



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number AA.09917.2013  
Promulgated on 16<sup>th</sup> May 2014

**THE IMMIGRATION ACTS**

Heard at: North Shields  
On: Friday 11<sup>th</sup> April 2014

Before

**Judge Aitken**  
**Deputy Chamber President (HESC)**

Between

**Mr W N S Fernando**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Ms S Rogers  
For the Respondent: Mr Kingham (Home Office Presenting Officer)

Decision

1. This matter appears before me permission to appeal having been given by Tribunal Judge Rolles on 20<sup>th</sup> February 2014 in the following terms:

*“1. This is an in-time application by the appellant, a citizen of Sri Lanka, for permission to appeal against the determination of Judge of the First-Tier Tribunal Henderson dismissing his appeal against the respondent's decision to refuse him asylum and to remove him.*

*2. The appellant is and was unrepresented so I have considered the determination carefully as well as the grounds and I consider that an arguable error of law is disclosed.*

*3. The respondent had accepted that the appellant went into hiding in Sri*

*Lanka because he had received threats from the police acting on behalf of the powerful Lansa family. The judge found it to be plausible that this family exerted control over the police at a local level because of their money and position (paragraph 35 determination) and in the context of the connection between the Lansa family and the President she found that there was no sufficiency of protection for the appellant and that if the Lansa family intended to do the appellant harm they had the means and connections to put their intentions into action (paragraph 42 determination). The judge concluded however that it would be reasonable for the appellant to relocate on return to Sri Lanka (paragraph 47 determination).*

*4. I consider there is force overall in the appellant's argument that the judge erred in law in her approach to relocation. I do not consider that she erred in her approach to his ability to leave Sri Lanka; her comments at paragraph 43 are not as one sided as the appellant suggests as she explains that the appellant's departure might mean that the Lansa family did not feel the need to bother about him. Nevertheless it is arguable that she gave inadequate reasons for her conclusion at paragraphs 46 and 47 that the Lansa family would not now be interested in harming the appellant outside his home area. She repeatedly referred in those paragraphs to there being no evidence other than that of the appellant that the family had an ongoing interest in harming him. It is arguable given the evidence the appellant refers to at paragraph 2 of his grounds that the judge did not give adequate reasons for rejecting the evidence of the appellant that the Lansa family had an ongoing interest in harming him. She did not make any express adverse findings against the appellant so far as credibility was concerned and she had accepted the main part of his account. It is right that the judge's conclusions were that if the Lansa family had such a wide reach then they would have been able to find the appellant but it is arguable that the judge did not take into account/alternatively give reasons for rejecting the appellant's evidence that they had looked for him whilst he was hiding and that was why he had to move.*

*5. If the appellant is credible and his evidence that the Lansa family have ongoing interest in harming him is therefore to be believed it is also arguable (as says in paragraph 3 of the grounds) that it would not be reasonable for him to relocate given that it would mean his living and hiding and giving his profession a photographer."*

2. Ms Rogers relied upon the grounds of appeal and that it appeared from paragraph 47 of the Determination that the judge had rejected at least some of the appellant's account, i.e. those parts relating to being pursued outside his area by his enemies and failed to indicate why this should be having accepted other parts of his account.

3. Mr Kingham responded that the judge had properly set out her conclusions relating to threats if he continued his business three years ago, and his ability to move elsewhere to avoid difficulties.
4. I am satisfied that paragraph 47 of the Determination is clear as to what the judge found, that was that the appellant had given a credible account, but that his difficulties were historic and his evidence also showed that his enemies were putting only limited effort into finding him, putting the two together she assessed the threat as now being limited to his home area. That is the meaning of paragraph 47 when she explains:

*“47. It has now been nearly three years since the events described by the appellant occurred. I have no evidence aside from the appellant’s to show that this family are intent on harming him now. I conclude that it is most likely that they are satisfied that they have driven from their locality with the help of the Police. He has skills as a professional photographer and his wife is well educated having studied in this country. I conclude that it is reasonable to suggest that they could relocate their family and business to another area of Sri Lanka.”*

5. It is clear that in context the reference to the evidence coming only from the appellant was not given as a reason to reject it, rather it fixed the evidence in time as being historic, rather than there being any current evidence. In paragraph 45 the judge made it clear that she was considering the questions of the risk posed to the appellant now, rather than what it had been when he left. The judge in the next paragraph had dealt with how the appellant was able to evade his enemies and came to the conclusion that it was because they were not bothered to put the effort in to look for him outside Negombo.
6. There is no conflict with accepting the appellant’s evidence and rejecting the suggestions that his enemies looked outside of Negombo for him in paragraph 46, where she relates *“I conclude that it is unlikely that the family would bother to look for him outside Negombo. This is borne out by the fact that they did not do so in the past.”* The suggestion is made that when the appellant indicated he fled Jaliyagoda at question 39 of his interview that should be taken as evidence that he was pursued away from Negombo. In fact the appellant said at question 35 of his interview that he had no problems in Jaliyagoda, then said he still had problems from his enemies, there is no conflict in this, the problems he had were threats to his wife who was still in Negombo at his home, and threats at the Hotel which Mr Dilsiri told him of. The threats were made in Negombo, although they were to the effect that they could find him anywhere. As the judge pointed out, threats may have been made, but no action seems to have been taken to pursue this outside of Negombo. Thus it is entirely logical to accept the appellant’s account of what was happening and still regard the

matter as localised, even if the appellant did feel intimidated enough to move from Jaliyagoda as a precaution.

7. I find therefore that the Tribunal judge has properly considered all of the evidence and come to a reasonable conclusion as regards relocation and the determination does not contain an error of law.

### **Decision**

The appeals in respect of all appellant's are dismissed

A handwritten signature in black ink, appearing to read 'J. Aitken', written in a cursive style.

Judge Aitken  
Deputy Chamber President (HESC)  
Friday, 16 May 2014