



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

Appeal Number: PA/07929/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 5 June 2019**

**Decision & Reasons Promulgated
On 14 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MR BPRW
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Wilcox, Counsel, instructed by Nag Law Solicitors
For the Respondent: Mr J McGirr, Senior Home Office Presenting Officer

DECISION AND REASONS

Background

The appellant is a citizen of Sri Lanka born on 15 October 1983. He appealed to the First-tier Tribunal against the decision of the respondent to refuse the appellant's application, that decision being dated 15 June 2018. In a decision promulgated on 29 March 2019, Judge of the First-tier Tribunal I Howard dismissed the appellant's protection claim.

The appellant appeals with permission on the following grounds:

Ground 1:

Failure to make findings on material issues, notably in respect of the guidance given in **PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 1011** and an alleged failure by the judge to decide whether or not there was an obligation on the Secretary of State to undertake particular enquiries in this case and if he decided that requirement existed, what consequences arose as a result of the Secretary of State's failure to discharge that obligation;

Ground 2:

Insufficient reasons in relation to the rejection of the documents provided on behalf of the appellant;

Ground 3:

Failure to have regard to the objective evidence including in relation to the significant change in the country situation in Sri Lanka and the intervening period between when the appellant fled in 2009 and when he returned in 2011 to marry, it being argued that the judge failed to give adequate reasons for finding this return inconsistent, given that the Sri Lankan government's concern changed following the conclusion of the war in May 2009.

Decision on Error of Law

It was Mr Wilcox's submission that the judge failed to engage with the guidance in **PJ** despite the fact that this formed part of the appellant's case, including as recorded at paragraphs 7 to 9 of the appellant's skeleton argument. Mr Wilcox relied on the documents submitted to the First-tier Tribunal, which included a letter from the mother of the person in question that the appellant claimed to have helped together with a receipt from the LRRRC. More significantly, Mr Wilcox submitted that the judge failed to engage with any of the documents at pages 49 to 55 of the appellant's bundle, which included an arrest warrant and Magistrates' documents and a letter from the appellant's attorney in Sri Lanka together with his Bar Association identity card and a national identity card. It was Mr Wilcox's submission that in terms of what was said in **PJ (Sri Lanka)** these documents in particular went to the heart of the appellant's case and were easily verifiable by the respondent.

PJ (Sri Lanka) provides including as follows:

"30. Therefore, simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead, it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document - depending always on the particular facts of the case - when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see Singh v Belgium [101] - [105]). I do not consider that there is any material difference in approach between the decisions in Tanveer Ahmed and Singh v Belgium, in that in the latter case the Strasbourg

court simply addressed one of the exceptional situations when national authorities should undertake a process of verification.

31. *In my view, the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process of verification is that the Secretary of State is unable thereafter to mount an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper enquiry. It follows that if a decision of the Secretary of State is overturned on appeal on this basis, absent a suitable investigation it will not open to her to suggest that the document or documents are forged or otherwise are not authentic.*
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. Instead, on an appeal from a decision of the Secretary of State it is for the court to decide whether there was an obligation on her to undertake particular enquiries, and if the court concludes this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation (see NA (UT rule 45: Singh V Belgium) [2014] UKUT 00205 IAC). If court finds there was such an obligation and that it was not discharged, it must assess the consequences for the case."*

It seems to me that at least a number of the documents including the warrant issued against the appellant and the report filed against the appellant by the Terrorist Investigation Division together with the letter from his lawyer are central to the appellant's case, and if they are genuine the appellant would be at risk if returned to Sri Lanka. Such was confirmed at paragraph 7(d) of the headnote to **GJ and others (Sri Lanka) [2013] UKUT 319 (IAC)**, which confirms that if an extant court order or arrest warrant are in force, then the individuals in question will be on a computerised stop list.

There is some force therefore in the argument that the First-tier Tribunal at least needed to engage with the arguments in **PJ (Sri Lanka)** as to whether the respondent ought to have undertaken such verification.

Equally, I agree with Mr Wilcox that the judge failed to give adequate reasons why he rejected the documents provided by the appellant, the judge relying simply on the assertion that the documents were produced in suspicious circumstances and therefore were not capable of corroborating the appellant's account. That would appear to fail to approach the documents and all the evidence in the round as the First-tier Tribunal only addressed the documents after reaching the conclusions that the appellant was not credible (see including **Mibanga [2005] EWCA Civ 36**).

Although Mr McGirr submitted that the judge had concluded that the appellant was not credible and therefore did not need to go any further in relation to the documents, that is to fall squarely into the **Mibanga** trap of rejecting the documents because the appellant was considered not credible rather than considering all of the evidence in the round including whether the documents were capable of supporting the appellant's account and if not, the judge was required to give reasons why this was the case (**MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)**).

In respect of ground 3 and the alleged failure to have regard to the objective evidence, again, there is merit in the appellant's argument that the judge failed to adequately explain why it was inconsistent for the appellant to have returned to Sri Lanka when he did to get married, given his earlier claimed problems, despite the fact that the background country evidence indicated a change of approach of the authorities following the end of the civil war in May 2009 (see including **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**); it being argued on behalf of the appellant that his approach and evidence was in keeping with the objective evidence, including that he had been able to leave Sri Lanka without issue under his own identity on 22 July 2009 after the ceasefire.

Although in response to the third ground Mr McGirr addressed the judge's findings about the apparent 'sea change in the attitude of the authorities' to the appellant after 2011, that is to misunderstand the grounds, which were in relation to the change of approach of the Sri Lankan authorities in general following the civil war which, it was argued and I accept, the judge failed to take into consideration in reaching his credibility findings (whereas the judge's findings at [29] were in relation to the judge's rejection of why and how the documents had been produced).

I am of the view that the First-tier Tribunal failed to give adequate reasons as to why the appellant's account was rejected in light of the background country information, which is potentially supportive of such a narrative.

Notice of Decision

The decision of the First-tier Tribunal contains an error of law and is set aside. As the errors in question go to the heart of the appellant's account, including the findings on credibility and in relation to the documents, no findings are preserved. Given the nature and extent of the fact-finding required therefore, the appeal is remitted to the First-tier Tribunal for a hearing de novo, other than before Judge Howard.

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 his 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: 12 June 2019

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT
FEE AWARD

No fee was paid and therefore no fee award is made.

Signed

Date: 12 June 2019

Deputy Upper Tribunal Judge Hutchinson