and accepted the veracity of the evidence emanating from the Sri Lanka Court in the previous two paragraphs, this was a sufficiently specific and clear finding as to the Claimant's account of past mistreatment following his arrest and detention in 2009 and 2015. In any event, I accept Ms Solanki's submission that the Claimant's case was primarily based on his 2015 detention and this is clear from the manner in which the Judge assessed his claim.

16.4. The Secretary of State further asserts that the Judge failed to give adequate reasons at [54] for finding that the Claimant's account that the authorities came looking for his brother is plausible, based on the fact that he had been granted refugee status in Canada and given that his brother left Sri Lanka in July 2009, it does not follow that he would still be a person of interest to the authorities *cf. GJ* [2013] UKUT 319. I consider that the Judge dealt with this point adequately at [62] of the decision, when he noted that the Claimant's brother is named in the court papers, where he has been described as absconding and has been granted refugee status in Canada. In any event, in light of the Judge's findings as to the Court and other documents from Sri Lanka, it is clear that he found and gave sustainable reasons for finding that the Appellant would be at risk on return to Sri Lanka in his own right.

16.5. The final ground of appeal is that the Judge erred in failing to assess the claim in the absence of any evidence that either the Claimant or his brother were Tamil activists working to destabilise the unitary Sri Lankan state. I find that there is no substance in this ground of appeal either. At [64] the Judge expressly directed himself with regard to the country guidance decision in *GJ* (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and noted and assessed the potential risk factors. At [65] he went on to find, sustainably, that the Claimant's mother had forfeited her surety when she appeared in court in December 2015; he considered it reasonably likely that the authorities are aware that both the Claimant and his brother had sought asylum abroad and that, given the nature of the charges brought against him it is reasonable to suppose that the Sri Lankan authorities will take the view that the Claimant is actively opposing the Sri Lankan government from the UK. At [67] the Judge expressly made reference to [356] of *GJ*. It is not the Claimant's case

that he is a Tamil activist, however, the issue is that the evidence before the Judge, which he accepted, gave rise to a reasonable likelihood that he may be perceived as such, due to the fact he had been living in the UK since April 2010 and was accused when interrogated in November 2015 of collecting funds abroad for the LTTE [11]. The Judge further found at [69] that the existence of an arrest warrant for failure to answer court bail would give rise to adverse attention on return at the airport or subsequently.

17. In addition to my specific findings above, I further draw the parties' attention to the recent judgment of the Court of Appeal in MD (Turkey) [2017 EWCA Civ 1958 where, in restoring the decision of the First tier Tribunal which had been overturned by the Upper Tribunal, Lord Justice Singh held *inter alia* as follows at [26]:

*"26. The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide any opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."*

18. I find that the decision of First tier Tribunal Robinson clearly enabled the Secretary of State to know why she had lost and his reasons were proper, intelligible and adequate.

### *Decision*

19. For the reasons set out at [16] and [17] above, I find that the reasons provided by the First tier Tribunal Judge for his findings and for allowing the appeal were adequate and sustainable. I find no material error of law in the decision, which is upheld. The appeal by the Secretary of State is accordingly dismissed.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

22 April 2018