



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

Appeal Number: PA/07937/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 07 December 2018**

**Decision & Reasons
Promulgated
On 18 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**MOHAMED [S]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss A. Sehra, Counsel instructed by Nag law Solicitors
For the Respondent: Mr N. Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals from the decision of the First-tier Tribunal (Judge A. K. Hussain sitting at Birmingham on 14 August 2018) dismissing his appeal from the decision of the respondent (“the Department”) to refuse his fresh asylum claim which he advanced on the basis that he had recently been able to obtain documentary evidence from Sri Lanka to prove that he had been (wrongly) accused by the Sri Lankan authorities of being involved in a bombing linked to the LTTE and that there was an extant warrant for his arrest. The First-tier Tribunal did not make an anonymity direction, and the

appellant did not apply for anonymity for this appeal to the Upper Tribunal.

Relevant Background

2. The appellant is a national of Sri Lanka, whose date of birth is [~] 1984. On 12 October 2010 he was granted entry clearance as a student, on a visa which was valid until 1 January 2013. The appellant became an overstayer on 13 July 2014. He sought to regularise his status later in 2014 on family/private life grounds. His application was refused on 26 February 2015, and he first claimed asylum on 28 May 2015. His asylum claim was refused on 19 November 2015, and his appeal came before Judge Housego at Hatton Cross on 28 April 2016.
3. The appellant represented himself. The appellant claimed that he had been arrested, detained and tortured. He said there was an open warrant for arrest and that in February 2015 his mother had told him that a person with the same name had been arrested instead of him in a case of mistaken identity. The Judge asked him what proof he had. He said his brother had been trying to get proof with the assistance of a lawyer, but he needed more time. In his subsequent decision, the Judge found that the appellant's claim was wholly lacking in credibility. The appellant did not appeal against Judge Housego's decision, which was promulgated on 14 April 2016.
4. On 15 May 2018 Nag Law submitted a fresh claim for asylum on the appellant's behalf relying on various documents which had been sent from Sri Lanka. On 13 June 2018 the Department refused the fresh asylum claim.
5. At the appeal before Judge Hussain, the appellant was represented by Counsel. In his subsequent decision, the Judge held at paragraph [20] that the appellant had not given a credible explanation for the failure to produce the documents at the hearing before Judge Housego. At Paragraph [23] he said that he attached little weight to the court documents due to the delay in their production and the fact that the Department could not have conclusively established that they were authentic or reliable, even if it had tried.

The Reasons for the Grant of Permission to Appeal

6. On 18 October 2018 First-tier Tribunal Judge Saffer granted the appellant permission to appeal for the following reasons:

“It is arguable that the Judge may have materially erred in relation to the documents produced and reasons for the delay in their production, and [as] regards his reasons for rejecting as lacking in credibility aspects of his account as set out in the application.”

The Hearing in the Upper Tribunal

7. There was no Rule 24 response from the Specialist Appeals team. At the error of law hearing, Mr Bramble conceded at the outset that Ground 1 (Delay in Producing Documents) was made out, and, upon further enquiry, he conceded that the error had a knock-on effect on the Judge's findings on the probative value of the documents, such that his overall findings on the credibility of the core claim were unsafe. He agreed with Miss Seehra that the decision should be set aside, and the appeal remitted to the First-tier Tribunal for a de novo hearing.

Discussion

8. Ground 1 is that the Judge did not take into account all the reasons given by the appellant for the delay in producing documents to support his claim, and so his starting point of treating all the recently produced documents with suspicion and as inherently lacking in credibility was inadequately reasoned. While the contrary is arguable, I do not consider that Mr Bramble's concession is perverse. Accordingly, I find that an error of law is made out as set out above. Since the credibility of the recently produced court documents is central to the fresh claim, the upshot is that the Judge's adverse credibility findings are unsafe, and the decision must be set aside and remade.

Notice of Decision

9. The decision of the First-tier Tribunal contained an error of law such that the decision must be set aside and remade.

Directions

10. **The appellant's appeal is remitted to the First-tier Tribunal in Birmingham for a *de novo* hearing on all issues before a Judge other than Judge A.K. Hussain.**

Signed

Date 11 December 2018

Deputy Upper Tribunal Judge Monson