



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08142/2016

THE IMMIGRATION ACTS

Heard at Stoke
On 13th September 2017

Decision & Reasons Promulgated
On 5th October 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MR IAS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel
For the Respondent: Mr C Bates, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on [] 1986. The Appellant having entered the UK as a dependent partner in 2010 and having had that grant of leave to remain subsequently extended claimed asylum on 22nd January 2016. The

Appellant's claim was that if returned to Sri Lanka he feared he would be arrested, detained and imprisoned for life by the authorities as a person suspected of supporting the LTTE. That application was refused by Notice of Refusal sent by the Secretary of State on 22nd July 2016.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Meyler sitting at Stoke on 15th May 2017. That appeal was dismissed on all grounds in a decision and reasons promulgated on 22nd May 2017. At that hearing the judge made an anonymity directions order. No application is made to vary that order and it remains in place.
3. On 8th June 2017 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended:-
 - (i) that the Immigration Judge had erred in her assessment of the documentary evidence and in criticising the Appellant for failing to contact former members of the LLRC;
 - (ii) that the judge had erred in misrepresenting the Appellant's evidence;
 - (iii) that the Immigration Judge's findings were at odds with the objective evidence.
4. On 19th June 2017 First-tier Tribunal Judge Astle granted permission to appeal. Judge Astle noted that the grounds argued that the judge erred in her assessment of the documentary evidence and in criticising the Appellant for failing to contact former members of the LLRC. She noted that the judge cited no authority or basis for finding that there was a "general prevalence of unreliable documents produced by attorneys in Sri Lanka." The evidence regarding the attorney was not challenged by the Respondent. There was no obligation on the Appellant to request a document verification report. The grounds state that it was unreasonable to expect the Appellant to approach former members of the LLRC. Secondly it was argued that the judge erred in misrepresenting the Appellant's evidence and thirdly that her findings were at odds with the objective evidence. In granting permission to appeal Judge Astle considered that it was arguable that the judge may have erred in her treatment of the documentary evidence. The other grounds could also be argued.
5. On 10th July 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. Therein it is stated it was open to the First-tier Tribunal Judge to attach whatever weight he saw fit and that it was open to find that there was a prevalence of false and unreliable documentation in Sri Lankan appeals. Further it was submitted that the judge having considered the Appellant's evidence was entitled to find that he would not be at risk on return after applying the risk factors found in the case of *GJ and Others*. He submitted that the Grounds of Appeal amount to a mere disagreement.
6. It is on this basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Ms Anzani. Ms Anzani is familiar with

this matter. She appeared before the First-tier Tribunal and she is the author of the Grounds of Appeal. The Secretary of State appears by her Home Office Presenting Officer, Mr Bates. The First-tier Tribunal Judge granted an anonymity direction for reasons set out in paragraph 5 of the First-tier Tribunal Judge's decision. No application is made to vary that order and that order remains in place.

Submission/Discussion

7. Ms Anzani starts by indicating that Mr Bates has conceded to her that the evidence does distinguish between the incidents of 2008 and 2010 and consequently she relies on her written Grounds of Appeal. She takes me to them. Her first submission is that the judge has erred in her assessment of the documentary evidence and in criticising the Appellant for failing to contact former members of the LLRC. She advises that there were a number of documents submitted, including documents from the Appellant's Sri Lankan attorney. She points to the finding by the judge of the fact that there is a general prevalence of unreliable documents produced by attorneys in Sri Lanka and considers that this is a sweeping statement and one that cannot be relied upon. She asked me to consider paragraphs 6 to 8 of her Grounds of Appeal which I have done and reiterates that the Immigration Judge has failed to identify what other "expert evidence" she expected to see in respect of the documents supplied by the Appellant and that it is far from clear what further expert evidence that the Appellant could reasonably have acquired. She also submits that the Appellant disputes any obligation on his part or that of his representatives to request the document verification report and submits that what is being asked for goes beyond the necessary lower standard of proof.
8. Further she notes that the Immigration Judge appears to criticise the Appellant for failing to contact former members of the LLRC but reminds me that the Upper Tribunal in *GJ and Others (post-civil war: returnees) Sri Lanka [2013] UKUT (IAC)* confirmed that the individuals who gave evidence to the LLRC implicating the Sri Lankan Security Forces, armed forces or the Sri Lankan authorities in alleged war crimes are at risk of persecution and require international protection. She submits that to expect an Appellant to approach former members of that commission is unreasonable in all the circumstances.
9. Ms Anzani turns to her second ground, namely that the Immigration Judge has erred in her misrepresenting the Appellant's evidence. She asks me to consider paragraphs 10 and 11 of her Grounds of Appeal which I do. Finally she turns to the third ground, namely that the Immigration Judge's findings are at odds with the objective evidence. She takes me to the authority of *MM (Sri Lanka) v SSHD [2014] EWCA Civ 36* where it was accepted that a material error of law had occurred where an Immigration Judge had concluded that the Appellant would not have been able to depart from the airport unnoticed if the Sri Lankan authorities had an interest in him. She submits that in this case the judge has similarly erred in that nothing in the objective evidence undermined the Appellant's account as to having been able to obtain his passport through the aid of an agent and thereafter to fleeing through the airport even when subject to a weekly reporting condition. She submits

consequently that the objective evidence suggests that the Appellant's account is reasonably likely and there is clear corroborative evidence of his account and consequently that there is a material error of law. She asks me to find material errors of law in the decision and to remit the matter back to the First-tier Tribunal for rehearing.

10. Mr Bates starts his submissions by pointing out that it is necessary to consider how the judge viewed the evidence. He takes me to paragraphs 39 to 41 of the decision and submits they must be taken in context and the judge was perfectly correct as set out at paragraph 41 to consider the documents in the round in accordance with the usual principles in *Tanveer Ahmed*. He refers me to paragraph 40 in some detail, pointing out that it is not being suggested that the Secretary of State should herself have got a document verification report and that the judge does not blame the Secretary of State for not verifying the documents. He points out that the judge has stated that there were other evidential routes that the Appellant could have explored and that the judge has found in the absence of this she should consider the evidence in the round. He submits that that is a correct approach and discloses no material error of law.
11. He accepts that the judge has speculated with regard to the generalisation that documents produced by attorneys in Sri Lanka are unreliable but submits that that is a general proposition that she was entitled to follow. He points out that in fact Ms Anzani in her Grounds of Appeal has noted that there is extensive objective evidence to widespread corruption and bribery in Sri Lanka and submits that this could also apply to the legal profession. He asks me to consider these factors in the round.
12. He points out that the judge's findings and reasons are extensive, starting at paragraph 24 and that the judge was entitled to reject the extent of the Appellant's evidence at paragraphs 32 to 35 and that at paragraph 36 it is not just the granting of bail the judge has taken issue with, and that this has to be looked at alongside paragraph 37. He points out that the judge notes therein that the Appellant was able to get his passport back and that the factual matrix therein reduces the credibility of the Appellant's story. He submits that the core of the credibility is perfectly reasoned by the judge and falls within the range of findings the judge can make.
13. He accepts there is an error of fact (as mentioned previously) at paragraph 33 and that the judge has confused the evidence of the affidavit, referring it to being June 2010 when the witness statement makes it clear that the period referred to was in 2008, but he submits that that is not material due to the judge having given cogent reasons as to why the Appellant could not give evidence of this nature on the basis that it would not be available to him. He submits that such error does not go to the core findings and he asks me to dismiss the appeal.
14. In brief response Ms Anzani submits that Mr Bates is attempting to give evidence that was not before the First-tier Tribunal Judge and that the finding of credibility is not tainted. She submits again that the documents must be considered as part of the evidence and that they were consistent and that the judge's approach is flawed. She

again emphasises that not all attorneys engage in using false documentation and that it is not open to the Appellant to approach people involved in the LLRC. She submits that the finding of the judge is flawed and asks that the matter be remitted with none of the findings of fact to stand.

The Law

15. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
16. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

17. The findings and reasons given by the judge are detailed. Not only are they detailed, they are fully reasoned. It is the role of the Upper Tribunal to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. It is not the role of the Upper Tribunal to rehear the matter. It is regularly possible that a different judge on hearing evidence may come to a different conclusion. That is a feature of the judicial process. Ms Anzani relies on three basic Grounds of Appeal in making her submission that there is an error of law. The first is that the judge has erred in her assessment of the documentary evidence and in criticising the Appellant for failing to contact former members of the LLRC. At paragraph 41 the judge has considered all documents produced in the round. The judge was entitled to do so. Paragraph 41 has to be read in conjunction with paragraph 40. It is not for the Secretary of State to go seeking a document verification report and the judge in the final two sentences of paragraph 40 has set out other avenues that the Appellant could have pursued but has failed to do so. Further there is objective evidence supportive of the view that in the round unreliable documents have in the past been produced by attorneys in Sri Lanka. I accept that that however does not mean that in

each individual case that is the norm and each individual case has to be looked at on its own facts. This I am satisfied the judge has done. She has considered alternative options for providing the reliability of documents before her, noted the lack of any expert evidence and made findings based on her reasoned analysis that the Appellant had shown to the lower standard that the documents sent by the attorneys could not be relied upon. Those are findings that she was entitled to make. The reasoning process is such that it does not disclose a material error of law.

18. Ms Anzani's second contention is that there has been a misrepresentation of the Appellant's evidence. It is accepted by Mr Bates that at paragraph 33 there is a misrepresentation of the incidents referred to in the witness statement. However I agree with Mr Bates that whilst there is an error of fact it is not material due to the cogent reasons given thereafter as to why the evidence would not have been available. This Ground of Appeal has to be looked at alongside the third ground, namely the contention that the judge's findings are at odds with the objective evidence. This is not borne out by the decision. The judge has given full, due and proper consideration to the oral testimony provided by the Appellant. She has noted that she has difficulty in accepting that the Appellant would be entrusted with editing sensitive news items concerning national security, given that the media is so tightly controlled and that there is no satisfactory explanation provided as to why the Appellant would have been granted bail in 2014 if an arrest warrant had been issued against him four years earlier on the basis that he had failed to cooperate with an investigation. She makes findings of fact at paragraph 37 that she is entitled to and she has given full, due and proper consideration throughout the decision to the relevant authorities.
19. The judge has thereafter gone on to summarise her conclusions in paragraph 43 where having considered all the evidence with anxious scrutiny she concludes that the Appellant has not discharged the burden of showing that there was a reasonable degree of likelihood he would be persecuted or at real risk of serious harm on return to Sri Lanka. In essence the submissions made on his behalf amount to disagreement with the judge's findings. For all the above reasons I am satisfied that the decision is well reasoned and that the judge has given full and proper consideration to all the facts of this matter. In such circumstances the decision does not disclose a material error of law and the decision of the First-tier Tribunal Judge is upheld and the Appellant's appeal is dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge discloses no material error of law and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

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 D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date

Deputy Upper Tribunal Judge D N Harris