



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/04189/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Bennett House, Stoke-on-  
Trent  
On 4<sup>th</sup> April 2017**

**Decision & Reasons  
Promulgated  
On 9<sup>th</sup> May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**B H P**  
(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Coleman (Counsel)  
For the Respondent: Mr Chris Bates (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Graham, promulgated in Birmingham on 29<sup>th</sup> November 2016. 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, who was born on 9<sup>th</sup> December 1952. He appealed against the decision of the Respondent refusing his claim to asylum status and humanitarian protection dated 8<sup>th</sup> April 2016. His wife and his daughter are both dependent upon his claim.

### **The Appellant's Claim**

3. The Appellant's claim is that if returned to Sri Lanka he would face mistreatment due to his involvement with the Board of Cricket Control and because he is wanted by the National Intelligence Bureau. He has also converted from Buddhism to Christianity in June 2015. The relevant facts and documentary material are set out in the judgment under appeal and I need not repeat them here.

### **The Judge's Findings**

4. The judge concluded that it was not in dispute that the Appellant had converted to Christianity. However, it was not credible that his conversion to Christianity which took place in the UK would be known in Sri Lanka. He also provided no evidence as to how or when he received documentation which he said had been left with his mother in Sri Lanka. In any event, Article 10 of the Sri Lankan Constitution allows for freedom of religion. The Appellant also had not submitted any objective material to counter the objective evidence about freedom of religion in Sri Lanka save to say that his conversion will "be talked about" and that this would cause him embarrassment. The judge concluded that the Appellant does not claim to be at risk of serious harm or persecution on this basis (paragraph 32).
5. With respect to the other parts of his claim, the judge rejected the claim that the Appellant would be at risk in Sri Lanka because he was a whistleblower in respect of corruption by the Sri Lankan Cricket Board (see paragraphs 35 to 37). He claimed to have suffered a serious assault but there was no documentation in relation to this and he also did not mention the assault at all during his interview (paragraph 39). He produced articles about corruption in Sri Lanka and that he talked about this corruption from 2006 onwards but the articles make no reference to him by name. The judge was firm in his conclusion that, "I have not found it credible that the Appellant is unable to provide evidence of his involvement in uncovering corruption in the cricket committee" (paragraph 43).
6. A feature of this appeal, however, was the reliance upon a statement from the Appellant's lawyer. Although the Appellant maintained that it was difficult to get legal documents posted from Sri Lanka, the judge concluded that the Appellant had a lawyer in Sri Lanka and also has contact with the Superintendent of Police there and he had been legally represented in the UK. In all these circumstances, therefore, "arrangements could have been made for these documents from the NIB

and the police be sent to the UK to support his claim and it is reasonable to expect these arrangements to have been made” (paragraph 49).

7. The appeal was dismissed.

### **Grounds of Application**

8. The grounds of application state that the judge gave as reason for rejecting the Appellant’s claim that the Appellant had not been able to obtain a police summons issued against him. The reason that the judge gave was that the Appellant had a lawyer in Sri Lanka. This conclusion caused the judge to reject the evidence that a summons had been issued against the Appellant because a copy of the document had not been obtained. It was suggested that the judge had overlooked the background objective evidence which confirms that it is not usually possible to obtain either copies or originals of court summons in Sri Lanka. Second, it was argued that the judge had required the Appellant to corroborate his claim when corroboration in a protection claim was not required.
9. On 6<sup>th</sup> February 2017, permission to appeal was granted by the first Tribunal.
10. On 16<sup>th</sup> February 2017, a Rule 24 response was entered to the effect that the judge had not found the Appellant to be credible and had given adequate reasons for these findings (at paragraphs 32 to 56) such that the appeal could not succeed in any event.

### **Submissions**

11. At the hearing before me on 4<sup>th</sup> April 2017, Mr Coleman, appearing on behalf of the Appellant, made the following submissions. First, the judge had recognised, in relation to the Appellant’s claim of having been a whistleblower against the Sri Lankan Cricket Club that “credibility is at the heart of this appeal” (paragraph 33). One reason that the judge gives for taking against the Appellant is that he did not claim asylum immediately after arrival but did so only on 13<sup>th</sup> November 2014. However, the Appellant did not at that time know that he was of adverse interest to the authorities until much later on. The judge indeed recognises this at paragraph 24 and at paragraph 54. Therefore, this could not have been taken against the Appellant.
12. Second, the Appellant had talked about his being subjected to an assault (referred to at paragraph 39 of the determination) but the judge concludes that the Appellant does not mention this in any of his accounts or his interview. Nevertheless, at paragraph 39 of the determination, the judge curiously observes that, “it appears that either before or after this incident he was seriously assaulted by a member of the Cricket Board Interim Committee”. This plainly was an express recognition of exactly that of which the Appellant had complained.
13. Third, there was the issue of the court summons and the judge had observed (at paragraph 49) that, given that the Appellant was represented

by lawyers both in Sri Lanka and the UK, he should have been able to get an arrest warrant. This flies in the face of the COIR report (at paragraph 10.17) which confirms that it is ordinarily difficult for a person to receive his or her arrest warrant. The accused cannot normally apply for copies of his arrest warrant. Therefore, it was wrong to have taken this against the Appellant.

14. Fourth, the judge applied the country guidance case of **GJ (Sri Lanka) [2013] UKUT 00319**. However, he then states that, “at its highest the Appellant’s own involvement with a Tamil deemed to be an LTTE member is to attempt to sell his house after his death”, which was wrong because there was an arrest warrant in existence that showed a risk of ill-treatment from another source.

15. Finally, the judge concluded that,

“I note the Appellant has travelled in and out of Sri Lanka regularly using his own documents without incident. He has visited the UK on fifteen occasions since 1996. In interview (question 11(b)) he says he visited the UK once a year every year since 2009. Therefore I do not accept the Appellant is on a computer stop list” (paragraph 53).

This ignored the fact that at paragraph 28 of his witness statement the Appellant states that, “on 25<sup>th</sup> September 2014 two people called me and asked me more information about the property, who are the owners etc. ...” He stated that the men were interested in knowing his connections to LTTE activists rather than in the property. The judge in fact accepts this at paragraph 55. Therefore, the judge had failed to evaluate the facts correctly with a view to determining the Appellant’s claim adequately.

16. For his part, Mr Bates submitted that he would rely upon the Rule 24 response. He relied upon **Tanveer Ahmed** and **TK (Burundi)**. If a document could have been produced earlier, but was not produced earlier, then this may be considered to be fatal to the Appellant’s case. The fact was that the Appellant here had delayed a month before claiming asylum. He had said that he was visited by two men on 25<sup>th</sup> September 2014. He therefore knew he was at risk. He had clearly not claimed asylum. Second, the judge nevertheless stated that, “I have not determined the Appellant’s credibility on this point alone. I have also taken account of the following which I have found to be relevant ...” (paragraph 35). In that regard, the judge was not persuaded that the Appellant was a whistleblower against the Sri Lankan Cricket Board with respect to corruption from 2006 onwards, and the articles did not refer to his name, and his explanation was rejected when he said that “the articles were difficult to get at and his brother was a busy man” (paragraph 42). Naturally, therefore, the judge concluded that, “I have not found it credible that the Appellant is unable to provide evidence of his involvement in uncovering corruption in the cricket committee” (paragraph 43).

17. Second, the judge rejected wholesale the Appellant’s account of any harassment from any source. The Appellant claimed that those harassing

him “sent a white van”, after he had terminated his contract with the cricket committee, but the judge held that if this was true then,

“There will be other attempts to abduct him. I am satisfied that the fact that the Appellant continued to live in his house for another four years until he left Sri Lanka in 2014 without any further attempts to arrest or abduct him undermines his claim” (paragraph 44).

Finally, there was no statement from Alponso, his lawyer could not get the documents, and most importantly he made no reference to the existence of any arrest warrant (see paragraph 49).

18. In reply, Mr Coleman states that the judge did not refer to **TK (Burundi)** or to **Tanveer Ahmed** and so it was wrong for Mr Bates to assert that the judge had regard to these authorities. The Appellant’s case was set out at paragraph 24 of the determination which stated,

“The Appellant states that shortly after his arrival in the UK he was told the NIB in Sri Lanka deemed him to be a supporter of the LTTE. The Secretary of State did not consider it credible that being involved in the sale of a property owned by a Tamil would warrant the attention of the NIB” (paragraph 24).

The Appellant had made it clear (see paragraph 3 of his witness statement) that this was not just an enquiry upon him. He really was in fear of being ill-treated. The police are on the lookout for him to arrest him. He did not claim asylum for a month, but this is because at the time of his arrival here he did not know he was at risk. The judge had set the bar too high. This appeal should be allowed.

### **No Error of Law**

19. 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) such that I should set aside the decision. My reasons are as follows. First, there is the history of this Appellant. By all accounts, he is a well connected member of Sri Lankan society, and may well be deemed to be a pillar of that society. He has been the recipient of several multientry visit visas to the UK issued from almost ten years ago in 2000, and as the judge recognised, he had been to the UK on fifteen occasions since 1996, coming to this country every year since 2009. He was employed since 2000 in the Board of Control for Cricket in Sri Lanka. All that is uncontentious. What is in dispute is whether he is a whistleblower as he claims. The judge rejected this claim comprehensively, doing so not just on the basis of the Appellant’s credibility, that he failed to claim asylum at the airport before being granted entry to the UK (see paragraph 34), but that he was not referred to in any of the articles that he himself drew attention to, and was unable to point to any documentary evidence confirming his role as a whistleblower. He claimed to have instructed a lawyer in Sri Lanka to pursue a complaint to the Human Rights Commission, but even here the judge was of the view that, “I have found it

relevant that the Appellant failed to ask his legal advisor in Sri Lanka to obtain this evidence from him” (paragraph 43).

20. Second, there is the issue about when the Appellant knew that he was in fear of persecution and ill-treatment. Mr Coleman asserts that the Appellant only discovered the true extent of the risk to him after his arrival in the UK. This cannot be true. The judge did not hold it to be true. The Appellant claimed that after his contract ceased with the cricket committee, “they were harassing me little by little as they sacked me” and that they then “sent a white van”. However, as the judge found, the Appellant continued to live for another four years in Sri Lanka before he left in 2014, “without any further attempts to arrest or abduct him” by the authorities being put in evidence (see paragraph 44).
21. Third, and in any event, the judge did give express consideration to when the Appellant’s fear materialised, observing that “the Appellant says he learnt of the NIB’s interest in him after he entered the UK in October 2014” but the judge rejected this because “in his oral evidence he said that prior to him leaving Sri Lanka he received a visit and telephone call from men asking questions about him which made him suspicious” (paragraph 54). The judge was entitled to make this finding of fact. Even more damaging to the Appellant, he had said that he was visited by men on 25<sup>th</sup> September 2014 and that “it was this visit which prompted his departure from Sri Lanka”. Yet, as the judge observed, if this is accepted then it would suggest that the Appellant was of interest to the authorities a month before he left Sri Lanka (paragraph 55).
22. Finally, there is the issue of the Appellant’s conversion to Buddhism, but the judge has given this proper consideration (at paragraph 17) in noting that the Appellant claimed that this would create “an embarrassing situation” for him. The judge’s findings in this respect can also not be faulted for the same reasons as the ones I have given above.

### **Notice of Decision**

23. There is no material error of law in the original judge’s decision. The determination shall stand.
24. An anonymity direction is made.
25. This appeal 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

Deputy Upper Tribunal Judge Juss

8 May 2017