Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08261/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 March 2018	**On 27 March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

V N B J V
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Harris of Counsel instructed by Nag Law Solicitors
For the Respondent: Mr T Wilding, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals, with permission, against a decision of Judge of the First-tier Tribunal M J Gillespie who in a determination promulgated on 22 August 2017 dismissed his appeal against a decision of the Secretary of State to refuse to grant asylum.

2. The appellant is a citizen of Sri Lanka born on [ ] 1984. He entered Britain on 9 October 2006 as a student. His leave in that capacity was extended until October 2011. On 12 January 2012 an application for further leave to remain was refused

without a right of appeal. The appellant made two further applications to remain as a student and as a post-study migrant which were also refused. The third application which was refused was reconsidered and then refused with a right of appeal. The appeal was however dismissed and the appellant's rights of appeal were exhausted on 26 March 2014. A further application for leave to remain as a student was then made, it was then amended to a claim for leave to remain under Article 8 of the ECHR. That was refused on 9 June 2015 with an out of country right of appeal. In August 2015 the appellant was detained and informed of his illegal status and liability to removal. He then requested reconsideration of his previous human rights claim but that was rejected in September 2015. A judicial review application was unsuccessful. In December 2015 the appellant claimed asylum. It was the appeal against the refusal of that application which was heard by Judge Gillespie on 11 August 2017.

3. The appellant is Sinhalese. He lived with his family in Wattala in Colombo where his father owned a restaurant, which the appellant managed. Amongst the eleven employees of the restaurant were two Tamil men who were employed in January 2006. In May 2006 members of the terrorist investigation department of the Sri Lankan police visited the restaurant and made enquiries about these men because they were suspected of being collaborators with, or members of, the LTTE. When the enquiries were made the two men were on leave in Jaffna. The appellant and his father were detained on suspicion of collaborating with the LTTE. The appellant said that he was first held at an army camp and then at Boosa Prison where he was violently interrogated and been obliged to sign a confession. He was traced in detention and released through the intervention of an uncle who had bribed a police officer to arrange his release. The appellant being told that he should leave the country. The appellant asserted that his father had never been traced and remained missing.

4. The appellant then joined his uncle in Watara remaining in hiding there until he left Sri Lanka. He received treatment for injuries but no permanent mark was left. He left through the airport at Colombo with the assistance of a corrupt policeman.

5. The Secretary of State, in refusing the application referred to the appellant's immigration history and did not accept that his story was true.

6. The judge heard evidence from the appellant and in paragraphs 17 onwards set out a very detailed assessment of his credibility, and made detailed findings of fact. He stated that although the appellant appeared to have given a reasonably coherent account which was not lacking internal consistency there was a material lack of particularity and consistency surrounding the account of the alleged police enquiries for the appellant since his arrival in Britain. The judge stated that up until the date of hearing the only visit by TID officers alleged by the appellant with any particularity was one to which he referred at interview as a recent visit although later at the interview he left hanging a suggestion there had been multiple visits to his home – he referred to his mother being in fear of "visits" by the authorities in which she had

been abused. The judge stated there was a clear progression in the appellant's claim for there being only one particularised visit to the vague insinuation this had been the most recent of many. He said that although the appellant had changed his evidence it appears that there had been no enquiries by the police for him prior to March 2016.

7. Having considered the background evidence the judge stated it indicated that even past LTTE collaborators and members were not at risk unless suspected by the sophisticated and well-informed security apparatus of continuing separatist activities. The claim of a resurgence of interest in the appellant six years after the LTTE was defeated and ten years after his departure from Sri Lanka was "so widely divergent from that which is plausible in light of the background evidence that it carries no credibility".

8. The judge referred to the delay in the appellant's claiming asylum. He noted the number of applications made by the appellant which had failed and the further applications which he had made which would have given him an opportunity to claim asylum. He stated in paragraph 22:-

> "Against this background, the continued failure of the appellant, even after March 2014, to raise a protection claim, is seriously incompatible with any genuine fear of harm on return to Sri Lanka."

He pointed out that it was only after removal directions had been made that the appellant had uttered any protection fears.

9. The judge in paragraph 23 dealt with the documentary evidence. He noted that the appellant had produced a document from a Sri Lankan attorney at the time of the first hearing of the appeal on 24 February and that on that occasion the respondent had asked for an adjournment to take steps to verify the documents but had not successfully pursued their verification and had merely relied on a submission from the appropriate consular officials in Sri Lanka as to the prevalence of use of fraudulent documents and of fraudulent identification of attorneys in Sri Lanka. The judge said that he could attach no weight to the substance of the claim of prevalence of fraud save only that it was a general caveat but considered the documents in the light of the principles enunciated in **Tanveer Ahmed**. He referred to the fact that the appellant had been inconsistent in his recourse to documentary support and indeed that the appellant had told the interviewing officer that he had no way of obtaining any documents and indeed that no document had ever been issued.

10. He noted the appellant's evidence which he stated was "in clear extemporisation" when asked if a warrant of arrest had been issued against him when he had said that the police had a paper which his mother was incapable of reading. The judge thought that was a highly equivocal claim and therefore carried little weight. At interview the appellant had been asked for the ample evidence which the appellant had claimed supported his claim but nothing had been forthcoming. The judge therefore stated that there must be serious concerns from the outset as to the reliability of the documents produced. He stated that a relevant point was that

existence of the documents was inconsistent with the appellant's statement that there were none to be had. The appellant had also said that he had received the document from an unknown source. That the judge did not consider to be plausible. He went on to say:

> "If there had been the genuine and honest involvement of an attorney instructed for the appellant in Sri Lanka, one would reasonably expect there to be proof of contact and good faith between the alleged attorney and the appellant's solicitors in the United Kingdom".

11. The judge also considered that the contents of the attorney's submissions threw up further inconsistencies in the appellant's account as the appellant had said that the attorney had been instructed on behalf of both himself and his father in May 2006. The judge said this was highly unlikely to be true as the appellant had at no time prior to the production of documents alleged involvement of an attorney. His allegation throughout was that he was traced by his influential and well-connected uncle who had procured his release by corrupt practice, whereas the attorney had said that the appellant was released on a "bond" and that this added a further inconsistency when considering the appellant's release. There was also an inconsistency about when the appellant was to report. The judge referred to his note of the proceedings and said that it reflected the fact that the answers given by the appellant showed evasiveness and that this damaged his credibility.

12. The judge then went on to consider the detail in the letter from the attorney setting out the various points which he considered were not credible.

13. The judge noted the medical evidence but did not consider that that assisted the appellant. He said that the contents of the report showed that the doctor "was by no means fully or genuinely instructed". There was a list of the medical treatment which the appellant had received and a note that he had had suicidal thoughts, having lost £29,000 because he was addicted to gambling, and had then been diagnosed with depression. That medical history had not been shown to the doctor who had prepared the psychologist's report.

14. The judge came to the conclusion that the communitive effect of all the evidence was that the account of the appellant was "falsely devised". He stated the documents produced were grossly unreliable and not at all likely to be genuine.

15. Applying the relevant country guidance, the judge concluded that the appellant would not face a risk of persecution on return. The judge then dealt properly with the issue of the rights of the appellant under Article 8 of the ECHR finding that those were not engaged.

16. The grounds of appeal asserted that the judge was wrong to aver that the appellant had not attempted to particularise enquiries by the police for him prior to 2006 referring to paragraph 12 of the appellant's witness statement. They also assert that the judge was wrong to find that the renewed interest in the appellant was at odds with objective evidence – the ground referred to ongoing harassment of suspected

LTTE sympathisers eight years after the defeat of the LTTE and stated that the renewed interest in the appellant occurred after regime change in Colombo. It was also argued, referring to the judgment in **PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011,** that the judge had erred by not ordering that the respondent verify the appellant's documents. They stated that the letter from the Sri Lankan attorney was at the centre of the request for protection given the risks for those detained as set out in the head note in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.

17. It was also asserted the judge had erred in his consideration of the documentary evidence and that the judge should not have found that the appellant's evidence as set out in the attorney's letter that he had been released on a "bond" was inconsistent with the appellant's claim to being released on "corrupt payment". They submitted that the appellant's claim was not unreasonable as the appellant's family had not been issued with the arrest warrant and his family would not have been in a position to obtain copies themselves. With regard to the warrant issued for the appellant's arrest by the Colombo Magistrates' Court the grounds stated "it is not in the nature of societies such as Sri Lanka for the state to behave reasonably and the unusual or the strange things should not be dismissed incredible or improbable based on how one might expect them to operate".

18. Those grounds were considered in the First-tier by Judge of the First-tier Tribunal Osborne and refused. He wrote:-

> "1. The grounds seek permission to appeal a decision and reasons of First-tier Tribunal Judge M J Gillespie who in a decision and reasons promulgated 22 August 2017 dismissed the Appellant's appeal for protection on all grounds.
>
> 2. The grounds assert that the judge misconstrued the Appellant's evidence. The judge's findings as to the plausibility of renewed interest in the Appellant are unreasonable and at odds with the objective evidence. The judge failed to reference or consider submissions advanced by the Appellant in respect of established case law. The judge erred in his assessment of the documentary evidence.
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> 3. Contrary to what is stated in the grounds, in a careful and well-reasoned decision and reasons the judge set out the pertinent issues, law, and evidence relating to the facts of the appeal. In appeals of this nature it is the task of the judge to make findings of fact on the basis of the evidence and to provide adequately clear reasons for those findings. That is what the judge did. The findings made by the judge were properly open to him on the basis of the evidence. The judge's Decision should be read as a whole in order to be given its full context. The judge considered all the evidence as a whole and made adequate findings for adequately expressed reasons. The judge was in the best position to assess the evidence as he scrutinised it and so and heard the Appellant as he gave his evidence.

4. Neither the grounds nor the decision and reasons disclose any arguably material error of law."

19. Renewed grounds were considered in the Upper Tribunal by Upper Tribunal Judge Macleman. He wrote:-

> "It is unnecessary to hold an oral hearing of the application for permission to appeal because I consider that it can properly be dealt with on the papers. Permission to appeal is granted, for these reasons:
>
> 1. Grounds 1, 2 and 4 are in substance only insistence and disagreement on the facts. They crystallise no proposition of error on a point of law whereby the decision might arguably be set aside.
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> 2. Ground 3 complains that the judge did not consider a submission that the SSHD was, exceptionally, bound to take steps to verify a document; but at paragraph 23, the judge dealt with precisely that issue as it arose on the facts of the case, gave weight to the fact that the respondent's investigation was on a general rather than a specific basis, and found that "an inadequate attempt at rebuttal'. He then went on to decide the matter in context. The grounds do not show that based on *PJ*, the appellant could have expected any more than that."

Despite what he had written Judge Macleman stated in that permission was granted.

20. At the beginning of the hearing I stated that I believed that there had in fact been a typing error in Judge Macleman's decision in that following the tenor of what he had written I considered that he had meant to refuse the application. However given that the appellant was represented before me I stated that I would hear from Ms Harris in any event.

21. Ms Harris asked me to consider the terms of paragraphs 30 to 32 of the judgment of the Court of Appeal in **PJ (Sri Lanka)**. She stated that the fact that the respondent had previously sought an adjournment indicated the importance of the verification of the document and that I should take into account the last sentence of paragraph 32 in which Lord Justice Fulford had stated:

> "If the court finds there was such an obligation and that it was not discharged it must assess the consequences for the case" (to verify the documents).

22. She then referred to the criticism by the judge that the appellant had not particularised the claim prior to March 2016 and asserted that that was unfair. The appellant had been consistent and indeed he had not been asked about earlier visits – that had not been put to him nor at interview, nor was it highlighted in the refusal letter. It was wrong therefore for the judge to have held that against him. The appellant had indeed referred to visits. Moreover she stated that there was Country Information Guidance which indicated the plausibility of there being interest in the appellant after the new government was formed in 2015. She said that the appellant would be of interest to the authorities because he had signed a confession. The reality was that there were 11,000 people who had had to pass through rehabilitation because of their previous support for the LTTE and it would take very little to

indicate the appellant's involvement and he was therefore likely to be tortured. The judge was wrong to second guess what the Tamils who had been detained might have said about the appellant's involvement.

23. Turning to the letter from the attorney she said that it clearly it showed that that lawyer had been involved in 2006 and that indicated that the appellant's story of what had happened at that time was true. The lawyer's letter referred to an email and although it was not the case that the letter from the appellant's solicitors in London had been submitted clearly they had written to the attorney which would support the veracity of what he said.

24. Mr Wilding in reply referred to correspondence from the British High Commission in Colombo which set out the difficulties in obtaining verification of documents because of the very large numbers of documents which were sent to Colombo for verification – there was simply not enough time to check them all. The letter stated that of 277 police and court documents which had been sent to the High Commission where attempts had been made to verify the documents 91% had not been genuine. The letter emphasised that the post did not have the capacity to continue to assist with the verification of documents.

25. He argued that the other grounds of appeal were really disagreements with the judge's detailed assessment of the claim. The judge had taken the constituent parts of the appellant's claim and examined each in detail and had reached findings and conclusions thereon which were fully reasoned. He had been entitled to comprehensively reject the content of the attorney's letter and had given reasons for that.

Discussion

26. I repeat the comments of Judge Osborne and Upper Tribunal Judge Macleman. Clearly this is a case where the judge very carefully considered the evidence and reached findings and conclusions which were fully open to him thereon. He was entitled to conclude that the appellant's claim was implausible and to place weight on the delay in claiming asylum particularly given the very large number of applications and appeals which the appellant had made. The judge properly applied the principles in **Tanveer Ahmed** to the document received from the attorney in Sri Lanka. He pointed out inconsistencies therein with regard to the appellant's evidence. He was entitled to note that there was no evidence of the correspondence, if any between the appellant's solicitors here and the attorney in Sri Lanka and to place weight on the inconsistencies and the appellant's evidence as to when the attorney was involved. I would add that I do not consider that the judgment of the Court of Appeal in **PJ (Sri Lanka)** places any obligation on the respondent to attempt to verify the documents. Indeed the reality is that at paragraph 30 Fulford LJ writes:

> "Therefore, simply because the relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step."

And at paragraph 32:

> "Finally, in this context it is to be emphasised that the courts are not required to order the Secretary of State to investigate particular areas of evidence or otherwise to direct her enquiries."

27. There was clearly no obligation on the Secretary of State to verify the document, the Secretary of State gave good reasons as to why it was not possible to do so and moreover the Secretary of State was not ordered by the court to verify the documents. The Presenting Officer at the first hearing who had been served with the document at the last minute was entitled to ask for an adjournment and did so. He gave no undertaking that the document would be verified nor was he obliged to have the document verified by order of the court. I therefore consider there is no merit in that point. With regards to the other points raised in the grounds of appeal these are, I consider, covered in the orders of Judge Osborne and Judge Macleman.

28. While I take into account the background information to which Ms Harris referred which she said indicated that there had been increasing interest since the change of government in Sri Lanka in 2015 in the activities of those who had taken part in subversive activities in the past, the reality of course is that this appellant is not Tamil – he is Sinhalese – and had never taken part in any separatist activities whatsoever. Although Ms Harris attempted then to state that the appellant had signed a confession that was something which was not accepted for good reasons by the judge. I consider the judge's findings that the appellant's claim was not credible were fully open to him. I find that there is no material error of law in the determination of the First-tier Tribunal Judge and I therefore dismiss this appeal.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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 their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed  Date 25 March 2018

Deputy Upper Tribunal Judge McGeachy