



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

Appeal Numbers: AA/04690/2012
AA/04691/2012
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THE IMMIGRATION ACTS

**Heard at Field House
On 30 September 2014**

**Determination
Promulgated
On 20 October 2014**

Before

**UPPER TRIBUNAL JUDGE GOLDSTEIN
UPPER TRIBUNAL JUDGE OCONNOR**

Between

**PJ
AJ
KJ**

(ANONYMITY ORDER MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr Jonathan Martin, Counsel instructed by Messrs ICS Solicitors

For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant and his wife and child are citizens of Sri Lanka. We shall refer to the first named Appellant PJ as “the Appellant” for the purposes of our determination.
2. The Appellant entered the United Kingdom as a student on 14 September 2008 with a visa valid until January 2010. His wife joined him on 25 January 2009 as his dependant. The Appellant’s student visa was extended to 23 July 2012 and during this process he was granted leave to remain as a Tier 1 (Post-Study Work) Migrant. His wife returned to Sri Lanka on 19 October 2010 in order to give birth and she and their child returned together to this country on 16 November 2011.
3. On 3 April 2012 the Appellant sought asylum claiming that if he returned to Sri Lanka he faced mistreatment because of the authorities’ perceptions as to his political opinions based on the connection between members of his family to the LTTE. In that regard he claimed that his sister joined the LTTE in 1993 – specifically a Black Tiger’s suicide squad member, who was killed on 11 May 2006 by the Sri Lankan Navy. The Appellant’s brother was forcibly enlisted in the LTTE in 1996 and killed on 24 September 1997. His father, though not a member of any political party, worked as a boatman for Colonel Soosai, the commander of the LTTE Black Sea Tiger Unit from its inception in 1992. The Sri Lankan Navy was said to have killed the Appellant’s father on 7 February 2000 during an engagement near Mullaitivu.
4. It was the Appellant’s account that he was put under pressure to join the LTTE. He claimed to have been arrested by the Sri Lankan Police on 30 November 2007 with three or four other men, because a bomb that did not explode was found at a railway station near the his home. The Appellant was held overnight and released on 1 December 2007. The Appellant claimed that whilst in detention he was beaten and pushed against a wall. In due course the Appellant brought his release document to the United Kingdom.
5. The Appellant’s account was that he was not charged or bailed or subject to reporting conditions but he nonetheless claimed to fear that he would be arrested by the Army and the CID if returned to Sri Lanka.
6. It was the Appellant’s account that on 30 December 2011 his mother was told by Police Officers that the Appellant was suspected of having contact with the LTTE and that they were making enquiries about him.
7. In consequence the Appellant made contact with a solicitor in Colombo a Mr Jayasinghe in order to obtain advice as to what steps his mother should take.
8. It was the Appellant’s case that on 13 February 2012 the Sri Lankan authorities issued an arrest warrant for him and that a letter was sent from a Magistrate to the Controller of Immigration and Emigration stipulating

that the Appellant was in the United Kingdom but that if he returned to Sri Lanka he should be taken into custody.

9. At interview the Appellant stated that the information came from his United Kingdom solicitors on 16 February 2012. On 29 February 2012 the Appellant's British solicitors wrote to Mr Jayasinghe requesting that he obtain any documents relevant to the case. On 16 March 2012 Mr Jayasinghe made an application to the relevant court and in consequence various papers were provided on 19 March 2012. Mr Jayasinghe wrote to the Appellant's British solicitors on 20 March 2012 enclosing a certified copy of a report and certain other documents that had been provided to the court by the Police together with a cash receipt for 30 rupees (the cost of obtaining the copy documents). The contents reveal that the authorities in Sri Lanka had linked the Appellant with the 2007 bombing that they refer to as a "bomb case" at Wellawatta Railway Station and that he was to be arrested on arrival in Sri Lanka.
10. The Appellant submitted additional documents in support of his claim for asylum including a photocopy of his father's death certificate stating that he died on 7 February 2000, the cause of death being "Death while the attack of Sri Lankan Navy" (sic), a "receipt of arrest" dated 1 December 2007, an arrest warrant in his name dated 19 March 2012 and a letter from Mr Jayasinghe.
11. In the event by letter dated 2 May 2012 the Appellant was informed that his asylum application was refused and in giving reasons for such refusal the Secretary of State concluded that the documents submitted by the Appellant did not advance his case. In that regard reliance was placed in a letter from the British High Commission in Colombo dated 14 September 2010 that addressed the issue of fraudulently obtained documents. The letter referred to the high level of corruption in Sri Lanka "and the unscrupulously actions of government officials at all levels, (that) somewhat undermines the issuing process for many official documents".
12. Notably however the letter included the following:

"Formally it is difficult for the accused to be able to obtain a copy of his/her own arrest warrant. When an arrest warrant is issued, a copy is kept on the legal file and the original is handed to the police. An accused cannot apply for copies of an arrest warrant to the relevant court. However in practice forged documents are easily obtainable throughout Sri Lanka. Additionally, given ongoing and well-documented concerns over corruption in the police it would probably not prove difficult to obtain a copy of an arrest warrant, although it would probably require prior contacts within the police service".

The Proceedings

13. It is right to say that the history of these proceedings have been extensively considered by the Court of Appeal in PJ (Sri Lanka) v the Secretary of State for the Home Department [2014] EWCA Civ 1011.
14. At the hearing before their Lordships followed the Appellant's unsuccessful appeal before the First-tier Tribunal. The Appellant having subsequently and successfully obtained the grant of permission to appeal that decision, it was heard by the Upper Tribunal in a decision promulgated on 20 December 2012 and was determined that the First-tier Tribunal's determination disclosed no error of law that justified setting their decision aside. It is of note however to record the Upper Tribunal in their determination nonetheless criticised the First-tier Tribunal Judge for having doubted the professional standing of Mr Jayasinghe, in circumstances when it was argued before the Upper Tribunal that since the same documents were obtained separately by two lawyers "compelling reasons" needed to be provided if they were to be rejected as unreliable. Notwithstanding that the First-tier Tribunal had described the document produced by the Appellant as being worthless and lacking in any validity, the Upper Tribunal in all the circumstances determined there had been no error of law that justified setting aside their decision, particularly when the judgment was read as a whole.
15. Permission to appeal to the Court of Appeal was granted on 16 October 2013 by Sir Stanley Burnton who was of the view that the possible consequences of an individual on return to Sri Lanka who was suspected of involvement in a bombing meant that there was a sufficiently compelling reason for the appeal to be heard. Sir Stanley Burnton observed inter alia:

"It seems to me that when the documents do come from a lawyer in Sri Lanka, who purports to confirm their genuineness and who effectively does say that the genuineness or not of the documents can be checked by the High Commission in Sri Lanka, it may be that a different approach to the documents was appropriate."
16. In PJ at paragraph 17 their Lordships recorded the submission of Mr Martin (who also appeared before us) that he had based his appeal on the proposition that as the documents were genuine then the Appellant was a refugee. They recorded his submission in that regard as follows:

"Both lawyers produced copies of a court file obtained from the Magistrates' Court in Colombo. The documents in that file included a report made by S S K Dharmaratne Inspector of the Police Station in Colombo North, CID which stated that the Appellant has previously been arrested, that he was known to have three family members with close LTTE connections and that he was wanted for questioning 'to decide whether he had been engaged in LTTE terrorist activities'. A further document on the file was a letter from the Magistrate to the Controller of Immigration and Emigration stating that the Appellant is in the UK and that he should be taken into custody on his return to Sri Lanka".

17. Their Lordships further recorded Mr Martin's submission that there needed to be a reason of real substance in order to doubt the veracity of the documents obtained from the court.
18. It was pointed out that once the Respondent refused the Appellant's claim for asylum the Appellant's United Kingdom solicitors wrote on 9 May 2012 to a more senior Sri Lankan lawyer, Mr Weerasooriya requesting that he repeat the process of ensuring that the relevant papers originally came from the court and were not forgeries. He was asked to provide another set of the relevant materials as a matter of urgency including the "Magistrates Minutes" and the "Notification to the Controller of Immigration and Emigration dated 19 March 2012". On 23 May 2012 Mr Weerasooriya replied stating that his junior had obtained a complete certified copy of the documents that matched those produced by Mr Jayasinghe. For self-evident reasons they now bore a rubber stamp from the Magistrates' Court dated 23 May 2012 (as opposed to 19 March 2012, the date when Mr Jayasinghe undertook this work).
19. Before their Lordships Mr Martin was recorded as submitting that both lawyers had provided evidence of their Bar Association membership and they were entered on the Supreme Court role. Moreover the British High Commission in Colombo provided confirmation, first that Mr Weerasooriya was a lawyer in Sri Lanka and second that it was possible for lawyers to obtain court files. Critically, it was submitted that the risk of forgery greatly diminished if the documents came directly from the court.
20. It will suffice for the purposes of this determination to set out below the conclusions of Fulford LJ who gave a leading judgment with which McFarlan LJ and Arden LJ agreed at paragraphs 41 and 42 below:

"41. In my judgment, Judge Woodcraft doubted the validity of these documents (certainly to a material extent) on a significantly false basis. Thereafter, Judge Kekic - having accepted that Mr Jayasinghe's status as a lawyer - failed to address the key issue that then arose given the suggested source of these documents (a court in Sri Lanka) and the route by which they were obtained (two independent lawyers who sent them directly to the Appellant's solicitor in the United Kingdom). Whilst it is undoubtedly the case that false documents are widely available in Sri Lanka, **once it was established that the documents in questions originated from a Sri Lankan court, a sufficient justification was required for the conclusion that the Appellant does not have a well-founded fear of persecution. Prima facie, this material reveals that the Appellant has previously been arrested in connection with a bomb, three members of his family had close LTTE connections and he is wanted for questioning 'to decide whether he had been engaged in LTTE terrorist activities' but perhaps of greatest significance there is a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration stating that the Appellant is in the United Kingdom**

and that he is to be arrested on his return to Sri Lanka. In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material - retrieved independently, it is to be stressed, by two lawyers from the Magistrates' court on separate occasions - is that the Appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities. Judge Kekic suggested that the interference to be drawn from the evidence that Mr Jayasinghe had *'obtained false evidence'* and that *'the Appellant had forgotten the account he had previously given when these falsified documents were prepared'*. **However, in my view, without an adequate explanation, it is difficult to understand how the Appellant could have falsified a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration ordering the Appellant's arrest which he then placed in the court records so that it could later be retrieved by two separate lawyers. At the very least, this feature of the evidence required detailed analysis and explanation.**

42. **These documents lie at the centre of the application for protection**, and I consider that Judge Kekic misdirected herself when she concluded that they had been falsely prepared without providing any reasoning as to how the Appellant could have infiltrated forged material into the court records, particularly since there is no suggestion that the lawyers had been involved in any discreditable conduct". (Emphasis added).

21. The Lordships thus decided to allow the appeal but remit the case to the Upper Tribunal for a rehearing.
22. Thus the appeal came before us for this purpose on 30 September 2014.
23. At the outset of the hearing Mr Martin handed to us copies of two documents comprising; a letter from the British High Commission in Colombo addressed to the UKBA and dated 28 January 2013 sub-headed "Sri Lankan Cases with Lawyers' Letters" and; a document headed "Document Verification Report" dated 10 October 2013 by Mr S Jayasuriya an Attorney- at-Law of the Supreme Court of Sri Lanka.
24. In summary the letter from the BHC Colombo confirmed the bona fides of Mr Weerasooriya noting that he was registered with the Bar Association.
25. Further, the letter which was generic in form and not necessarily specific to this particular case confirmed that an official from the Bar Association of Sri Lanka had advised that court files were available to lawyers and this would include copies of any handwritten notes. The DVR of Mr Jayasuriya, who had been instructed by the Appellant's British solicitors to yet further verify the authenticity of the documents produced, included the following verification:

“Our investigations/enquiries at the Bambalapitiya Police confirm that the above name (PJ) was arrested by the Bambalapitiya Police in a search operation of a house in .. Wellawatta Colombo on 30/11/2007. He was arrested together with four other persons in relation to the above case.

Police records confirm that Mr PJ was released on Police bail by the Bambalapitiya Police on 01/12/2007. Bambalapitiya Police lock-up records were checked and Mr PJ’s name is on record.

Notification of arrest of PJ’s Bambalapitiya Police dated 01/12/2007 is genuine and issued by the Bambalapitiya Police when he was released on the said date.

The Court records were checked at the Magistrates Court, Mt. Lavinia and we confirmed that the case records including all attached ‘B’ reports, airport notification and journal entries are authentic. There is a file on case number B4852/2007 on record at the Mt. Lavinia Magistrates’ Court.

Police records at the Bambalapitiya Police also confirmed that the ‘B’ reports was filed in the MC, Mt. Lavinia.

The court records were checked at the Chief Magistrates Court Number 3 at Colombo-12 and we confirm that the case records including all attached ‘B’ reports, airport notification and journal entries and authentic. There is a file on case number B8144/3/2012 on record at the Chief Magistrates Court at Hulftsdrob in Colombo-12.

Police records at the Modara Police also confirm that the ‘B’ reports were filed in the Chief Magistrates Court at Hulftsdrob in Colombo-12. I did not request detail of the investigation as my task is limited to verification of the authenticity of the documents sent for verification and not to make a judgment on the contents.

Notice to Controller of Immigration and Emigration - We conducted investigation under Bandaranayake International Airport and confirm that the notice issued by the Magistrate requesting the arrest of the suspects is genuine and on record at the Controller of Immigration and Emigration. As the suspects are said to be evading arrest by repatriating abroad the notice has been issued ordering the arrest on return to Sri Lanka.

I also contacted Mr Asoka Weerasooriya, Attorney-at-Law who had provided a letter addressed to Mr Ambananden Sooben, ICS Solicitors, stating that he had instructed his junior and filed a motion and obtained the same certified copies of the court records. Mr Weerasooriya confirmed that he had issued the letter and also reconfirmed the findings of investigation. I do not know Mr Weerasooriya personally but I have heard of his work as an Attorney-at-Law by repute. He is a well-known and respected lawyer in Sri Lanka who was attached to the Attorney General Department before starting private practice in Sri Lanka.

Opinion

Based on the information received it is my opinion the documents (Case Ref's: B4852/2007 and B8144/3/2012) sent for verification is authentic".

26. Ms Isherwood informed us that the DVR had only been seen and received by her that morning. She told us that the Respondent had an interest in verifying documents. She accepted that nothing had been done by the Secretary of State to try and verify the documents produced apart from the BHC letter of 28 January 2013 (see above) and asked to confirm that Mr Weerasooriya had registered at the Bar in Sri Lanka.
27. Ms Isherwood stated that she wanted to take instructions although she was "not sure what on yet" we granted her request that we should rise while she made her enquiries.
28. Upon our return to the hearing room Ms Isherwood informed us the Respondent had been in contact with Colombo and understood that they could obtain a response/report hopefully within fourteen days as to the veracity of the documents upon which the Appellant relied, but Ms Isherwood continued the difficulty was the amount of corruption in Sri Lanka. However, at this point we reminded her that this had been the standpoint of the Secretary of State in this case from the outset it was addressed by their Lordships in PJ. Two lawyers independently of each other whose status was not questioned by the Secretary of State had already made it clear that the documents were genuine and reliable. We thus queried of Ms Isherwood why in such circumstances a further delay in this case would be justified?
29. When further pressed to explain our what basis Ms Isherwood sought to persuade us that it was in the interests of justice to grant an adjournment mindful of the wealth of evidence already before us, Ms Isherwood explained that if as a result of the Secretary of State's further enquires she found that she could herself place reliance on them then it would be the Respondent's position that she would accept that the Appellant was at risk.
30. Not surprisingly, Ms Isherwood's adjournment request was vigorously resisted by Mr Martin who inter alia pointed out the Secretary of State had had two and a half months in which to make her enquiries since the promulgation of the decision of the Court of Appeal in PJ. The Respondent might have also thought it sensible if so minded to check the veracity of the documents given they had been in her possession since April 2012. The Appellant's life had been on hold for long enough. Mr Martin submitted that the just and timely disposal of this appeal warranted that it should proceed to its conclusion today. It was simply too late in the day to seek an adjournment.
31. We refused Ms Isherwood's adjournment request. We considered that Mr Martin's observations were well-founded. The documents concerned had indeed been in the Secretary of State's possession since April 2012. There

had been ample opportunity to make appropriate enquiries but the Respondent had failed to do so. Promulgation of the Court of Appeal decision in PJ took place in July 2014 over two months previously. We concluded that for those reasons and given the evidence cumulatively before us but quite apart from their Lordships' observations in PJ included reports of the two lawyers originally involved and now a further report from a third lawyer there was in the circumstances, ample evidence before us to consider and determine the outcome of this appeal.

32. We further observed that the letter from the BHC dated 10 October 2013 was a document that featured in the hearing in PJ and was in the possession of the Treasury Solicitor. The fact that internal difficulties meant that Ms Isherwood was not in possession of the document until today was in such circumstances not a factor that we could take into account in her favour. This case had been in the appeal track for some considerable time. The just disposal of this appeal and the interests of justice warranted the refusal of Ms Isherwood's adjournment request.
33. There was common ground between ourselves and the parties' that the outcome of the appeal turned upon our consideration of the documentation before us and the weight that we decided to attach to those documents. In that regard we asked Ms Isherwood if she could clarify the Respondent's position specifically as to whether if the Tribunal found the documents to be reliable such as significant weight could be attached to them, was it the Secretary of State's position that in such circumstances it would be accepted that the Appellant would be at real risk if now returned to Sri Lanka. Ms Isherwood responded that whilst she appreciated the significance of our enquiry the position remained that she would continue to rely on the Secretary of State's Letter of Refusal 2 May 2012.
34. We were informed by Mr Martin that he did not intend to call the Appellant to give oral evidence before us and the parties were in agreement that the hearing should now proceed on the basis of submissions only.
35. At the conclusion of their respective submissions we were able to inform them that we had no difficulty in concluding that this appeal should be allowed for the reasons that would follow in this, our determination.

Assessment

36. Our starting point has been the findings of their Lordships in PJ not least those expressed by Fulford LJ at paragraphs 41 and 42 of his judgment (above) who, considered of "greatest significance" the letter from the Magistrate of the relevant Court to the Controller of Immigration and Emigration stating that the Appellant was in the United Kingdom and that he was to be arrested on his return to Sri Lanka. His Lordship had continued that "In the absence of a sufficient reason for concluding otherwise, the inescapable conclusion to be drawn from this material -

retrieved independently, it is to be stressed by two lawyers from the Magistrates' court on separate occasions, is that the Appellant will be arrested on his return to Sri Lanka as a result of links with the LTTE and their activities".

37. His Lordship's observations have been reinforced by the production before us of the letters handed in by Mr Martin comprising the BHC Colombo letter of 28 January 2013 and the Document Verification Report of the Attorney-at-Law in Sri Lanka Mr S Jayasuriya not least in terms of those aspects of each of those documents that we have identified above. Taking this we have had no difficulty in such circumstances mindful of the overwhelming accumulation of evidence in support that the documents concerned are reliable and are such that we can attach significant weight to them. It follows that we find that the Appellant not least to the lower standard of proof has convincingly established the truth of his account. Indeed and as an example, the Appellant's account of his arrest and detention following the discovery of an unexploded bomb near his home has been clearly confirmed by the documents and reaffirmed in the DVR of 10 October 2013 submitted by Mr Jayasuriya.
38. It was notable and indeed to Ms Isherwood's great credit, that she accepted that the bona fides of Mr Jayasinghe and Mr Weerasooriya, lawyers in Sri Lanka, was not challenged. She accepted, that the evidence clearly established that such documents did indeed appear in the court records.
39. In particular whilst it was her submission that although the documents in their form might be genuine their content might be false, Ms Isherwood recognised that the issue of as she put it "the content and weight to be placed on it" was a highly significant factor in determining whether or not this Appellant would be at real risk if now returned to Sri Lanka.
40. In that regard Ms Isherwood recognised that whatever the genuineness of the content of those documents given her acceptance that they were on the evidence on the court records, that if the Sri Lankan authorities found them they would not question that the Appellant was the subject of an arrest warrant and indeed that he was required to be arrested upon return to Sri Lanka.
41. We therefore enquired of Ms Isherwood as to where that left the Secretary of State's case. If the Respondent was not challenging the bona fides of the lawyers and not suggesting that the documents concerned were not on the court records then it would surely follow that the Appellant would upon arrival at Sri Lanka Airport be found to be on a "Stop List" and in such circumstances a person who would be at real risk of persecution.
42. It is right to state that Ms Isherwood's brief response was that she continued to rely on the Reasons for Refusal Letter.

43. Whilst that letter made reference to the availability of forged official documents in Sri Lanka was notable, as indeed Mr Martin pointed out in his closing submissions that at paragraph 24 of the Respondent's Letter of Refusal she had cited a letter from the BHC in Colombo dated 14 September 2010 concerning forged and fraudulently obtained documents and that the passages relied upon from that letter claimed inter alia that it was common knowledge that persons could obtain an ID card or passport in any identity they wanted with the right contacts. The Visa Section regularly saw forged education certificates and bank statements and employment references. The passages cited did not however identify the documents upon which the Appellant in the present case relied in the category of forged or identify. There was no reference in that letter to documents on the Court record or letters from Magistrates of relevant Courts to the Control of Immigration Emigration.
44. We have reminded ourselves that in HK [2006] EWCA Civ 1037 it was held inter alia that instead of asking whether an account was inherently implausible, one should look at the evidence and ask oneself whether for example it is consistent with the background material and any expert evidence in support whether such evidence was of good quality. That is the approach that we have taken in our consideration of the credibility of the Appellant's account and claims. Our assessment of his credibility has been helped considerably by the documentary evidence that the Appellant has been able to produce in support of his claims that are indeed consistent with his account such that not least the lower standard of proof concluded that the Appellant's account is credible.
45. That however is not the end of the story because whether or not the Appellant's credibility was in question the issue that we have to determine is whether in his particular circumstances he would be at real risk if now returned to Sri Lanka. For this purpose we have taken full and careful account of the guidance of the Tribunal in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC) a decision subsequently approved by the Court of Appeal in MP (Sri Lanka) [2014] EWCA Civ 829 that we have applied against the backdrop of the facts as we have found them.
46. The Tribunal in GJ concluded that the focus of the Sri Lankan government's concern has changed since the civil war ended in May 2009. The LTTE in Sri Lanka itself was a spent force and there had been no terrorist incident since the end of the civil war. The Tribunal identified the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka whether in detention or otherwise.
47. In that regard and at (7)(d) of their headnote the following was stated:
- “(d) A person's whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name*

appears on a 'stop' list' will be stopped at the airport and handed over to the appropriate Sri Lankan authorities in pursuance of such order or warrant".

48. In light of our findings and in common with the views expressed by their Lordships in PJ we too have come to the "inescapable conclusion" to be drawn from not least the documentary material before us retrieved independently by two lawyers from the relevant Magistrates' Court on separate occasions and subsequently reaffirmed by yet a third lawyer Mr Jayasuriya, that in the Appellant's circumstances he would undoubtedly be arrested on his return to Sri Lanka as result of links with the LTTE and their activities in consequence of his family connections with the LTTE. We find in common with their Lordships those documents indeed lie at the centre of the application for protection and as we have already stated for the above reasons they are documents to which we can attach significant weight. As found by the Tribunal in GJ those on a stop list are those in respect of whom arrest warrants had been issued and/or court orders. We are satisfied that an arrest warrant has indeed been issued in relation to this Appellant that he is therefore undoubtedly at real risk of detention and ill-treatment at the point of return.
49. For the above reasons, the Appellant's appeal is therefore allowed on asylum grounds and under Article 3 of the ECHR. No separate Article 8 ECHR argument was advanced. The Appellant is not entitled to the grant of humanitarian protection.

Conclusion

50. We remake the decision in the appeal by allowing it on asylum and human rights (Article 3 ECHR) grounds.

Signed

Date 20 October 2014

Upper Tribunal Judge Goldstein