



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/07185/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 10<sup>th</sup> August 2017

Decision and Reasons Promulgated  
On 20<sup>th</sup> September 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[T R]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D Coleman (Counsel)

For the Respondent: Mr S Kotas (HOPO)

**DETERMINATION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Malcolm, promulgated on 6<sup>th</sup> March 2017, following a hearing at Hatton Cross on 7<sup>th</sup> February 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Sri Lanka, and was born on 13<sup>th</sup> August 1977. He appealed against the decision of the Respondent dated 10<sup>th</sup> April 2015, rejecting his application for asylum and humanitarian protection under paragraph 339C of HC 395.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that whilst he was in Sri Lanka, he had agreed to let his property to three people, who had given him one year's rent in advance, and these three people were to remain in his property until 2014. However, on 2<sup>nd</sup> February 2011 he came to the UK as a dependant on his wife's visa. In April 2014 he learnt that two of the people to whom he had rented the property had been arrested and it was subsequently discovered that they were members of the LTTE. Then in April 2014 also some six or seven police officers came to the Appellant's home in Sri Lanka inquiring about his whereabouts. The police came in July and then in February 2015 as well. The Appellant accordingly fears return to Sri Lanka on account of mistreatment due to his imputed political opinion.

## **The Judge's Findings**

4. The judge, in an extensive determination, set out the relevant documents before him (at paragraph 13), which included letters from a lawyer in Sri Lanka by the name of B. R. P. Jayasinghe. He heard the Appellant's explanation for why he had not claimed asylum early because the Appellant was unaware of any problem until April 2014. He had, in any event, a visa valid until October 2014 (see paragraph 51). Particular consideration was given to a summons issued in Sri Lanka because a document verification report (DVR) had concluded that this was not a genuine document (see paragraphs 116 to 124).
5. The judge dismissed the appeal.
6. On 3<sup>rd</sup> July 2017, permission to appeal was granted on the basis that it was arguable that the judge had erred in his assessment of the documentary evidence that had been produced.

## **Submissions**

7. At the hearing before me on 10<sup>th</sup> August 2017, Mr Coleman, appearing on behalf of the Appellant, laid particular emphasis on the fact that the judge had given insufficient reasons for why she had accepted the Respondent's document verification report. In particular (at paragraph 121) the judge had noted that there had been no investigation or verification of the two different letters written by two different lawyers in Sri Lanka. These letters evidence an ongoing adverse interest in the Appellant from the Authorities. The letters attested to the genuineness of the court summons and were entitled to be given sufficient weight. Importantly, Mr Coleman submitted that unlike the Respondent's DVR evidence, these letters were

signed and were fully attributable to the lawyers who had sent them. Second, Mr Coleman also emphasised that (at paragraph 123) the judge had failed to note a letter from B. R. P. Jayasinghe of 17<sup>th</sup> January 2017, which specifically refers to the Appellant's court file being in existence in Attanagalla Magistrates' Court. Given that this was the case, and that a file in the Appellate court had been known to exist, this wholly verified the evidence that the Appellant was relying upon. The judge was wrong to say (at paragraph 123) that, "the letter accordingly does not provide any further documentation other than to say that the efforts which have been made to obtain information have proved unsuccessful".

8. Finally, the judge also fell in error (at paragraph 124) in finding that it was not material as to whether the letters from the attorneys in Sri Lanka were genuine because she had already found that the summons was not genuine.
9. There were two fundamental reasons for why this was an erroneous approach. First, the evidence must be looked at in the round. This was, as Mr Coleman phrased it, a "**Mibanga** error", because it was rather like saying that, because one did not find the Appellant's oral account to be credible, there was no need to consider the medical evidence in support of his claim. Second, the approach was erroneous because the attorney's letters were highly relevant, in that if they were accepted as genuine then they cast a flood of light on the unreliability of the DVR. Mr Coleman emphasised that the lawyer's letters were not subjected to verification by the Respondent Secretary of State at any stage. Therefore, it was up to the judge to make a finding on the letters herself. The provenance and credibility of these letters was central to the whole appeal. The judge ended inevitably (at paragraph 125) by noting that there was a "lack of any other evidence" in support of the claim that the tenants were LTTE members. He asked me to make a finding of an error of law and to remit the matter back to the First-tier Tribunal for a reconsideration.
10. For his part, Mr Kotas submitted that there was no error of law. This was for the following reasons. First, there had been an initial submission by the Home Office Presenting Officer that there were directions issued on 31<sup>st</sup> August to the effect that further documents had to be lodged by 1<sup>st</sup> November 2016, but the additional documents had only just been received the day before, and the Presenting Officer had on the day in question submitted that "little or no weight should be accorded to these documents" (paragraph 15). I have to say that looking at this submission, it is important to bear in mind Mr Coleman's submission on the day in question as well, which was that he was "happy to agree to an adjournment if the Home Office Presenting Officer considered that this was necessary to verify the documents which had been lodged" (paragraph 17).
11. Second, and in any event submitted Mr Kotas, the Appellant had then provided further documents from lawyers on 28<sup>th</sup> October 2016 and a further letter on 17<sup>th</sup> January 2017, which was after the DVR assessment had been carried out. If the Appellant's side were producing documents in dribs and drabs, a decision had to be taken on them, and this is what the judge did, and the judge cannot be faulted for this.

12. Third, the suggestion that the DVR has been heavily redacted is simply not true. Mr Kotas handed up a copy of the DVR for me to consider. There is a statement there that, "a name and address redacted copy of the summons document was faxed to the attention of the registrar Attanagalla Magistrates' Court via fax tel [ ] (as shown below)". This was dated 25<sup>th</sup> April 2016. Then the DVR goes on to say that the registrar has been contacted on telephone number [ ], and he has stated that, under case number B/[ ]/MC14 it is the case that, "the accused is namely [SANN]" and that this "case relates to a matter concerning an 'assault of an individual' and that 'the case has now been concluded'".
13. Accordingly, this summons did not relate to the Appellant at all. It related to an entirely different person and in an entirely different criminal case. In fact, submitted Mr Kotas, case number B/[ ]/MC14 does not relate to the Appellant at all and the DVR makes this quite clear. It goes on to say that this is a "falsified document and is verified as not genuine".
14. Third, it was difficult to see how this could be called a "**Mibanga** error". If the Appellant had submitted a falsified document then the judge was entitled to take the view that the claim as put was not proven.
15. Finally, it is being suggested that the registrar had not provided a statement confirming what had emanated from his office. This was unarguable because the assistant helping the lawyer had also not provided a statement confirming exactly how he came to verifying the information that he had submitted.
16. In reply, Mr Coleman submitted that it had been open to the judge below, on the invitation of himself as the lawyer appearing on the day in question, to ask for an adjournment, and this had not been accepted. If all that the Respondent was complaining about was that the documentation from the Appellant's side had not been verified, they had been given ample opportunity to do so and had chosen not to. Mr Coleman submitted that he would have to accept that the judge had to come down one way or the other but she still had to decide if the lawyer's letters were genuine or not, and simply to say that because the DVR had been accepted by her, she need not look at the authenticity of the lawyer's letters, was the wrong way of approaching the matter.

### **No Error of Law**

17. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007), notwithstanding Mr Coleman's commendable efforts to persuade me otherwise. My reasons are as follows.
18. First, it is not the case that the judge was dependent entirely upon the lawyer's letters for her assessment of the reliability of the Appellant's claim. She also had to look at the oral evidence and the surrounding circumstances. In this regard, she concluded (at paragraph 125) that she was "not satisfied from the information in the evidence produced that the tenants were LTTE members as claimed by the Appellant" because

the evidence relied upon was “simply based on information provided to him by his father and his friend”. Given that the “LTTE connections of the tenants is also an important part of the Appellant’s case” there had been a “lack of any other evidence in support of this claim (for example at the very least a statement from the Appellant’s friend) ...” (paragraph 125).

19. Second, the registrar is under no obligation to provide a statement from the Attanagalla Magistrates’ Court confirming his understanding of the summons being fraudulently produced. It was for the lawyers to make their case and having made it on the basis that case number B/[ ]/MC14 related to the Appellant, the DVR confirmed that this related to an entirely different person for an entirely different offence. This is what the purpose of document verification stands for and it is a process which in this case cannot be criticised for having been improperly conducted.
20. Any suggestion that the relevant information was “redacted” is untenable because the material details are all too clearly set out, more than once in the DVR, for any person to note. The analogy with medical evidence that was put before me is not the correct analogy.
21. It is one thing to say that a decision maker has not found an Appellant to be credible and therefore need not look at the medical evidence from a medical practitioner. It is an entirely different matter to say that a decision maker is not persuaded by the veracity of a claim put forward because key documentation in relation to a court summons is fraudulently contrived and submitted, in contravention of clear directions that were issued on 31<sup>st</sup> August for documentation to be submitted some three months later, but had still not been timeously submitted until just a day before the hearing.

**Notice of Decision**

22. There is no material error of law in the original judge’s decision. The determination shall stand.
23. No anonymity direction is made.

Signed

Dated

Deputy Upper Tribunal Judge Juss

19<sup>th</sup> September 2017