Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: PA/12793/2018
PA/06653/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 27 August 2019	**On 04 September 2019**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S P D S
S L D S
(ANONYMITY DIRECTION MADE)

Claimants

Representation:

For the Appellant: Mr T Lindsay, Senior Home Office Presenting Officer
For the Claimants: Mr A Pipe, instructed by TRP Solicitors

DECISION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an anonymity direction. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication shall directly or indirectly identify either claimant or their family members.

This is the Secretary of State's appeal against the decision of First-tier Tribunal Judge Anthony promulgated on 22 May 2019, allowing the appeals of the claimants on both asylum and on human rights grounds.

First-tier Tribunal Judge Manuell granted permission to appeal on 13 June on the basis it was arguable that, notwithstanding the obvious care which was taken in the preparation of the decision, the judge has omitted to consider the matters mentioned above which are of plain significance, and appeared to have determined the appeals largely on her view of plausibility. The matters mentioned are set out in the grounds and, in summary, they are that the judge failed to address the respondent's case for refusal adequately, in particular failed to consider the material timeline, which included the fact that the first claimant had been returned forcibly to Sri Lanka on 23 March 2010. It is alleged the judge also failed to consider the significance of the claimant's failure to claim asylum in the United Kingdom when faced with such removal. The timeline is significant because at the date of his enforced return to Sri Lanka in March of 2010 an arrest warrant had been issued some time earlier and the claimant had been informed of it; it is accepted by Mr Pipe the claimant was aware of it before he was returned. Despite that, and despite the enforced return, he did not claim asylum.

I should add at this stage that as a preliminary issue it was pointed out that the application for permission to appeal referred to only, on its face, PA/06653/2018, which is the second claimant's case, although it named only the first claimant. In the covering fax header for that application sent to the Tribunal and to the claimants that PA/06653 number was crossed out and replaced with PA/12793/2018. This was all a bit of a mess in that it is clear from the body of the grounds that the challenge was to the judge's findings in relation to the first claimant and both parties agree that in that regard the second claimant is largely dependent on the first claimant.

Which number was intended to be referred to is further confused by the fact that when Judge Manuell granted permission to appeal he headed the permission document with both appeal numbers and purported to grant permission in respect of both. The point is whether there was in fact an appeal against the decision in respect of the first or second claimant or not. For the sake of clarity, having heard submissions on the matter and having heard Mr Pipe's concession that he is not prejudiced by these technical difficulties, I grant permission to amend the application to include both file names, both appeal numbers and both claimants so that the grant of permission by Judge Manuell is valid and if it is necessary, exercising the authority I have as a Judge of the Upper Tribunal to sit as a judge of the First-tier Tribunal, I grant permission and extend time for both the amendment to the application and to the grant. That should take care of the matter and no issue has been taken by either party with that part of the decision.

The Secretary of State contends in the grounds that the judge failed to engage with the timeline in reaching the credibility findings. There is no mention in the decision of the 23 March 2010 enforced return to Sri Lanka of the first claimant and it is asserted this is a material error, failing to resolve a clearly material part of this dispute between the parties.

The background is that the first claimant asserts that from the end of 2009 the Sri Lankan authorities had reopened a case against him in respect of the death

of his wife and an arrest warrant was out for his arrest. His case is that this was politically motivated based on their view that he was associated with the armed wing of the LTTE. His claim is that someone else killed his wife during a break-in into the home. In any event, he returned to the UK in July of 2010 and he states that it was in 2013 that he found out that he had been convicted in his absence and that he had been sentenced to death.

The Rule 24 response points out that the respondent accepted a number of facts including the following,

that the first claimant's wife had been unlawfully killed in July of 1995,

that the court documents tendered by him in support of his claim are genuine,

that he was convicted of his wife's murder on 29 September 2013,

that he suffered two heart attacks within short succession in February and March of 2018 and he suffers from heart failure as a medical condition and

it was accepted that his removal from the United Kingdom would be in breach of Article 3 in the light of the combination of his medical condition and prison conditions in Sri Lanka.

The respondent's refusal decision granted leave to the first claimant on the basis that his removal would be in breach of Article 3. In the decision of Judge Anthony, the judge considered the second claimant's private and family life and found that his removal would be a disproportionate interference with his family life, essentially with the first claimant, in the UK. It had been pointed out that the Secretary of State has not challenged that part of the decision, the Article 8 finding allowing the appeals on Article 8 ECHR grounds.

In support of his submissions, Mr Lindsay's submissions pointed out that the 2010 enforced return had not been mentioned and directed me to paragraph 25 of the impugned decision, which sets out the chronology and totally omits to mention the 2010 enforced return. The judge accepted, based on the chronology it would appear, the first claimant's assertion to have been able to bribe officials. However, the point is made that if he was being forcibly returned to Sri Lanka in March of 2010, how he could bribe officials on return, and the second point being made is that before me left the United Kingdom on that enforced return he failed to claim asylum when he had an opportunity to do so and when it is accepted there was an arrest warrant for him.

In response to that, Mr Pipe's submission is to take me to the decision in some detail and to point out that the judge has taken, in his submission, a view of all the evidence and whilst there is no specific reference to the 2010 enforced return, the judge has addressed the credibility of the claim to be able to bribe officials with the assistance of his brother. As the judge set out at paragraph 71 of the decision, it was accepted and found as a fact that the first claimant was only able to secure his safe passage with the help of his brother and a friend, and my attention has been drawn to the first claimant's witness statement in that regard.

The point being made for the respondent by Mr Lindsay is that if the judge ignored these factors, then the credibility findings must be flawed because they are very clearly points that would, in his submission, undermine the claimants' credibility and if they have not been taken into account, then it cast into doubt the rest of the findings. It was said that no reference was made whether the first claimant ever advanced any explanation for his failure to claim asylum but in response to that, Mr Pipe has taken me to his witness statement, where the appellant explains why he did not claim asylum on that occasion as he did not want to claim asylum, hoping to be able to work things out, and it was pointed out that at that time he had not been convicted in his absence and was not facing the death penalty although the proceedings had been reopened and a warrant issued. In fact, in the Rule 24 response reliance is placed on paragraph 9 to suggest that the respondent's submissions are fatally undermined by the fact that the respondent had already accepted that as of March of 2010 there was already a warrant out for the first claimant's arrest in Sri Lanka and the court documents in relation to that were accepted as genuine. There is no doubt that the appellant was wanted by the authorities. It is suggested that it is simply not open to the respondent to suggest that if the first claimant were to genuinely have been at risk he would have claimed asylum in March of 2010 and would not have been able to pass through the airport in Sri Lanka in safety, where such a risk existed. In that regard, I have been referred by Mr Lindsay to the country guidance of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), which explained that if a person was on a stop list such as because a warrant is out they would have been detained and handed over to the authorities. Mr Pipe's response is to refer me to the claimant's explanation that he was, with the help of his brother, able to secure his safe passage, effectively on the same occasion, having left and then been returned at the same time in 2010 with the help of his brother.

Looking at the decision as a whole and noting it is an extremely detailed, carefully considered and staged approach the judge has taken in each issue, I am not satisfied that the omission of inclusion of the enforced return and the failure to claim asylum on that enforced return could have made any material difference to the outcome of the appeal, given those matters which were conceded by the respondent in relation to the arrest warrant, and, secondly, the findings of the judge accepting the claim to be able to pass through the airport with the help of his brother.

I accept Mr Pipe's submissions that it must be assumed that the judge had the 2010 return in mind, that it did not escape the attention of the judge even though it is not explicitly referenced. The decision can properly be read in that light. In this regard I note that it is not essential for a judge to cite and resolve every issue in an appeal. I accept the argument that the issue is potentially relevant to the credibility of the claimant but looking at the findings as a whole, in the round, I am satisfied that even had the judge specifically addressed those findings, the judge would have found in favour of the claimant.

Decision

In the circumstances, for the reasons cited, I find that the making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such as to require the decision to be set aside.

I do not set aside the decision.

The outcome of the appeal will stand as made.

Signed
Upper Tribunal Judge Pickup

Dated 27 August 2019

To the Respondent
Fee Award

No fee is paid or payable and therefore there can be no fee award.

Signed
Upper Tribunal Judge Pickup

Dated 27 August 2019