



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

Appeal Number: PA/00387/2017

**THE IMMIGRATION ACTS**

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

**Decision & Reasons Promulgated  
On 04 September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**NG (SRI LANKA)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Seehra, Counsel instructed by Nag Law Solicitors

For the Respondent: Mr Tufan, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Graham sitting at Birmingham on 21 March 2017) dismissing his appeal against the decision of the Secretary of State to refuse his protection and human rights claim. The First-tier Tribunal made an anonymity direction in favour of the appellant, and I consider that it is appropriate that the anonymity direction is maintained for these proceedings in the Upper Tribunal.

## **Relevant Background**

2. The appellant is a national of Sri Lanka, who transited the UK on 12 March 2006 on a multi-visit visa which had been issued in Bridgetown, Barbados for the 6-month period running from 8 March 2006 to 8 September 2006. The appellant returned to the UK on 4 September 2006 on the same visa. The appellant did not leave the UK before the expiry of his visa, and overstayed. On 3 September 2015 he applied for leave to remain on family and private life grounds. The application was rejected on 13 October 2015. On 14 December 2015 the appellant re-submitted the same application. This was refused on the merits on 10 March 2016. On 8 July 2016 the appellant claimed asylum.
3. In his screening interview, he said that he was of Sinhalese ethnicity, and his occupation in his home country had been that of a plumber. He originated from the town of Gampola. He had first come to the UK as a visitor on a visit visa in 2005. The appellant was asked to explain all the reasons why he could not return to his home country. He said that he received a "*life-threat*" in Sri Lanka from the Sri Lankan authorities in 2001. Because of his political opinion, he had given a statement to the media against the Government in 2001. He was asked whether he had been accused in any country of an offence for which he had been, or could have been, convicted. He answered: "*No*". He was asked whether he had ever been involved with, or accused of being involved with, any political organisation or armed or violent organisation, group or Party. He answered: "*No*". He was asked whether he had ever been involved in, or suspected of being involved in, terrorism, and again he answered: "*No*".
4. Following the screening interview, which took place on 8 July 2016, the appellant's legal representatives served a statement of additional grounds, on 14 July 2016. They said that the appellant had been in employment in a Danish construction firm, and in this capacity had worked abroad. His employer had assisted a NGO operating in Sri Lanka. The appellant was concerned about the disappearance of his Tamil associates, which he had brought to the attention of the media, especially to the late Editor of The Sunday Mail. He was advised to complain to the Human Rights Commission (HRC) which he did. He began to face problems from the authorities and from fellow Sinhalese villagers, and so he had decided to leave Sri Lanka. His statement to the HRC was later submitted to the LLRC by the relatives of the disappeared Tamils. The appellant was now being pursued by the authorities.
5. The appellant subsequently attended a substantive asylum interview. In the refusal letter of 6 January 2017, the respondent summarised his account as follows. Between 2001 and 2006 he had supplied information to a friend who worked for numerous newspapers, revealing information about the practises of two politicians and their family members. Between 2005 and 2006, while working for a Danish company overseas, he had become involved with an NGO in Sri Lanka which undertook work in the district of Trincomalee. Whilst he was in Trincomalee, a friend of his was

abducted by the Army after he had been seen with this friend. After he left Sri Lanka, the Terrorist Investigation Department (TID) came to his house with a warrant for his arrest.

6. The respondent rejected the appellant's protection claim on the grounds that there were numerous inconsistencies between, *inter alia*, what he had said in his screening interview as against what he had said elsewhere. His claimed fear of the Sri Lankan authorities was also said to be inconsistent with the fact that he had applied for a new passport from the Sri Lankan High Commission in October 2015.

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

7. Both parties were legally represented before Judge Graham. Ms Seehra of Counsel appeared on behalf of the appellant. In her skeleton argument for the hearing, she summarised the appellant's evidence. He had been associated with a NGO and a Tamil person called "MS". The villagers became hostile towards them in November 2005 when they considered that they associated with the LTTE. The NGO was destroyed on 14 April 2006. His friend MS was abducted on 27 May 2006, following which the appellant filed a complaint with the HRC. The complaint was passed to the Lessons Learned Reconciliation Commission (LLRC) whilst he was in the UK. His journalist friend Lakmal was shot dead in July 2006, and the appellant thereafter received threatening calls and visits to his home. The appellant believed that Lakmal's killers were aware that he was an informant. After he fled to the UK, the TID attended his home and his parents were shown an arrest warrant.
8. In paragraph 6 of her skeleton, Ms Seehra listed the documents upon which the appellant relied. They included a letter from the solicitors to a Sri Lankan Attorney; a response from the Sri Lankan Attorney; certified Court documents stamped on 24 February 2017, which included a report of an investigation on 23 October 2006 accusing the appellant of LTTE associations, anti-Government activities and causing public unrest and a warrant of arrest dated 23 October 2006; an affidavit addressed to the HRC; and a letter from LLRC.
9. In her subsequent decision, the Judge gave a detailed account of the evidence given by the appellant at the hearing at paragraphs [36] to [44]. The appellant was cross-examined *inter alia* about the provenance of the Court documents and on the topic of what he was accused of by the authorities. The Judge noted, at paragraph [42], that whereas the appellant stated a number of times that the only charge he faced related to him passing information about politicians to the media, the report purportedly issued by the Officer in charge of the TID (document 21) accused him of assisting the LTTE in terrorist activities by maintaining contacts with the LTTE, providing them with security plans which were the property of the Government, and acting to de-stabilise national security.
10. The Judge's findings of credibility and fact were set out in paragraphs [45]

to [57]. On the topic of the documents from Sri Lanka relied upon by the appellant, the Judge said, at paragraph [52], that she had considered the reliability of these documents by looking at the matter in the round. At paragraph [53] she referred to **PJ (Sri Lanka) [2014] EWCA Civ 1011**, and set out verbatim one of the passages cited by Ms Seehra in her skeleton argument. At paragraph [54], she held that there were a number of reasons to doubt that the Sri Lankan Attorney had genuinely obtained these documents. Firstly, there was confusion as to when, why and how he was instructed. The appellant said that his sole reason for instructing the Attorney was to obtain court and police documents, and yet the letter of instruction from the representatives in the UK made no mention of this, and instead referred to issues which were not relevant to the appellant. The response from the Attorney made no reference to the representatives' letter, nor did he attempt to answer any of the questions posed in that letter, but instead referred to an email which pre-dated his instruction.

11. In paragraph [55], the Judge said that she was satisfied that the appellant, and not his UK representatives, had instructed the Attorney. There was no evidence before her to indicate that the representatives had made any checks as to whether he was genuinely a lawyer in Sri Lanka. The documents at 12 and 13 were not original documents. In any event, she was also satisfied that there was no need to instruct another lawyer in Sri Lanka when the appellant must have been in touch with the lawyer who had drafted the affidavit upon which he relied. At the time the appellant said that he was instructing the new Attorney, his father's friend was contacting this other lawyer to obtain a copy of the affidavit. Not only was this other lawyer familiar with the appellant's case, according to the affidavit, but his firm was based in Colombo, and therefore was ideally placed to obtain the documents from the Court and the Police. The Judge noted that the letter from the appellant's representatives dated 8 February 2017 made no request that the court and police documents should be obtained and forwarded to them. The Judge concluded, in paragraph [56], as follows:

For all of these reasons and given that the documents themselves refer to the appellant being connected with the LTTE, which the appellant denies, I have not found these documents to be reliable and accordingly I attach no weight to them.

12. The Judge continued, in paragraph [57]:

The appellant's account is littered with material inconsistencies as highlighted. The screening interview contains significant omissions which has led me to find that he has embellished his later accounts. The appellant only mentions the complaint to the LLRC in his witness statement, the affidavit does not support his claim that he made a complaint. The appellant's account of the abduction of the NGO is fundamentally inconsistent regarding not only the date of the incident but whether or not the appellant was with the NGO at the checkpoint where he was stopped, or whether the appellant travelled to the jetty separately. Looking at the appellant's account in the round, I find that it is a fundamentally flawed account and I do not accept

even the core of his claim as credible. I make comprehensive adverse credibility findings in this appeal.

### **The Grounds of Appeal to the Upper Tribunal**

13. Ms Seehra pleaded the grounds of appeal to the Upper Tribunal. Ground 1 was that the Judge's approach to the assessment of the Court documents was flawed. Contrary to what the Judge said in her decision, the appellant's case was not distinguishable from **PJ (Sri Lanka)**. Ground 2 was that there was a lack of reasoning and fairness by the Judge when assessing the letter from the Attorney. Ground 3 was that the Judge failed to consider relevant evidence, comprising: (a) two internet articles from Tamil Net confirming that MS was checked by the Police and the Navy, and then forcibly abducted in a van (appellant's bundle, page 39), and that the office of the NGO was attacked on 14 April 2006 (appellant's bundle, page 38); and (b) a letter from the LLRC (page 30 of the appellant's bundle). Ground 4 was that the Judge had erred in giving undue emphasis to the answers which the appellant had given in is screening interview, contrary to the guidance given in **JA (Afghanistan) [2014] EWCA Civ 450**.

### **The Reasons for the Initial Refusal of Permission to Appeal**

14. On 2 June 2017 Designated Judge Campbell gave detailed reasons for refusing to grant the appellant permission to appeal on any of the 4 grounds pleaded. With reference to Ground 1, Campbell held that the Judge had given cogent reasons for distinguishing **PJ** and for concluding that the documents were unreliable evidence of risk on return. With regard to Ground 2, he held that the Judge's analysis took into account several factors and her conclusion that the letter had no weight was open to her. With regard to Ground 3, he held that the absence of any express mention of these items did not undermine the Judge's overall findings and conclusions, in the light of her careful reasoning which took into account the appellant's poor immigration history and the material inconsistencies in his account. With regard to Ground 4, he held that the Judge's approach was consistent with the guidance given in **JA**.

### **The Reasons for the Eventual Grant of Permission to Appeal**

15. On a renewed application for permission to appeal to the Upper Tribunal, permission was granted by Upper Tribunal Judge Bruce on 4 July 2017 for the following reasons:

Although the First-tier Tribunal had given reasons why it finds the documents to be distinguished from those discussed by Fulford J in **PJ [2014] EWCA Civ 1011**, I am prepared to grant permission, particularly, but not exclusively, in relation to Ground 3.

### **The Hearing in the Upper Tribunal**

16. At the hearing before me to determine whether an error of law was made out, Ms Seehra developed the case which she had pleaded in the grounds

of appeal. In reply, Mr Tufan adhered to the Rule 24 response opposing the appeal that had been settled by a colleague.

## **Discussion**

17. 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. 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, in the passage cited by Judge Graham at [53], Fulford J 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.*"
18. **PJ (Sri Lanka)** is not authority for the proposition that whenever the Tribunal is presented with a set of court and police documents which have been certified as authentic by a Sri Lankan Attorney, the Tribunal must treat such documents as being reliable, unless the respondent can establish the contrary. As was held by Lord Justice David Richards in **MR (Sri Lanka) -v- Secretary of State for the Home Department [2016] EWCA Civ 763** at paragraph [8], in the course of his judgment Fulford J stressed that documents should not be viewed in isolation and that the evidence needs to be considered in its entirety.
19. Unlike in **PJ** in the Court of Appeal, in this appeal the provenance of the documents, and the reliability of the Attorney who had purportedly extracted them from a court file, were both live issues. As highlighted by the Judge, there was a fundamental inconsistency between what the appellant said was the reason why the authorities had sought to arrest him, and the reason actually given in one of the key documents allegedly extracted from the court file. There was also an unexplained discrepancy, identified by the Judge at paragraphs [43] and [44], between the letter from the Attorney dated 1 March 2017 which stated that he was in receipt of their email dated 6 February 2017, whereas the only email that had been shown to the Judge was an email dated 8 February 2017 (and the Appellant said that he had not instructed the new Attorney until 8 February 2017, and he had done so by phone - see below). The Judge acknowledged that she had received a fax after the hearing from the representatives, confirming that it was a standard 'pro forma' letter, by way of explanation for the fact that it raised questions which are not relevant to the appellant's particular case. But it was nonetheless open to the Judge to hold that this still did not explain why such a letter would be sent with no request for the Attorney to obtain official police and court documents, "*when this is the sole purpose in instructing him*".

20. In Ground 2, it is argued that it was unfair of the Judge to make an adverse credibility finding on the basis of the appellant instructing a new Attorney for the specific purpose of obtaining the court and police documents, rather than using one of the lawyers who had worked for him previously, such as the lawyer who prepared his affidavit in 2006. Ms Seehra pleads that the appellant was not questioned about this matter, and so he was not afforded the opportunity to provide an explanation. However, it is clear from paragraph [43] of the Judge's decision that the appellant was specifically cross-examined by the Presenting Officer on this issue. As the Judge records, the appellant "*accepted*" that he had other lawyers working for him previously. His explanation for instructing a new Attorney was that "*a friend recommended this lawyer*" and he said that he had instructed the new Attorney by telephone on 8 February 2017 for the specific purpose of obtaining the documents, including the arrest warrant and the court documents relating to him. He said that he had first advised his representative in the UK on 8 February 2017 that he had instructed the new Attorney earlier that day.
21. It was open to the Judge to find that the appellant had not given a credible explanation for instructing a new lawyer recommended by a friend to obtain court documents pertaining to his case, rather than using one of his previous lawyers who would be already familiar with his case.
22. With regard to Ground 3, I refer to the guidance given by the Court of Appeal in **Muse & Others v Entry Clearance Officer [2012] EWCA Civ 10** on challenges to the adequacy of a judge's reasons. In **South Bucks District Council v Porter (2) [2004] UKHL 33**, cited with approval by the Court of Appeal at [33], Lord Brown said:
- The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision maker erred in law, for example, by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. *The reasons need only refer to the main issues in the dispute, not to every material consideration* (my emphasis).
23. The Judge did not err in law in not making specific findings on every single document emanating from Sri Lanka. The documents which Ms Seehra relies upon are of peripheral relevance only. The news article of 27 May 2006 reported that MS was abducted on Saturday morning by a group of unidentified persons in a white-coloured van from the Muttur Jetty where he was waiting to travel to Trincomalle Town by ferry with his wife. The incident was said to have been witnessed by several members of the public who were present at the site. The appellant is not identified as being one of the members of the public who were present at the site. The

letter from the LLRC is at best equivocal in its import, as the date given for the appellant's statement (15/07/2010) does not accord with the date of the affidavit which the appellant purportedly affirmed in Colombo on 9 June 2006. The letter is also addressed to the appellant as if he is resident in Gampola when, in fact, he had not been a resident of Gampola for over four years.

24. As to Ground 4, in paragraphs [45] to [50] the Judge gave extensive and sustainable reasons as to why she placed significant adverse weight on the numerous and fundamental discrepancies between what he said in his screening interview and what he said subsequently. Her reasoning included the fact that, as she observed at paragraph [48], in his asylum interview the appellant was asked whether the screening interview record was correct. The only alteration that the appellant made to his screening interview record was in relation to him passing information to a journalist via a third party. The Judge's approach was not contrary to the guidance given in **JA**.

### **Notice of Decision**

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands.

This 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 28 August 2017

Judge Monson

Deputy Upper Tribunal Judge



