Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/01486/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 4 June 2019	**On 11 June 2019**

Before

UPPER TRIBUNAL JUDGE WARR

Between

MIW
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Jegarajah of Counsel instructed by Greater London Solicitors Ltd
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 13 July 1985. She appeals the decision of a First-tier Judge following a hearing on 18 March 2019 to dismiss her protection and human rights claim from the decision of the respondent dated 23 January 2019.

2. The First-tier Judge helpfully summarised the background to this case in the following extract from her determination:

> "3. The historical background to this appeal is as follows. The appellant arrived in the UK on 31 March 2012 as the dependent

partner of her first husband who had a Tier 4 student visa expiring on 20 April 2014. She claimed asylum on 17 April 2014. This was refused on 8 August 2014. An appeal against the decision was dismissed on 15 October 2014 and permission to appeal was refused.

4. The basis of the appellant's asylum claim was that she was wanted by the authorities for allegedly renting her property to LTTE supporters, and feared serious mistreatment is she was to return.

5. The appellant made further submissions to the respondent on 28 October 2015 which were refused. She applied for assistance to voluntarily depart in April 2016 but eventually did not co-operate over a departure. Further submissions were lodged again on 3 December 2018 and the respondent treated these as a fresh claim which they refused on 23 January 2019".

3. The judge noted that while the respondent had accepted that the appellant was from Sri Lanka it was not accepted that she had had issues with the authorities there, nor that she would be at risk on return in the light of **GJ (post-civil war – returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. The respondent had not accepted that the fresh documentary evidence was genuine. She could not establish a protection claim or a claim on human rights grounds. In relation to the documentary evidence the judge reminded herself of the authority of **Tanveer Ahmed [2002] UKIAT 00439**. Counsel for the appellant (Ms Popal) referred her to **PJ (Sri Lanka) v Secretary of State [2014] EWCA Civ 1011** while the Presenting Officer (Mr Bassi) relied on VT (Article 22 Procedures Directive – confidentiality) [2017 UKUT 00368. The judge also referred to **MJ (Singh v Belgium: Tanveer Ahmed unaffected) Afghanistan [2013] UKUT 00253 (IAC)**.

4. The judge records that both parties relied on the country guidance case of **GJ** and she was referred by Mr Bassi to the Home Office response to an Information Request Report on Sri Lanka dated 26 September 2018 which suggested that document fraud remains prevalent in Sri Lanka, and to the reference in **PJ** to a letter from the British High Commission in Colombo dated 14 September 2010, and also to letters from the British High Commission cited in the case of **VT** "which suggest that attempts to verify documents provided in support of asylum applications, such as police or court documents or letters of verification from attorneys, have been shown to be not genuine in a very high proportion of cases".

5. The judge accepted that the appellant was of Sinhalese ethnicity and that she had never been involved with the LTTE or a supporter of Tamil insurgency. The judge outlined the appellant's claim as follows:

"25. The appellant sets out the basis of her claim in her witness statement dated 15 March 2019. She started working for Ceylinco Travels and Tourist Ltd in 2006 in Colombo. She had a colleague called SR who is of Tamil ethnicity. The appellant permitted SR to use her residence as a postal address. Their friendship continued

even after the appellant changed jobs. The appellant was also friendly with SR's wife who lived in India, and on one occasion she travelled to stay with her there. The appellant stated that she had the mobile number of SR's wife at the time although she no longer has it.

26. The appellant married her first husband on 6 January 2011 in a Catholic ceremony. Her father was not happy about her marrying a Catholic and she said that their relationship was never the same again.

27. The appellant says that her father bought her a property in Pandadura as part of her dowry. She wanted to join her husband who was studying in the UK. She rented out the property to SR who paid three year's rent up front. The appellant then travelled to the UK to join her husband in March 2012.

28. The marriage did not last. In April 2013, Mr AL moved into the shared house she was living in, and their relationship commenced.

29. On 10 March 2013 the appellant received a telephone call from her father informing her that the Sri Lankan police had visited their family home asking about her. He was told that a known LTTE terrorist had been arrested at her property. The police alleged that the appellant was assisting the LTTE diaspora internationally. SR had also been arrested. The police also visited her ex-husband's house.

30. The appellant asserted that in December 2013 the police had visited her family home again with some documents in her name which her father had refused to accept. Her father was then required to report to the police station every month.

31. On 1 February 2014 the appellant travelled to Sri Lanka in order to 'clear her name'. She was stopped at the airport and questioned by an immigration officer, but allowed to leave. When her father picked her up, he was concerned for her safety and arranged for her to stay with one of his friends. The next day a female CID officer visited her father's house but went away when she was told that the appellant would return in one week.

32. The appellant's evidence was that her father consulted a lawyer who advised that she should leave Sri Lanka immediately. Her father paid 500,000 rupees to an immigration officer to get her through the airport. The appellant had to wait until 23 March 2014 as this person was on leave. She was therefore in Sri Lanka for several weeks. She returned to the UK and claimed asylum on 17 April 2014.

33. The appellant says that she considered returning to Sri Lanka in April 2016 but her father advised her not to do so as the CID were still looking for her and secondly he did not approve her relationship with a Muslim man. The appellant states that her father and mother are now not speaking to her.

34. The appellant has not made any efforts to contact SR's wife or take other steps to find out what has happened to him since the first appeal date.

35. The appellant was divorced from her first husband in November 2015. She underwent an Islamic wedding ceremony with Mr A.L. on 4 September 2018.

36. Mr A.L. arrived in the UK as a student in 2009 and his visa expired in 2013. He confirmed to me that he has not taken any steps to regularise his stay in the UK. He borrowed money from his brother who has threatened to kill him because he has not been repaid. He says his brother is a sergeant with the police. His mother disapproves of the fact that he has married a woman who is a Buddhist and divorced. He says that he cannot live in Sri Lanka as he does not speak the language and because of an increase in anti-muslim violence.

37. The appellant asserts that if she has to return to Sri Lanka she would not be able to take her husband with her as he is Muslim. She would not be able to obtain support from her family and would be a single female head of household, which would place her at particular risk".

The judge notes that at the previous hearing in 2014 the judge had accepted that the appellant had been working in the tourism industry and that she had provided a consistent account of the police visiting her family home in March 2013. However, the judge also had found inconsistencies between the appellant's statement and that of her father as to who owned the property where a known LTTE supporter had been arrested. The evidence did not show that the appellant owned the property or where it was.

6. The judge found it clear that the previous judge had had sight of alleged court documents and had placed little weight on them and that it was highly surprising that the appellant would have decided to travel to Sri Lanka in February 2014 if she was aware that the police had alleged that she was involved in LTTE activities. It was also found to be surprising that if an arrest warrant had been issued in December 2013 that the appellant had not been arrested when detained at the airport on her arrival and nor had the authorities made efforts to find her during the weeks she had been in Sri Lanka.

7. Having reminded herself of the principles in **Devaseelan** the judge turned to consider the new material and records that she had some difficulty in establishing which documents in the appellant's bundle were new and which had been in front of the former Tribunal. When asked this specific question Counsel referred the judge to pages 72 to 107 in the appellant's bundle. The judge itemises these documents in paragraph 47 of her decision and found it was clear that the majority had been before the Tribunal Judge at the first appeal. The only attorney letter which had postdated the first appeal hearing was a letter from Mr R Raguraajah dated 19 June 2018 to the appellant's solicitors confirming that he had attended the Magistrates' Court in Panadura and had spoken with the chief registrar who was able to check the court records and confirmed that the case record was genuine. The letter had failed to deal with a request

to verify the status of the previous attorney Mr P Wijesinghe whose evidence had been considered by the first Tribunal. The judge concluded there was very little in the way of new evidence save for the letter from Mr Raguraajah. The judge then considered what weight should be given to the letter as follows:

> "51. Mr Bassi refers me to paragraph 73 of *VT* which reads: 'the fact that evidence was obtained through 'lawyer to lawyer' correspondence does not mean that it should be accepted without question. The fact that the process of obtaining the evidence is more apparent is a matter that lends more weight to the evidence, but the overall reliability of the information provided by an attorney in Sri Lanka must still be subject to scrutiny'. The letter goes on to say that evidence from the British High Commission in Colombo 'shows that a number of similar letters purporting to be from Sri Lankan attorneys have been shown to be unreliable'.
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> 52. Ms Popal points out and I accept that *VT* was concerned with Article 22 and the process of verification that was being used by the respondent. She urges me to place weight upon the attorney letter and suggests that if the respondent disputed that it was genuine, it should have sought to verify the letter himself. Mr Bassi stated that the respondent is not currently carrying out verification of documents in Sri Lanka due lack of resources.
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> 53. In *PJ* the Court of Appeal considered when the respondent might be expected to verify documents. It is accepted that this may be necessary in some cases but added (paragraph 29) that 'it is important to stress however that this step will frequently not be feasible or it may be unjustified or disproportionate'. The paragraph finishes: 'As the court in *Tanveer Ahmed* observed, documents should not be viewed in isolation and the evidence needs to be considered in its entirety'.
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> 54. Taking this guidance into account, I am not able to view the production of the letter from Mr Raguraajah as a piece of evidence that substantially adds to the documentary evidence supplied previously. Ms Popal urges me to take the position that this letter is 'at the centre of the request for protection' (*PH*). I do not accept that in the context of this case. The attorney letter is one document out of a number presented by the appellant. The judge at the first appeal hearing identified significant issues both in relation to the documents relating to the property and in relation to the arrest warrant. He was troubled by the fact that none of these referred to the actual address where the LTTE activists were allegedly operating from. He was not satisfied that the documents demonstrated that the appellant owned the property. He concluded that little weight could be placed upon the documents.
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> 55. Ms Popal argued that the judge's conclusions regarding the property deeds were incorrect. I did not have copies of these deeds in my bundle, but the appellant had brought English translations to court and I was shown them. Ms Popal accepted that the purported deed of transfer to the appellant did not show

a property address as such. She stated that although she was not seeking to make submissions about Sri Lankan property law, that the deed and its reference to a plot of land as opposed to an address were the standard format for land documentation in the country. She urged me not to take a 'westernised' viewpoint of the format of the documents simply because they were dissimilar to the type of property deed we are used to seeing in the UK. I am not able to accept this submission. In the absence of any expert or other evidence as to the interpretation of the deed produced, I am unable to interfere with the finding of fact made by the judge at the first appeal that the appellant had not demonstrated to the required standard that she owned a property at which LTTE activists had been arrested.

56. Taking all the evidence produced into account, I am not able to accept that the attorney letter dated June 2018 is so significant as to cause me to take an entirely different view of the evidence than the first judge".

8. The judge then went on to consider various evidential issues raised in the first appeal which had not been addressed satisfactorily before her. Like the previous judge she had found it hard to understand why the appellant should decide to visit Sri Lanka in February 2014 given the circumstances. She continued:

"59. Second, it is the appellant's case that a number of arrest warrants were issued against her in late 2013 and early 2014. Despite that, although stopped and questioned at immigration, she was released. Given the sophistication of state intelligence identified in *GJ*, it seems highly likely that she would be on a 'stop' list if the arrest warrants were genuine. In fact, she managed to enter Sri Lanka and she remained there for over six weeks, avoiding being detained by the police.

60. There is no recent evidence about the case against the appellant. I am surprised that she has not made any efforts to find out about the case of SR, whom she has described as a colleague and a friend. At the very least the appellant could have tried to contact his wife to see what had happened to him. Over four years has passed since the first appeal but the appellant has not produced any evidence to show that the authorities have a continuing interest in her.

61. Although the appellant says that she became aware that the authorities were looking for her in March 2013, she has not provided a satisfactory explanation as to why she did not claim asylum until 17 April 2014, over three weeks after she returned to the UK and just three days before her Tier 4 dependent visa expired.

62. Against the background of all these issues I am not able to give significant weight to the evidence from the attorney dated June 2018 for a number of reasons. First, although Mr Raguraajah states that his Bar ID card is enclosed, no copy has been included in the bundle. Second, he does not reply to the question asking him to verify the status of Mr Wijesinghe. Third, his letter is not

direct evidence of the genuine nature of the case record at the Magistrate's court but a second-hand report. Finally I take account of the warnings in *VT* about potential issues with attorney letters from Sri Lanka. When I consider this letter alongside the other documentary evidence produced in support of the asylum claim, I conclude that substantial concerns around the documents remain and do not assist the appellant in her assertion that she is wanted by the authorities.

63. In summary I find that there are not good grounds for revisiting the decision that Judge Henderson made following the hearing on 30 September 2014. I therefore find that the appellant has not demonstrated to the required standard that she is wanted in Sri Lanka and would be at risk upon a return. She has not established that there is a real risk that she falls within one of the categories of persons entitled to protection in the case of *GJ*".

9. The judge did not accept the claim that she would be at risk on return as a single female head of household nor that she would not have family support on her return. She did not accept that the appellant had become completely estranged from her family and could in any event return to Sri Lanka with her husband. For reasons set out in detail in the decision the judge rejected the claim on all grounds.

10. In the grounds of appeal from the decision it was argued in ground 1 that the judge had erred in considering the letter from Mr Raguraajah in isolation and had failed to follow the authority of **Tanveer Ahmed**. She had failed to understand the relevance of a second Sri Lankan lawyer being instructed at a different moment of time coming to the same conclusion as a lawyer previously. Reference was then made to **PJ (Sri Lanka)**. Ground 3 also relies on **PJ** and argues that the consideration of the authority by the judge had been flawed in that it would not have been particularly onerous for the respondent to make the necessary enquiries about the authenticity and reliability of a document.

11. In ground 4 it was pointed out that the judge had erred in finding that the Bar ID card for Mr Raguraajah had not been included. This had been in the respondent's bundle. In ground 5 it was argued that Mr Raguraajah had not replied to the question asking him to verify the status of Mr Wijesinghe but this had never been raised by the respondent in cross-examination or in submissions. The issue was one of fairness. The first time the point was raised was by the judge in her written determination.

12. In ground 6 the judge was criticised for finding that the report from Mr Raguraajah was a second-hand report and he had attended the court personally. It was also argued that as the appellant would be returned on an ETD she would be taken into questioning and would be at risk under Articles 2 and 3.

13. Permission to appeal was granted on all grounds on 7 May 2019 by the First-tier Tribunal.

14. Ms Jegarajah argued that the material identified by Mr Raguraajah was completely different from the previous material and was based on the original court documents, they were copies of the original sealed material. Translations of the documents appeared from page 79. The documents revealed the entire sequence of events affecting the appellant. The appellant had failed to attend court and an open warrant had been issued. The appellant's case had been treated as a fresh claim on the basis of the material. The judge had erred in finding that production of the material had not substantially added to the documentary evidence supplied previously in paragraph 54. It would be a simple matter for the Home Office to make enquiries.

15. Mr Whitwell submitted that it was difficult to relate the points being made to the grounds on which permission had been granted. He noted that in ground 1 at paragraph 4 reference had been made to paragraphs 47 and 48 of the First-tier decision but the reference in paragraph 48 should have been a reference to paragraph 49. While it was acknowledged that the Bar ID card had been enclosed in the respondent's bundle although not it appears in the appellant's bundle, the judge had correctly found that Mr Raguraajah had been asked to verify the status of Mr Wijesinghe. It was submitted that the new evidence should be treated with caution and that any error in paragraph 62 was immaterial. The documentary evidence should not be considered in isolation. There were not sufficient resources in the Home Office to make enquiries.

16. In reply, Ms Jegarajah submitted that matters happening since the previous decision could be considered in the light of the points made in **Devaseelan**. The decision of the First-tier Judge in the previous decision had not made findings in relation to the lawyers' letters. The same documents had been, as it were, re-packaged. Mr Raguraajah had spoken to the chief registrar at the court.

17. At the conclusion of the submissions I reserved my decision.

18. I have carefully considered all the material before me. I remind myself that I can only interfere with the decision of the First-tier Judge if it was flawed in law.

19. Before considering the main issues I should mention two of the grounds on which there was no dispute at the hearing. In ground 4 the judge had said that the lawyer's Bar ID card had not been included in the bundle. The judge had referred in paragraph 46 of her decision to the difficulty in establishing which documents in the appellant's bundle were new and had been referred to pages 72 to 107 in the bundle. It is correct that in those pages the Bar ID did not appear but it did feature in the Home Office bundle. The oversight was understandable given the papers she had been expressly asked to consider. In relation to ground 5 it is quite clear from the letters of instruction to Mr Raguraajah dated 13 April 2018 that he was indeed asked to confirm the status of Mr Wijesinghe. There is no merit at all in this challenge. It should not have been advanced. The point was

available to the judge on the face of the material to which her attention had specifically been directed.

20. The main argument advanced at the hearing before me by Ms Jegarajah (who submitted that the error in ground 5 was irrelevant) was based on the fact that the position had indeed changed since the previous hearing in that Mr Raguraajah had taken copies of all the original court documents at the court. In relation to this point it is not without relevance to note what the judge said in paragraph 48 of her decision (summarised in paragraph 7 above) that Mr R Raguraajah had written to the appellant's solicitors confirming" that he attended the Magistrates' Court in Panadura and spoke with the Chief Registrar who was able to check the court records and confirmed that the case record was genuine." I am not satisfied that she was unduly dismissive about the new documentary evidence or materially misdirected herself in relation to it.

21. The judge had a number of reasons for concluding as she did. She had had the benefit of hearing oral evidence. She clearly had in mind the guidance in the case of **PJ**. However the appeal before her was a case in which findings had previously been made in relation to the material and the case of **Devaseelan** is of relevance**.** It had been found, for example, by the previous judge that the evidence could not be relied on to show there was an extant court order or arrest warrant. The points made by the judge in paragraphs 58 to 61 remain good ones. She noted, correctly, in paragraph 62 that the status of the previous attorney had not been verified. She was entitled to conclude that substantial concerns about the documentary evidence remained, notwithstanding the new material. She properly addressed herself on the issue of documentary verification and what was said in **PJ** (including the reference by the Court of Appeal to **Tanveer Ahmed** and the need not to view documents in isolation.) She was entitled to take account of potential issues with attorney letters as identified in **VT**. In all the circumstances it was open to her not to give significant weight to the material provided by Mr Raguraajah. I agree with Mr Whitwell that the approach of the judge was not materially flawed in law and that it would not be proportionate for the respondent to make enquiries in the light of the guidance in **PJ** at paragraph 29 to which the judge had alluded in paragraph 53 of her decision. In relation to ground seven The judge properly addressed the risks on return in paragraphs 63 and 64 in the light of the country guidance.

22. This appeal is dismissed and the decision of the First-tier Judge shall stand.

23. The First-tier Judge made an anonymity direction which it is appropriate should continue.

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 her or any member of her 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.

TO THE RESPONDENT

FEE AWARD

The First-tier Judge made no fee award and I make none.

Signed Date: 10 June 2019

G Warr, Judge of the Upper Tribunal