



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

Appeal Number: PA/03591/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 8 October 2019**

**Decision & Reasons Promulgated
On 11 October 2019**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

RS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, counsel instructed by S Satha & Co Solicitors

For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Roopnarine-Davies, promulgated on 18 June 2019. Permission to appeal was granted by Upper Tribunal Judge Rintoul on 2 September 2019

Anonymity

2. Such a direction was made previously and is reiterated below because the appellant is vulnerable owing to a mental health condition.

Background

3. The appellant entered the United Kingdom on 15 April 2005, with leave to enter as a working holidaymaker, valid until 5 April 2007. An application made by the appellant for further leave to remain as a student was refused with no right of appeal on 24 April 2007. Thereafter he remained in the United Kingdom without leave. On 30 January 2014, the appellant applied for asylum and it is the refusal of that claim which is the subject of this appeal. The appellant's protection claim is based on his support for the LTTE, that his support became known to the authorities and this led to his arrest and detention in Sri Lanka for a short period in 2000. He was arrested again in 2005 and detained for a longer period because the authorities suspected that he had resumed his activities. He fears that the Sri Lankan authorities, who had visited the family home after his departure, are still looking for him. The appellant also relies on medical evidence which raises a risk of suicide as well as sur place political activity in the form of attending demonstrations.
4. The respondent refused the appellant's protection claim on 9 April 2019 for the following reasons. Reference was made to several inconsistencies between the accounts provided by the appellant in interview as well as in his supporting evidence; a lack of clarity regarding many aspects of his claim and a document verification report (DVR) which stated that the evidence of court proceedings relied upon by the appellant was not genuine. Consequently, the respondent did not accept that the appellant was a member of the LTTE, that he had experienced the issues he claimed or that he was involved in political activity in the United Kingdom. The appellant's claim under Articles 3 and 8 based on his mental health was refused as it was not accepted that his removal to Sri Lanka would amount to a breach of his human rights on the basis of his medical condition.

The hearing before the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant did not give evidence because a consultant psychiatrist had stated that he was unfit to do so. Therefore, the appeal proceeded by way of submissions. The judge accepted that the appellant was arrested on the first occasion but not the second. The judge further accepted that the appellant was suffering from PTSD and depression but did not accept that he would be at real risk of suicide on return to Sri Lanka.

The grounds of appeal

6. The grounds of appeal argued that the judge's assessment of the appellant's claim subsequent to his detention in 2000 was fundamentally flawed for the following reasons.

7. Firstly, the judge had made mistakes of fact. These were finding that the letter from the Human Rights Commission had been tampered with; noting differing spelling in translated documents and that the judge failed to have regard to the appellant's evidence regarding the whereabouts of the appellant's cousin, N, prior to his death.
8. Secondly, it was argued that the judge did not identify the internal inconsistencies she referred to. There was said to be an absence of reasons for negative conclusions; that the judge erred in finding that the appellant had given an inconsistent account of his second arrest; erred in finding that it was implausible that he was granted bail if of interest; that the appellant's evidence regarding how he left Sri Lanka was not taken into consideration and that the reference to an arrest warrant was misplaced because the appellant had never seen such a document or produced it in support of his claim.
9. Permission to appeal was granted on the basis sought, with Upper Tribunal Judge Rintoul commenting that the appellant may well struggle to show that the arguable errors were material.
10. The respondent did not file a Rule 24 response.

The hearing

11. I heard brief submissions from the parties, who agreed that the judge erred in making a reference to an arrest warrant, in connection with the DVR. Neither had had sight of such a document and the appellant had not produced one. Mr Singh emphasised that the respondent was in difficulty in defending the decision, that the issue of the arrest warrant was relevant to the credibility findings and the matter should be heard afresh.

Decision on error of law

12. At [41] of the decision, the judge refers to the DVR produced by the respondent in concluding that the appellant's oral and documentary evidence was inconsistent with the document verified by the respondent. She further notes that the appellant had made little attempt to challenge the DVR. Having considered the documents on file, I can find no trace of the "warrant of arrest" referred to in the DVR. The judge did not address the fact that the documents produced by the appellant did not include an arrest warrant and therefore her reliance on a DVR stating that an arrest warrant was not genuine meant that she fell into error. This error is material because the majority of the other credibility findings relate to the contents of the appellant's visa application when he applied to come to the United Kingdom as a working holidaymaker and the findings of the judge who allowed his appeal against the refusal of that application. It may well be that the details of those proceedings have limited utility in his asylum appeal. In addition, at [43] of the appellant's witness statement which was before the First-tier Tribunal, he expresses concerns as to the involvement of the police in the document registry as well as with what

was seen or verified by the British High Commission. The DVR was the central reason for the refusal of his protection claim and ought to have been considered with anxious scrutiny.

13. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of one day by any judge except First-tier Tribunal Judge Roopnarine-Davies.

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 8 October 2019

Upper Tribunal Judge Kamara