Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/08174/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
Heard on 23 January 2019	**On 04 March 2019**
Prepared on 27 February 2019	

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

MANOJ [K]
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Parkin, Counsel
For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Sri Lanka born on 12 April 1986. He appeals against the decision of Judge of the First-tier Tribunal Lawrence sitting at Hatton Cross on 27 July 2018 in which the Judge dismissed the Appellant's appeal against a decision of the Respondent dated 20 June 2018. That decision was to refuse the Appellant's application for international protection.

2. On 21 December 2010 the Appellant applied for leave to enter the United Kingdom as a Tier 4 (General) student which was granted valid until 28 June 2014. He entered the United Kingdom on 18 April 2011. On 28 May 2014 the Respondent revoked the licence of the Appellant's educational institution and the Appellant was given 60 days to find an alternative institution. On 25 March 2015 the Appellant made an application for leave to remain as a Tier 4 student which was refused and he made no further applications until he claimed asylum on 21 December 2017 the same day he was served with form IS96 ENF as an overstayer. It was the refusal of that application which has given rise to the present proceedings.

The Appellant's Case

3. The Appellant's case was summarised by the Judge at [9] of his determination. The Appellant is Sinhalese and was friends with an individual who was a Tamil but whom the authorities suspected of being involved with the LTTE. The Appellant was suspected by association. On 10 February 2009 the two men were walking home when four armed men in a white van arrested them, blindfolded them and took them to a police station in Kandy where the Appellant was ill-treated and interrogated about his association with the LTTE through his friend. The Appellant's father paid a bribe of 300,000 Sri Lankan Rupees in order to secure the Appellant's release. The Appellant was made to sign on at the police station every two weeks as a condition of his release.

4. The parents of the other man visited the Appellant twice seeking information about their son's whereabouts, but nothing has been heard of that man since the date of the arrest. The Appellant states that he made a statement to the Sri Lankan Human Rights Commission (HRC) and following the making of this statement police threatened him not pursue the matter any further. In June 2010 he gave evidence to the Lessons Learnt and Reconciliation Commission (LLRC). In August 2010 he started receiving threats to withdraw his evidence to the Commission and men in a white van came to his neighbourhood asking questions about him. The Appellant then fled to the United Kingdom.

The Decision at First Instance

5. The Judge did not find the Appellant to be a credible witness. At [16] the Judge found no evidence that the Appellant's statement purportedly made to the HRC was ever sent to that organisation. The Judge was concerned at [17] that the document said to be a response from the HRC was incomplete and the Appellant was unable to provide the original which was said to be still with the Appellant's mother in Sri Lanka. The document produced was a template and parts of the wording were missing. The Judge invited the Appellant's counsel to clarify the matter with the Appellant in oral testimony, but the Appellant merely repeated what had already been said. The Appellant did not know where his mother obtained the document from.

6. The problem which the Judge identified on the document was that it was dated 27 May 2009, yet the Appellant did not leave Sri Lanka until April 2011 and therefore the person receiving the document must have been the Appellant not his mother and he could reasonably be expected to have the original to produce. The explanation offered by the Appellant's counsel for the poor condition of the document was that it had been badly photocopied, but the Judge did not accept that argument. At [21] he indicated that that explanation was inconsistent with what parts of the document had and had not apparently been copied. Overall the document was in the Judge's view a bad and careless "cut and paste" effort.

7. This was not the only credibility point taken against the Appellant. At [22] the Judge found an inconsistency in the length of time which the Appellant claimed to have been detained, 17 days (according to the Appellant's employer) against 8 (the Appellant's statement). It was implausible (the Judge used the word "inconceivable") that the defendant could have been released without charge if a further document which indicated that the Appellant had given information to the authorities was correct.

8. The Appellant told the Respondent in interview that he had learnt about the warrant for his arrest (which confirmed there had been an application by the police to the Magistrates' court) in April 2015. This implied that the warrant was issued before that date, yet it was not referred to in the statement of the Appellant's father. The Judge found the Appellant to be evasive when asked why that was not the case. At that point at [25] the Judge referred to the date of the warrant as 29 June 2018 indicating it could not have existed in April 2015. I return to that passage later in this decision.

9. The Judge did not find it credible that the police would seek a warrant after 9 years without there being at least some fresh evidence. The Appellant said in cross-examination that he had not instructed anyone in Sri Lanka to look into or deal with the warrant. It was put to the Appellant that that answer was inconsistent with a letter said to be from a Sri Lankan lawyer. At [27] and [28] the Judge was clearly unimpressed by the Appellant's answers in cross examination. The letter purporting to be from the lawyer, should not have been addressed "To whom it may concern", it was self-serving.

10. At [30] and [31] the Judge found against the Appellant on the Appellant's claim that the police were regularly visiting his home every 4 months. This contradicted a letter written by the Appellant's father which referred to the authorities visiting at least once in 2 months. The Appellant told the Judge that in those circumstances he relied on his father's letter and that his parents kept some of the visits from him. The problem with that answer was that it indicated that the Appellant had not read his father's letter before putting it forward as supporting evidence. Someone in the Appellant's position could reasonably be expected to read documents with great care before putting them forward as evidence as they concerned the Appellant's life.

11. It was plausible that the Appellant could be friendly with someone of Tamil ethnicity, but the Appellant's oral account did not sit well with the documents he produced. The Appellant's account was a total fabrication and did not stand up to scrutiny even to the lower standard. The Appellant was cross examined during the hearing on the Respondent's allegation that the Appellant had obtained his TOEIC English-language certificate fraudulently. The Judge correctly directed himself that that of itself would not mean that the Appellant had lied in his separate asylum claim but that did not assist the Appellant as the Judge did not accept the Appellant's credibility. He dismissed the appeal against the refusal of asylum.

12. The Judge then went on to dismiss the Article 8 claim at [37] to [42]. He found that the Respondent's decision did not breach Article 8 in respect of the Appellant's claim to a private life. The Appellant would not face very significant obstacles to reintegration in Sri Lanka. This part of the decision (relating to Article 8) has not been appealed.

The Onward Appeal

13. The Appellant appealed against the decision to refuse his asylum appeal in grounds settled by counsel who had appeared before the Judge at first instance. The grounds alleged that the Judge had misunderstood the Appellant's case. He had not revealed a lot of information to the authorities since he had no information to reveal. The allegations made to the Magistrates Court were a mere pretext to enable the issue of an arrest warrant which was actually inspired by the Appellant's complaints to the HRC not to any knowledge of or involvement with the LTTE.

14. The finding that it was inconceivable that the police would release the Appellant on reporting conditions was speculative and unreasoned. The Judge had misdirected himself as to the evidence about the timing of the arrest warrant which was issued on 28 April 2011. The dates in June (not August) 2018 which appeared on the document were the dates the copies were obtained from and certified by the Registrar at the Magistrates Court in Kandy rather than the dates of the warrant. The Appellant's evidence was not that there had been a sudden and unexplained desire to detain him after 9 years. The warrant was in fact issued shortly after he left Sri Lanka or, from the perspective of the police, disappeared.

15. The application for permission to appeal came on the papers before Judge of the First-tier Tribunal Parkes on 9 October 2018. In refusing permission to appeal, Judge Parkes noted that Judge Lawrence had found that if the Appellant was not of interest when first detained and released the security forces would not be interested in him years later and that remained a valid observation. There were other objections to the Appellant's account and the reliance on unreliable documentation and his inconsistencies in that regard undermined the Appellant's general credibility. The grounds were a disagreement with findings which were open to the Judge for the reasons given.

16. The Appellant renewed his application for permission to appeal on the same grounds as before and the matter came before Upper Tribunal Judge Kekic on 12 December 2018. Granting permission to appeal she wrote: "Arguably, for the reasons set out in the grounds, the Judge misunderstood parts of the Appellant's claim and therefore arguably reached unsustainable findings on material matters".

The Hearing Before Me

17. For the Appellant counsel indicated that this was a reasons-based challenge to the determination and permission to appeal had been granted on relatively narrow grounds relating to paragraphs 8 and 9 of the grounds of appeal. Paragraph 9 was the most straightforward point which argued that the Judge had misdirected himself at [26] of the determination in relation to the dates on the arrest warrant. The warrant itself appeared at page 39 of the Appellant's bundle and the English language translation thereof appeared at page 40. The warrant was dated 28th of April 2011 and that was consistent with the Appellant's claim. The rubber stamp on the document dated 25 June 2018 indicated that something had happened on that day, the inference must be that it was obtained then from Kandy Magistrates Court.

18. The Judge erroneously referred at [26] to a date of 29 August 2018, it was not clear where that came from. The Judge had found the Appellant's credibility was harmed but that finding came from the Judge's misunderstanding of the dates on the warrant. That mistake had impugned the Appellant's credibility in the Judge's eyes to a significant degree. The Judge considered that if the Appellant's account was correct he would not have been released but that missed the obvious point that the arrest of the Appellant was based on a pretext. The real reason for the arrest was because the Appellant had made statements to the HRC. That put the Appellant within the risk categories set out in the country guidance case of **GJ**.

19. It was no argument for the Respondent to say that even if those points were misguided the Judge had nevertheless found against the Appellant on other credibility points. The Tribunal had to consider credibility as a whole and the Judge's mistakes had infected the Tribunal's decision. Counsel accepted there was no expert evidence to confirm the validity of the warrant, but the copy had been produced in the Appellant's bundle at page 39. It was written in Tamil, Sinhalese and English. The reason why the Tribunal had not accepted the credibility of the arrest warrant was because it was mistakenly thought it had been issued in 2018.

20. There were other matters counsel would have wished to say but he accepted that he had to confine his arguments to those two points (the dates on the warrant and the reason why the Appellant was released). However, these two points were the most significant. The appeal should be remitted back to the First-tier to be reheard.

21. For the Respondent it was argued that it remained unexplained how the arrest warrant had come to have the date stamp of 25 June 2018. Although the Judge's reference to the dates on the warrant were unhelpful to say the least, there were nevertheless problems with the warrant which the Judge had pointed out at [25]. There were still problems with the Appellant's evidence about the documents, for example the document given to the HRC did not look genuine. Elements had been cut and pasted into it. The error with the arrest warrant was not material partly because the document itself was equivocal about when it was issued. The main thrust of the Judge's conclusion was correct, having released the Appellant in 2011, it made no sense that the Sri Lankan authorities would suddenly develop an interest in the Appellant. The determination was sustainable.

22. In conclusion, counsel argued that this was not a case of the Sri Lankan authorities suddenly taking an interest in the Appellant, it was a case of taking an interest in him after he gave information to the HRC in 2009. Even if there was some discrepancy in the evidence to the commission (see paragraph 6 above) the Appellant's problems began in earnest after that. There was no inconsistency or implausibility in the Appellant's evidence.

Findings

23. This was a reasons-based challenge to the Judge's determination which made two main points. The first was that the Judge had misunderstood an arrest warrant produced by the Appellant and the 2nd point was that the Judge had misunderstood the reason why the Appellant had been arrested by the authorities and consequently came to a wrong view about the fact of the Appellant's release from detention. The Judge made a number of credibility criticisms of the Appellant's account which I have summarised above. The Appellant does not argue directly with those findings (see paragraph 20 above) but states that because the Judge is said to have made two errors, one about the arrest warrant and the other about the reason for the arrest, none of his other findings can be relied upon.

24. Dealing with the warrant first of all, it is apparent from the determination that the Appellant himself was inconsistent about the dates on the warrant. A date of 28 April 2011 appears on the warrant, but the Appellant told the Judge that it was issued in 2015 which was also when he learnt about it. If the date of 2011 is correct the Appellant's misunderstanding remained unexplained. If the document was correctly dated 28 April 2011 the stamp at the top of the document, 25 June 2018, is quite inexplicable. It is speculation to suggest that that date was put there to indicate when the copy was obtained from the Magistrates court there being a marked lack of evidence to establish that. It is inconsistent with the Appellant's account of the circumstances in which the warrant was obtained.

25. The Judge pointed out at [25] that the Appellant's father's letter was dated after the warrant was purportedly obtained on 25 June 2018. The father did not refer to having the warrant, quite the contrary the father's letter

specifically states that the authorities would not hand over the warrant because it was addressed to the Appellant. The Judge found against the Appellant that if the warrant was already in existence by the time of the father's letter (which is dated 28 June 2018) three days after the date stamp on the warrant) it was reasonable to have expected the father to have referred to the existence of the warrant in his letter of support, but he did not do that. It was a matter for the Judge as to whether he considered that was a mere omission or whether it indicated a lack of credibility in the supporting evidence. The Judge evidently thought the latter, a conclusion that was open to him.

26. It is correct that the Judge in the following paragraph of his determination at [26] referred to the warrant being dated 29 August 2018. It is not clear where August came from but the reference to the 29th on the date comes from the English translation which refers to the rubber stamp from the Magistrates court at Kandy being dated 29 June 2018, contrary to the Roman numerals which in fact appear on the copy warrant itself and which state 26 June 2018. There was thus a considerable amount of confusion surrounding the warrant and neither the Appellant nor his father were able to shed any light on the document.

27. The burden of proof rested on the Appellant. If he chose to put forward an ambiguous document that was so inconsistent it did not support his case, it was not surprising that the Judge would take an adverse credibility point against the Appellant. Whilst therefore the Judge may have misstated certain points on the document, the document on its face was so unreliable that it undermined the Appellant's case and the Judge was entitled to draw that conclusion at [25] and [26]. In short whilst the Judge may have committed an error, it was not a material one. There were a number of other cogent points which the Judge took against the Appellant and overall, he was entitled to form the view that the Appellant was not a credible witness and the documents the Appellant put forward lacked credibility.

28. In those circumstances the second ground argued by the Appellant falls away. The grounds of appeal argue that this was not a case of the authorities reviving their interest in the Appellant 9 years after arresting him when on that earlier occasion they had released him after only 8 days. The problem for the Appellant was that his account was internally inconsistent. The Appellant's case was that the Sri Lankan authorities were lying on the warrant when they said that the Appellant had already given them information and they wished to question him further to elicit more information. The real reason why they wished to arrest the Appellant, he claims, was because he had given information to the HRC.

29. The problem was that the Appellant's claim was that he was abducted initially by four men in a white van because of his association with a Tamil suspected of involvement with the LTTE. If that was the case, then there might be a reason why the Sri Lankan authorities would wish to re-question the Appellant. At the time the Appellant was originally detained

there was no issue surrounding the HRC but that raises the problem for the Appellant as to why he would be released so quickly after only 8 days on reporting conditions. It was then a matter for the Judge whether he accepted the Appellant's account that he was released after a short period of time because he had nothing to tell the authorities or whether the Judge came to the view that the Appellant's account was a fabrication and the Appellant had not been released either after 8 or 17 days (the two different periods being mentioned at various stages during the appeal).

30. The grounds of onward appeal amount to no more than a disagreement with the Judge's conclusion that the entire account was a fabrication. A disagreement does not of itself indicate a material error of law. The Judge had ample evidence before him to indicate that the Appellant was an unreliable witness and it was open to the Judge in those circumstances to dismiss the appeal and find that the Appellant was of no adverse interest to the Sri Lankan authorities. I do not consider there was any material error of law in the determination such that it should fall to be set aside. I dismissed the onward appeal against the decision of the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellant's appeal

Appellant's appeal dismissed

I make no anonymity order as there is no public policy reason for so doing.

Signed this 27 February 2019

.....
Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed this 27 February 2019

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Judge Woodcraft
Deputy Upper Tribunal Judge