



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

Appeal Number: PA/00243/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 25 September 2017**

**Decision & Reasons
Promulgated
On 6 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**NL
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Mohzam, Solicitor, Liyon Legal Limited
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of the First-tier Tribunal (Judge Mace, sitting at Hatton Cross on 9 March 2017) dismissing his appeal against the decision of the Secretary of State to refuse to recognise him as a refugee, or as otherwise requiring international or human rights protection.

Relevant Background

2. The appellant is a national of Sri Lanka, whose date of birth is [] 1971. He applied for a visa to the United Kingdom on 30 August 2010, and his application was successful. He was granted entry clearance from 9 September 2010 until 20 July 2012. He entered the UK on his visa on 9 October 2010. On 20 July 2012 he applied for leave to remain as a student, and the application was refused. The appellant overstayed following the refusal, and on 17 November 2014 he was served with an IS151A notice informing him of his liability to detention and removal as an overstayer. On 6 August 2015 the appellant raised a claim for asylum.
3. He said that he had rented his mother's property to two friends. He was arrested and detained on 10 September 2009 following the arrest of his two friends, who were LTTE members. They informed the authorities that he had been helping the LTTE "*for payments*" (Q&A 62). Under the tenancy agreement which he had negotiated with his LTTE friend Prakash, he was receiving 7,000 rupees per month in rent. He had not registered the tenancy agreement with his local police force, as was legally required, and he was questioned about this non-compliance during his detention. He said that he was kept in army detention at an unknown location until 14 September 2009, and was then taken to Welikasa Police Station where he was detained for a further 39 days. He said that he was released after his brother-in-law paid a bribe.
4. On 22 December 2015, the Secretary of State gave her reasons for refusing to recognise the appellant as a refugee. The property which was being rented belonged to his mother and was under her name. Nonetheless, although the property was in her name, he said she was never targeted by the authorities with regard to their investigation into the property he rented to LTTE members.
5. He initially stated that he had two arrest warrants issued against him - one in November 2009 and the other in December 2009. In his substantive interview, he said that there were in fact three warrants issued against him. He said that the first one was issued in September 2009, and it detailed why he was wanted. He also stated that the warrants were posted to his home, and that his mother had informed him about them. However, available objective information indicated that in Sri Lanka an arrest warrant remained with the police, with a copy being kept on a legal file. There was no objective evidence that arrest warrants were posted to the houses of those who were accused.
6. It was not accepted that he was detained and released on payment of a bribe. But, if he was, the fact that he was released from detention on payment of a bribe indicated that the state no longer had a genuine and continuing interest in him, following **PT (Risk - bribery - release) Sri Lanka CG [2002] UKIAT 03444**. The fact that he was released, on his account, and was able to apply for a visa and leave Sri Lanka on his own passport without any problems, indicated that he was never of interest to

the authorities to warrant him being on a 'stop' list.

7. The respondent cited a letter from the British High Commission in Colombo, dated 5 January 2012, for the proposition that the DIE were notified only when a court decided to impound the suspect's passport or an arrest warrant was issued. The details of such persons were placed on their 'alert' or 'wanted' list within their database. The other matter, which was rare and case-specific, was that the State Intelligence Service could inform the immigration officers of individuals suspected of terrorist activity and those on the 'wanted' list. Again, the details of suspects would be put on the DIE database.

The Hearing Before, and the Decision of, the First-tier Tribunal

8. The appellant's appeal came before Judge Mace by way of remittal from the Upper Tribunal, the previous decision of the First-tier Tribunal having been set aside as being vitiated by a material error of law. Both parties were legally represented.
9. As the Judge noted in paragraph [16] of his subsequent decision, the appellant relied on a series of documents which had purportedly been obtained from the Chief Magistrates' Court in Colombo. One of them was a document dated 5 October 2010, and it contained "*facts*" purportedly reported to the court regarding a suspect (the appellant) who was involved with terrorist activities. It described how security forces had arrested two LTTE members. It was revealed that they had been staying at 165 Hospital Road, and the premises were searched. Thereafter, the suspect (the appellant) was detained on 15 September 2009. However, he escaped from custody on 23 October 2009. Attempts to arrest him were abortive. A case was going to be filed at the Chief Magistrates' Court on 6 October 2010 in order to obtain an order to issue a summons against him.
10. The documents from Sri Lanka included three summonses purportedly directed to the appellant, requiring him to appear before the Chief Magistrate on 3 November 2010, 24 November 2010 and 22 December 2010 respectively.
11. The Judge found the appellant's account of his detention and ill-treatment in 2009 to be credible. In relation to the claim that there were extant court proceedings and that the authorities had resurrected an interest in him and continued to visit his family home, he found this evidence to be inconsistent and lacking in credibility and unsupported by background information. He did not accept that there were any outstanding proceedings against him, or that the authorities had visited his address in the recent past. The appellant had not participated in activities in the UK which would have brought him to the attention of the authorities. He was not active in the diaspora. His name did not appear on a 'stop' list and he would not be perceived to be a threat to the integrity of Sri Lanka on the basis that his name would appear on the 'stop' list comprising individuals against whom there was an extant court order or arrest warrant. Neither

was his name likely to appear on a 'watch' list. Accordingly, the appellant had not discharged the burden of proving that there was a real risk or it reasonably to be likely that he would suffer persecution in the country of return, or that he would face a real risk of serious harm on return.

12. Part of the Judge's reasoning was that there was nothing to support the existence of an arrest warrant (paragraph 21) and although the case of **PT** was of some antiquity, the point raised in that case was not disputed (paragraph 23). The background information cited in that case led the Tribunal to conclude that bribery-related releases would not, in the absence of some special reason, be likely to be treated as "escapes", and would not result in the inclusion of the individuals involved on a 'wanted' list.

The Reasons for the Grant of Permission to Appeal

13. On 4 August 2017, First-tier Tribunal Judge Pickup granted the appellant permission to appeal for the following reasons:

2. it is arguable that the Judge erred in fact in stating at [21] that there was nothing in existence that referred to the existence of a warrant. Page 30 of the appellant's B bundle is a document which makes repeated reference to an arrest warrant. It is arguable that this error is material to the outcome of the decision as at [26] the Judge considered the appellant's credibility based on the evidence as a whole, but including consideration of the reliability of the documents. The Judge may also have erred at [22] in misunderstanding which documents were being referred to.

3. It is also arguable that the Judge erred in law in making findings against background evidence and case law in concluding that a person released from detention through bribery would not be treated as an escapee.

4. The other grounds of appeal have lesser merit.

The Hearing in the Upper Tribunal

14. At the hearing before me to determine whether an error of law was made out, Mr Mohzam, who did not appear below, developed the case advanced in the grounds of appeal to the Upper Tribunal. On behalf of the respondent, Mr Tufan adhered to the Rule 24 response settled by a colleague opposing the appeal.

Discussion

15. The grounds of appeal are highly discursive, but I consider that the Judge granting permission has reasonably distilled them into two principal grounds - the first of which is that the Judge erred in his consideration of the documents purporting to emanate from the Magistrates' Court of Colombo.
16. The Judge is wrong to say in paragraph [21] that none of the documents now produced refer to an arrest warrant, but he was right to say that no

copy of any warrant had been produced. The significance of the document referred to by Judge Pickup (at page 30 of the B bundle) is that it is the last document in the sequence of documents purportedly comprising *the entire case record* held at the Chief Magistrates' Court in Colombo in respect of case number 1650/2010. However, the certification to this effect is not provided by a Clerk of the Court or by an attorney instructed by the appellant. It is provided by a Government-approved translator.

17. The document at page 30 purports to be a report of a hearing which took place at the Court on 22 December 2010. According to the record of proceedings, the OIC requested an open warrant against the appellant for his arrest. The TID had information that the accused had escaped from the country, and was seeking to issue an arrest warrant against him. The Court purportedly ruled that the accused had been supporting the LTTE in their activities and he had escaped from custody while the investigation was pending, and the Court was hereby issuing an arrest warrant against the suspect for his arrest.
18. There is, however, no arrest warrant, as the Judge noted. This is not consistent with the claim that an arrest warrant was issued and/or that a warrant for the appellant's arrest is extant.
19. The Judge reasonably goes on to draw an adverse credibility inference from the lack of an arrest warrant, reasoning that if the appellant was able to produce three summonses, "*why could he not procure a copy of an arrest warrant if there is one in existence?*"
20. Mr Mohzam submits that this line of reasoning is flawed and impermissible, as in the refusal letter at paragraph 10 the respondent had cited a letter from the British High Commission in Colombo dated 14 September 2010, which reported that it was 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 the arrest warrant to the relevant Court. However, in practice forged documents are easily obtainable throughout Sri Lanka. Additionally, given ongoing well-documented concerns over corruption of 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.

21. I do not consider that the Judge's reasoning runs counter to this piece of background evidence. If the Magistrates' Court at Colombo had issued a warrant for the appellant's arrest, a copy of the warrant would have been kept on the legal file at the Court. The documents produced in Bundle B purported to constitute the entire case record, and yet they did not include an arrest warrant. The Judge recognised in paragraph [20] that it might be difficult to obtain a copy of an arrest warrant (as the background information would seem to indicate). However, since the appellant had been able to produce other documents purportedly on the court file, such as the lengthy police report, it was open to the Judge to find that it was

reasonable to expect the appellant to produce a copy of an arrest warrant, if such existed.

22. At paragraph [22], the Judge said as follows: *“The appellant states that his brother-in-law has obtained these documents for him. He claimed asylum on 6 October 2015, some six years after he entered the United Kingdom. He was not interviewed until 9 December 2015. However, despite his claim that the summonses had been posted to his home address, he was still not in a position to produce them at the interview and further time to do so was requested. In those circumstances it is not clear why his brother-in-law would need to obtain them and why there would be any period of delay since presumably they were in the possession of the appellant’s mother. The appellant stated at the hearing that he was in contact with his mother and sister but did not want to expose them to the authorities so he did not ask them to send the summonses. I do not find that a credible explanation for the posting of documents which are almost seven years old.”*
23. It is argued that the Judge has misunderstood the provenance of the documents in Bundle B, and has not taken into account the fact that they were all extracted from the Court file in March 2016. However, this criticism is unjustified. At paragraph [22] the Judge is only referring to the summonses. He is not referring to the other documents in Bundle B. What the Judge says about the summonses is factually correct. A set of summonses was first provided in late December 2015, although they would have been in his mother’s possession since 2010, if they were genuine. So, it was open to the Judge to draw an adverse credibility inference from the delay in their production.
24. It is true that copies of the same summonses purportedly re-appeared as part of the entire case record allegedly extracted from the court file on 1 March 2017. However, supposedly the appellant’s brother-in-law obtained the documents from the court file, rather than a lawyer. So, the present case is distinguishable from the facts of **PJ (Sri Lanka) [2014] EWCA Civ 1011**.
25. The distinguishing feature of **PJ (Sri Lanka)** is that in that case it was not reasonably contestable that the court documents relied on by the claimant had been genuinely extracted from a file held at the relevant Magistrate’s Court in Sri Lanka, as two independent lawyers had separately verified their provenance. Given this starting point, it was inherently implausible that the court documents were forgeries, as in order to be forgeries, the claimant would have needed to infiltrate forged material into court records genuinely held at the Magistrate’s Court in question. Hence, Fulford LJ held that the judge had misdirected herself, *“when she concluded that they had been falsely prepared, without providing any reasoning as to how the applicant could have infiltrated false material into the court records, particularly since there is no suggestion that the lawyers had been involved in any discreditable conduct.”*

26. Ground 2 is that the Judge's finding in paragraph [23] is against the background information and the Country Guidance. In support of this proposition, Mr Mohzam relies upon the expert evidence of Mr Punethanayagam, which is recorded in an annex to **GJ & Others (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**, and on the following commentary on his evidence contained in the body of the Upper Tribunal's decision at paragraph [275]: *"His evidence on the process of bribery was particularly useful. We did not have the opportunity of hearing him give oral evidence, and some of his evidence goes beyond what he can be taken to know himself but where his evidence concerns criminal processes in Sri Lanka, we consider that it is useful and reliable. We take particular account of his view that the seriousness of any charges against an individual are not determinative of whether a bribe can be paid, and it is possible to leave through the airport even when a person is being actively sought."*
27. The following passage in Mr Punethanayagam's evidence is also relied upon: *"In my opinion, it is plausible that the detainee was released following the payment of a bribe, even if a significant adverse interest to the authorities. It is unlikely the person who accepts the bribe would access a detainee's record and change them as released or no longer wanted. Hence such cases are normally recorded as escaped from detention in the database of the police. Subsequently an absconder action would be commenced and the detainee's details would be passed to the National Intelligence Bureau."*
28. I consider that the Tribunal endorsed two aspects of Mr Punethanayagam's evidence, but not the crucial third aspect which underpins the error of law challenge. The Tribunal did not find as true the proposition that a person who accepted the bribe would be unlikely to change the detainee's record to "released" or "no longer wanted" or that the detainee would be normally recorded as escaped from detention. Moreover, I consider that the Tribunal's findings at paragraph [275] are at best a gloss on **PT**. They do not constitute a clear repudiation of the ratio of **PT**.
29. In a passage cited at paragraph 23 of the refusal letter, the view taken by the Tribunal on common sense grounds in **Amalathaasen** (and affirmed by the Tribunal in **PT**) was as follows:
- It seems to us that it is highly improbable to say the least that a police officer, releasing a man on payment of a bribe, would record it as an escape. There is certainly no need to do so. If the police wanted to keep an interest in him all that was necessary was to note that he might be of interest in the future. Normally if someone is released on payment of a bribe or otherwise it is indeed because the authorities take the view there is no good reason to detain him even if there is some involvement with the LTTE at a very low level.
30. On the appellant's account, his support to the LTTE was very low level - only consisting in him providing rented accommodation to LTTE members in return for payment. As the approach of the Sri Lankan authorities is

based on sophisticated intelligence, it was open to the Judge to find that his release on payment of a bribe after 39 days in police detention was much more consistent with him not being of ongoing adverse interest to the police, and hence his release being recorded for what it was, and not being falsely recorded as an escape.

31. If it had been recorded as an escape, it would have been reasonable to expect the police to have taken absconder action immediately, and to have sought to re-arrest him. This indeed was what the appellant initially claimed happened, in both his screening interview and asylum interview. He said that arrest warrants - which he later corrected to summonses - had been sent to the family home in the autumn of 2009, and the first of these was received in September 2009.
32. It is argued in the grounds of appeal that the Judge erred in law in drawing an adverse credibility inference from the fact that the summonses eventually produced by the appellant were issued in October and November 2010, almost a year after his release from detention, and *“within a short period of the appellant being granted leave to enter the United Kingdom.”*
33. There is no merit in the argument that the Judge has engaged in impermissible speculation. The dates of the summonses are inconsistent with the dates which the appellant gave for the summonses in his screening and asylum interviews, and the delay in the summonses being purportedly issued was reasonably treated by the Judge as not being consistent with the appellant being someone of ongoing adverse interest to the authorities at the time of his release in October 2009, and being treated as an escapee in respect of whom absconder action was required.
34. In summary, although the Judge made a mistake in saying that there was no reference in the documents to an arrest warrant, his mistake is not material. The Judge has given adequate and sustainable reasons for finding that the appellant had not made out his case that he was genuinely of ongoing adverse interest to the authorities following his release from detention in October 2009, and that he did not have a well-founded fear of persecution on return to Sri Lanka.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. The appellant's appeal to the Upper Tribunal is dismissed.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction

applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 5 October 2017

Judge Monson

Deputy Upper Tribunal Judge