Upper Tribunal
(Immigration and Asylum Chamber) Appeal no: **PA 13865-17**

THE IMMIGRATION ACTS

At **Field House** **Decision & Reasons Promulgated**
On **02 October 2018** On **09 October 2018**

Before:

Upper Tribunal Judge
John FREEMAN

Between:

[U P]

appellant

and

Secretary of State for the Home Department

respondent

Representation:
For the appellant: *Charlotte Bayati* (counsel instructed by Birnberg Pierce & Partners)
For the respondent: Mrs A Fijiwala

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Stella Rozanski), sitting at Taylor House on 14 June, to dismiss an asylum and human rights appeal by a Tamil citizen of Sri Lanka, born 1983. An issue was raised by the presenting officer's note as to whether the appeal had been limited to article 3 grounds; but the judge clearly took the view that she had an asylum appeal before her, and dealt with it on that basis too.

2. This was a second asylum appeal: the appellant had arrived and made his original claim in 2010, and his appeal against refusal of that was finally dismissed in 2011. He did nothing to regularize his situation (nor the Home Office anything to remove him) till 2016, when he applied for an EEA residence card, which was refused that July. Further submissions on asylum followed in March 2017, refused on 4 December.

NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.

3. The judge allowed the appellant's article 3 and 8 human rights appeal, on the basis that returning him to Sri Lanka would present a suicide risk which would not be prevented by proper care there. There is no cross-appeal against that conclusion. In dealing with the article 3 appeal, she considered the report of a consultant psychiatrist, Dr Saleh Dhumad, and 'several addenda'. At 43 she preferred his assessment of the appellant's suicide risk as being more likely correct than that of another consultant psychiatrist who had recently seen him.

4. The relevance of that to the asylum appeal is set out in ground 2: it is suggested that the judge went on to find at 56 that "the Appellant's claims to be politically active were 'completely inconsistent' with the medical evidence". As Mrs Fijiwala pointed out, this was not what the judge had said: her full finding on this point was this:

> The reports that the appellant has regularly engaged in sufficiently high level of political activism so as to have come to the attention of the Sri Lankan authorities is completely inconsistent with the extensive NHS medical evidence about the appellant's mental health and activities. This indicates that since the latter part of 2011 the appellant has been consistently psychotic with paranoid delusions, is anxious, spends most of his time in his room, is afraid to go out, fears being attacked, appears to have a low IQ and has a very poor level of functioning.

5. The appellant's supporting evidence had him as "a committed activist working with TGTE 'Transitional Government of Tamil Eelam' for four years, distributing leaflets and other material, attending meetings and demonstrations and helping with logistical support". Dr Dhumad's addendum of 1 June, in a bundle filed the day before the hearing (as to which the judge had complaints to which I shall come later), said this at 5.4 – 5.5:

> [The appellant] told me that he takes part in Tamils diaspora events and he attends Hindu temples accompanied whenever he feels able to do so … he is angry with the Sri Lankan government and he wants to help the people in Sri Lanka and … to make the world aware of what is happening there and he wants the Tamil people to get freedom. This behaviour seems completely in line with a trauma survivor. Having witnessed and suffered serious trauma, it seems very plausible to me that he wanted to fight to prevent such trauma happening to other people.

6. The reason why the appellant claimed to have come to the notice of the Sri Lankan authorities as a result of these activities was that he said his father had been detained by police there on 12 – 14 November 2016 (not December, as Mrs Bayati pointed out the judge had said at 55): he was said to have been released as a result of representations made by a lawyer. His wife had also been detained from 29 – 30 November 2017, as well as in 2010: in both cases she was released following representations by a former MP. The judge's treatment of the evidence about this forms the subject of ground 1.

7. The relevant risk category is set out in the judicial head-note to *GJ* (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) as follows:

> *(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:*
>
> *(a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to*

> *post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka.*

8. The judge set out the entire head-note at 24, and her reference to a "sufficiently high level of political activism" was clearly intended to relate to the 'significant role' required for risk category (a) to apply. On the basis of the appellant's claimed activities in this country, she was clearly entitled to take the view that his rôle had not been significant in this way, even without taking account of what Dr Dhumad had said in his addendum. As she said at 57 - 58

> The appellant has provided no credible evidence that he has played a *significant* [*my emphasis*] political role in the UK or that he has otherwise gained a high profile here. *GJ* indicates that the Sri Lankan authorities carry out sophisticated surveillance of diasporic activity so that mere attendance at demonstrations does not make individuals of adverse interest to them … to the extent the appellant is sometimes well enough to participate in protest or other political activity, the Sri Lankan authorities would be aware that he does so only occasionally and at a low level.

9. That disposes of ground 2; but ground 1 is still relevant: if the appellant's family members had in fact come under suspicion as a result of his activities here, then that might still be relevant to the question of whether he himself would be at real risk on return. The judge's reasons for rejecting the evidence about that, and the complaints made about them in the grounds, now follow.

10. These are the judge's key points on credibility:

> 55. The claims [about the detention of the appellant's father and wife] were not put forward in the appellant's further submissions in March 2017 and instead have been advanced at a very late stage in the appeal process. No explanation has been volunteered as to why this should be the case.
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> 56: see **4**.
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> 57 – 58: see **8**.
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> 59. No reason has been provided for why their [the appellant's father and wife's] statements and the corroborating evidence from an attorney and an ex-government minister should not have been produced until the eve of the appeal hearing in June 2018.
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> 60. (1) … the nature of [the lawyer and former MP's[representations has not been stated, and no copy of the claimed representations has been provided.
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> 60. (2) I also consider it inconsistent that the full name of the attorney does not appear on his bar membership card.
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> 61. The British High Commission in Colombo conducts checks to verify documents … from January 2014 to July 2015 "The vast majority (86.7%) of letters provided by Sri Lankan attorneys that [were] verified [were not credible. The High Commission considers that caution about accepting the insertions of letters of Sri Lankan attorneys is particularly indicated where there are no supporting documents to verify"
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> 62. … the letters from Sri Lanka provided by the appellant were produced too late for the respondent to conduct any verification checks and … it is not claimed that there are any extant court proceedings of an arrest warrant for the appellant. Thus there are no documents to verify.

In all of these circumstances, I find that the appellant has failed to establish that the supporting documents from Sri Lanka are reliable.

11. I will deal with the challenges to them one by one, without losing sight of the principle that what needs to be considered is the effect of whatever I find is made out on the judge's credibility findings as a whole. My views on the points made at paragraph 6 of the grounds are as follows:

i. I agree there is not much in the judge's point at 60 (1) on the lack of any information about the nature of the representations made by the lawyer and the former MP. Both might simply be assumed to have been using whatever influence they possessed to secure the release of a client or former constituent; the wife's 2010 detention was said to have been only for questioning about the appellant's former involvement with the Tamil Tigers and his escape from then. While her 2017 detention is said to have been for failure to give information about the appellant's activities here "which is an offence under the Prevention of Terrorism Act", the letter leaves it very far from clear why in that case the former MP was assured she would be released on reporting conditions once she had been questioned. The same assurance is said to have been given on the father's 2016 detention, and the same must apply to it.

ii. Again at 60 (1), the personal visits said to have been made by the lawyer and the former MP to the police station might reasonably have been taken to suggest that their representations were oral.

iii. requires separate treatment: see below.

iv. Nor is there much in the point at 60 (2) about the lawyer's bar membership card not giving his full name: while of course Call certificates in this country all do so, there is no evidence about the general form of annual membership cards in Sri Lanka, while the lawyer's headed paper gives his professional name in the same form. However the judge prefaced this comment by 'also', and clearly did not consider it of prime importance.

v. At 55, while the judge was right in saying that the father's detention had not been mentioned in the further submissions of March 2017 themselves, the appellant had evidently mentioned it to Dr Dhumad in the report he gave of their meeting on the 18th. While it is certainly odd that the solicitors should not have mentioned it, that is a reflection on them professionally, rather than on the appellant's credibility. However, looking at the passage cited as a whole, it is quite clear that the judge's real point was about the very late submission of the supporting evidence: from her use of the plural 'claims', it can be seen that she was also referring to the one about the detention of the appellant's wife. Since this was not said to have happened till November 2017, of course it could not have been referred to in the March submissions; but no reason has been given for why evidence of it could not have been provided sooner than the day before the hearing in June 2018.

12. The grounds themselves take the point about late submission of evidence at iii, together with another on the judge's treatment of the British High Commission statistics at 61. It is argued that, since the presenting officer had not asked for an adjournment for verification purposes, what that might or might not have revealed was irrelevant. I disagree: as I suggested to Mrs Bayati in the course of argument, the appellant's solicitors were not entitled to file potentially important evidence so late that it put pressure on the presenting officer, and the judge, to let it go in, rather than waste court time, and discount the public interest in having cases of this kind heard sooner rather than later, by a last-minute adjournment.

13. While once again this may have been the solicitors' fault, rather than the appellant's own, it left the judge in the position of having to assess his credibility on the basis of documentary evidence which the respondent had had no proper opportunity to verify, and she was clearly entitled to take account of that.

14. As for the British High Commission letter, Mrs Bayati argued that it effectively dealt with what may only have been a small sample of all the lawyers' letters of this kind. It is worth looking at what the British High Commission said in more detail. While it is possible that the Home Office had referred to them letters which gave cause for concern, there must also have been many cases, like this one, and on the basis of a good many years of experience of hearing asylum appeals at first instance, where documents were simply filed too late for them to be checked. The only possible analysis was of the letters which actually were checked, and I will turn to the details of it.

15. The total number of lawyers' letters checked was 30: out of these, 7 were cases where the lawyer confirmed sending the letter, but their statements about live court cases or arrest warrants were shown to be wrong on checking with the courts or police. In 4, apparently all involving one lawyer, no other documents were provided for verification; but his credibility was questionable, since the copy letter he produced did not correspond to the one submitted over here. In 6 cases the lawyer's professional credentials were found to be false, and 11 lawyers could not be contacted. In one of these cases there was no supporting documentation by way of court documents or arrest warrants, while in nine such documents were found to be false when checks were made. In one case the supporting documents were genuine. In two cases the lawyer confirmed that the letters did not come from them. These figures (7, 4, 6, 11 and 2) add up to exactly 30, so there is no double counting involved.

16. One might quarrel with the statistical method behind the analysis in the next paragraph, which takes the percentage of unreliable lawyers' letters in each category, and adds it up, so reaching the figure of 86.7% noted by the judge, rather than looking at the combined figure on all of them. However, taking that approach would mean that only one letter out of 30 contained genuine supporting documents, even if the writer could not be contacted. That gives the percentage of unreliable cases as 96.7, rounding up to the nearest whole number.

17. Admittedly the sample was not large, so a strictly statistical approach might not have been justifiable; but it included all the lawyers' letters the British High Commission had been asked to check, and their inquiries were clearly thorough. If the judge had relied on their findings to reject any Sri Lankan lawyer's letter out of hand as unreliable, then she would of course have been wrong; but that is not what she did at 61. She simply set out the British High Commission's own final comment, that their findings inclined them to be cautious in accepting assertions in letters from Sri Lankan lawyers, where there were no supporting documents to verify them, or be verified themselves.

18. Mrs Bayati pointed out that the letters relied on in this case had come direct to the appellant's solicitors, the one about the appellant's father's detention at his request, and the other following a telephone conversation between them and the former MP. I do not think it can be said that this made the letter about the father any more reliable: politicians, present or past, do not seem to have been included in the British High Commission's survey, and more store might reasonably have been set by a direct communication from such a person.

19. However once again the judge was doing no more than treating letters of this general kind with caution, where there were no documents to verify them, and this was the importance of what she said at 62. Of course, as Mrs Bayati pointed out, no court documents or arrest warrants were likely to have been generated by short periods of detention for inquiries. Even so, the judge was entitled to consider what there was to support the letters relied on.

20. Looking at all the points together, both those made by the judge and in the grounds, it is clear that those at 60, and challenged at i, ii and iv, could not have justified a negative credibility finding on their own; but neither would they cast any real doubt on the judge's other points, if those were justifiable themselves. So far as that is concerned, while she would not have been justified, on the basis of Dr Dhumad's first report, in regarding the appellant's account of his father's detention as a recent invention, she was fully entitled to treat the evidence to support both that and his wife's detention with considerable caution, given how late it was put in. There was a further reason for caution in the British High Commission's findings, particularly in the case of the lawyer's letter. There was nothing to support either letter by way of verifiable evidence, whether or not that was to be expected in the circumstances.

21. At 57 the judge took a view, which is not challenged, and to which she was fully entitled about the claimed nature of the appellant's activities in this country. She went on to point out there and at 58 that this would not, on the country guidance, be likely to make him a subject of adverse interest on the part of the Sri Lankan authorities. That leaves no real explanation for why they should nevertheless have detained both his father and his wife for questioning about what both the lawyer and the former MP said were regarded as terrorist activities, but assured both interveners that they would be released once that was over, which duly happened.

22. While the judge's credibility decision does contain what might be described as the slightly over-enthusiastic points made at 60, bearing in mind not only the very late submission of the supporting evidence, and the findings of the British High Commission, but the realities of the situation, as I have set them out at **21**, the result was one she was entitled to reach, in a decision over which she clearly took a great deal of care. The result is that her asylum decision stands, and so does her decision on human rights, leaving the appellant's status in this country protected, if not as a refugee.

Appeal dismissed

(a judge of the Upper Tribunal)
Dated: **03.10.2018**