Upper Tribunal
(Immigration and Asylum Chamber)   Appeal Number: PA/11769/2017

THE IMMIGRATION ACTS

Heard at Field House   **Decision & Reasons Promulgated**
On 11 December 2018   **On 5 February 2019**

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

WM
(Anonymity Order Made)

                                                              Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
                                                              Respondent

Representation:
For the Appellant: Mr Mustafa of Counsel
For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

1.   The appellant is a citizen of Sri Lanka born in 1970. He is Sinhalese.

2.   He appealed against a decision of the respondent made on 31 October 2017 to refuse his claim for asylum.

3.   The basis of his claim is that he was a sergeant in the security division looking after the President and his family. At the request of a friend in

2007 he facilitated meetings between a group of Tamils who lived in Malaysia and the President's son. The Tamils wished to invest in a golf course and hotel estate. Although he arranged meetings the appellant eventually lost interest in the project as it was taking too long.

4. In 2009 he resigned from the army. About a year later, in 2010, he was detained by the CID who accused him of working for the LTTE. He was released some ten days later and told by the CID to leave the country or he would be killed.

5. The application was refused as lacking in credibility.

6. He appealed.

First-tier Hearing

7. Following a hearing at Taylor House on 31 July 2018 Judge of the First-tier Tribunal Aujla dismissed the appeal.

8. His findings are at paragraph [28] ff. In summary, first noting that the events started in 2007 when the conflict between the authorities and Tamils was at its height, and only two years before the LTTE were finally eliminated, it was not accepted that his Tamil friends *"would be interested in investing funds at that time"* [29].

9. Second, it was not credible that the appellant would compromise his position and put himself at risk as an army sergeant and a person in charge of protecting the President and his family by allowing access to them by Tamils. They may not have been genuine investors but people who wished harm to the President [30].

10. Third, following release from custody he did not leave Sri Lanka for seven months during which time he had no problems. Also, he was able to exit via the airport through proper immigration controls on his own passport. If he had been recorded as an absconder following payment of a bribe, such lack of difficulty was not credible [31].

11. Fourth, he overstayed his student visa and delayed for five years before claiming asylum [32].

12. Finally, what purported to be court documents from proceedings in Sri Lanka soon after he arrived in the UK in 2011 were not produced to the respondent until much later [33].

13. He sought permission to appeal which was granted on 2 November 2018.

Error of Law Hearing

14. At the error of law hearing Mr Mustafa focused on two points. First, documentary evidence from the Magistrates Court in Colombo which included an arrest warrant had been produced to the respondent. An earlier hearing before the First tier Tribunal had been adjourned at the respondent's request to carry out verification checks on these documents but the respondent failed to do so. Case law indicated that having failed in her legal duty to verify the documents the effect was that for the purpose of the hearing the authenticity of the documents could not be disputed. The further consequence was that the arrest warrant would mean the appellant will be on a wanted list and would be at risk of arrest on return.

15. The other main point made by Mr Mustafa was that the judge failed to have regard to material aspects of the appellant's evidence, particularly in his witness statement, about his ability to leave Sri Lanka through the airport by way of an agent and corrupt officials. That corruption is widespread is clear from the background material. It was also not his evidence that he had been living at home and moving about freely before his exit.

16. Mr Kandola's brief response was in line with that in the rule 24 reply, namely, that the judge directed himself appropriately and gave adequate reasons for finding the account not credible. He gave adequate consideration to the documentary evidence in line with the principles in **Tanveer Ahmed**.

Consideration

17. I do not find merit in the submission about the non-verification of the purported court documents. It is not apparent from the submission by the appellant's then representative, recorded (at [24]) of the decision, that this issue was raised before the First-tier Judge. Nor is it mentioned in the skeleton argument lodged for the first-tier hearing or in the record of proceedings. The judge cannot be criticised for failing to deal with an issue which was not raised before him.

18. However, I do find merit in the submission that the judge failed to have regard to material aspects of the appellant's evidence. At [31] the judge found that the appellant did not leave Sri Lanka for over seven months after his release during which he had no problems from the authorities. He went on: *"Not only that, he was able to leave the country through the proper immigration channels on his own properly issued passport without any problems. If the appellant were recorded as an absconder from detention and suspected of supporting the LTTE, I do not for a moment find it plausible that the authorities would not have gone to his house to pick him up or at least detain him at the airport since it is reasonably likely to assume that his name would have been on a stop list. The fact that the appellant was able to move freely in the country and then leave the*

country without any problems further undermined the credibility of his account that he was arrested, detained and released with payment of a bribe."

19. The problem is that in his witness statement (31 July 2018) he said that he did not stay at home but at a mine owned by a friend because no one was there, and that he only went out once with the agent to submit his visa application (at para 17). Moreover, in respect of his exit through the airport he stated that once he got the visa the agent took him in his vehicle with the immigration officer who was in the vehicle as well. The statement continues: *"Before the airport, there were some checkpoints outside of the airport (2 air force checkpoints). The Immigration Officer showed his ID. We were allowed to go. Inside the airport the immigration officer came with me … He said something to the officer at the counter and my passport was stamped. He himself brought me up to the boarding area and put me on the plane."*

20. He said much the same at his asylum interview on 12 October 2017 (eg Q48,59,60).

21. In ***GJ and Others (post-civil war: returnees) Sri Lanka CG*** [2013] UKUT 319 the Upper Tribunal noted that bribery and corruption was pervasive in Sri Lanka (see [394]).

22. It is not necessary for me to examine in further detail the grounds of the application. I am satisfied that the judge's failure to have regard to relevant evidence on matters which were central to his claim was a material error of law. The findings made by the judge are unsafe and should not be allowed to stand. The decision of the First tier Tribunal is accordingly set aside.

Decision

23. The decision of the First-tier Tribunal is set aside. The nature of the case is such that it is appropriate under section 12(2) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2 to remit to the First-tier Tribunal for an entirely fresh hearing. No findings are preserved. The member(s) of the First-tier Tribunal chosen to consider the case are not to include Judge Aujla.

    An anonymity order is made. Unless and until a tribunal or court otherwise directs, the appellant is granted anonymity. Failure to comply with this order could lead to contempt of court proceedings.

Signed   Date 29 January 2019

Upper Tribunal Judge Conway