



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08424/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 14th November 2017**

**Decision & Reasons
Promulgated
On 28th November 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between

**KPUD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel instructed by Nag Law Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge O'Rourke promulgated on 16th February 2017. At the appeal hearing before the Upper Tribunal the Appellant is represented by Ms Anzani, Counsel and the Respondent is represented by Mr Melvin, a Senior Home Office Presenting Officer.
2. Judge O'Rourke in his decision dated 6th February 2017, but promulgated on 16th February rejected the Appellant's asylum appeal, in respect of his

claim that he is at risk upon return to Sri Lanka due to his imputed political opinion as an alleged supporter of the LTTE. His claim is that he will be subject to persecution upon return, as a result of him having been involved in the coaching of young cricketers from the Tamil north and Jaffna area.

3. There are three Grounds of Appeal in this case and I note that permission to appeal has been granted by Upper Tribunal Judge Martin on 15th September 2017 who found that it was arguable, as asserted within the grounds, that the First-tier Tribunal erred in basing adverse credibility findings on inconsistencies and contradictions without identifying them. It is also arguable, she found, that the First-tier Tribunal erred in rejecting the documents for reasons given, namely that they may not be genuine.
4. In considering this appeal I have taken into account of all the evidence submitted including the original decision of the judge, the Grounds of Appeal and the Rule 24 reply, all of the papers before Judge O'Rourke, together with the oral submissions of both the legal representatives before me.
5. Within the Grounds of Appeal the first Ground of Appeal argues that Tribunal Judge O'Rourke failed to provide adequate reasons for the finding at paragraph 21 that the Appellant's account of police visits to his house was contradictory and inconsistent.
6. At paragraph 21 in respect of the findings in that regard, Judge O'Rourke has simply stated at subparagraph (ii) "*his account of police visits to his house was contradictory and inconsistent*" and has given no further specific findings at that point. However I do in that regard accept the submission of Mr Melvin that the judge had actually previously made findings in respect of the Appellant's case in respect of police visits when considering his evidence at paragraph 13 of the judgment at page 4, when Judge O'Rourke stated:

"He said the police had been to his family's house on several occasions over the years since and had shown his mother an arrest warrant. In interview he said that the visits took place in 2008 to 2010, ceased, but then started again in 2015. In his statement the final reference to such visits is one in February 2015, when the police shouted and screamed at his mother, asking where he was, but in cross-examination he said that they had also called at the end of 2016 and routinely did so twice a year. As far as he knows the two Tamil boys have disappeared or are missing and he fears the same fate for him if he returns."

7. The Secretary of State in the Rule 24 reply relies specifically upon the case of **Budhathoki (reasons for decision) [2014] UKUT 341** in which the Upper Tribunal observed at paragraph 14 of the judgment that in giving judgments the judges do not have to set out the entirety of the evidence presented and it is not necessary to rehearse every detail or issue raised, but the judge has to give clear and brief reasons for preferring one case to

the other, so the parties understand why they have won or lost and to identify and resolve key issues in the evidence. Although clearly it would have been better had Judge O'Rourke set out the inconsistencies relied upon at paragraph 21 when finding that the police visits to the house were inconsistent and contradictory, I do find that he actually has made adequate and sufficient findings previously in that regard regarding at paragraph 13.

8. Although Ms Anzani makes the point that the cross-examination and statement postdated the interview, clearly the evidence that the judge set out at paragraph 13 in terms of the fact that in cross-examination he said that they called in 2016 and routinely did so twice a year the Judge found was inconsistent, with the judge pointing to the inconsistencies between what he said in the statement that the visits took place between 2008 to 2010 and ceased and started again in 2015. I do therefore find that in fact the judge has given adequate and sufficient reasons for his findings in that regard.
9. In respect of the second Ground of Appeal it is argued by the Appellant that the judge has erred in his assessment of the documents produced by the Appellant and it is said that the Appellant produced several documents in support of the asylum claim, including what is said within the Grounds of Appeal to be most notably a certified copy of a Mt Lavinia Magistrates' Court file in his name, including an arrest warrant and a letter from a Sri Lankan Attorney, Ms Meenu Aparna Aramathunga, which is said to confirm the existence of the court file and the existence of the outstanding proceedings and the arrest warrant.
10. Criticism is made in the grounds of appeal, of Judge O'Rourke's findings in respect of the analysis of that evidence and in particular at paragraph 22(iii)(a) where Judge O'Rourke noted and found:

"While I note that they have been apparently obtained via a Sri Lankan lawyer, by request from his solicitors that does not, of itself, satisfy me as to their provenance. There will no doubt be lawyers in Sri Lanka, as also sometimes in the UK, willing to participate, for payment, in activities that are dishonest and this is at least a possibility in this case."

11. Judge O'Rourke went on to criticise the tardiness with which those documents had been produced. I am told by Ms Anzani that they were actually produced on 2nd February prior to the hearing on 6th February rather than being actually produced at the hearing itself, but that was only four days prior to the hearing and therefore not in accordance with the court directions. The judge found that the Respondent would not have been able to verify them in that short time. The judge at subparagraph (c) also stated that they make no mention of the Appellant's partner, Mr P but the police report apparently cites extensive enquiries on their part including mention of two other Tamil persons but failed to mention any reference to Mr P. The judge found it is highly unlikely having mentioned the cricketing charity in their report and having, as the Appellant claims,

taken the relevant documents from his house, that the police would not have been aware of Mr P's involvement and also sought to make enquiry of him. In subparagraph (d) the judge finds that the late production of all the documents, the police records and the court records, the charity certificate and the cricketing records undermined their provenance generally.

12. The point made by Ms Anzani in the grounds, but also in oral submissions in respect of the lack of mention of Mr P, is that the Appellant was not saying that the police did not know about Mr P, but the Appellant's case was that he lost contact with him and his friend had disappeared.
13. What is clear is that the evidence before Judge O'Rourke was a letter from Ms Amarathunga dated 18th January 2017 in which she says that she is aware of the circumstances which her client, the Appellant, had undergone and that he sought legal assistance from her when he wanted to obtain court documents for his immigration matter in the UK and that he had been summonsed to appear before a court. She says that by then he had been left the country and the court had issued the warrant against him and that she obtained those documents and posted them to the Appellant's solicitors in London, together with a letter. She stated there was a warrant for his arrest and if he tried to re-enter the country he would be arrested at the airport. She also submitted a photocopy of her Bar Association of Sri Lanka card, which is at page 10 of the Appellant's bundle, together with a list of the Bar Association of Sri Lanka members at page 11 which details her name and practising address, together with the original and English translation of the report reported by the Sri Lankan police to the magistrate at page 15, the order by the magistrate for issue of the warrant, copy of English translation which is at page 20 and also the arrest warrant itself, a copy of which is at page 21 and the English translation at page 22 . "Aiding and abetting terrorists" as stated on the arrest warrant as the particulars of the offence.
14. Although Judge O'Rourke clearly was entitled to consider the lateness of the documentation and the fact that the Respondent had not had the opportunity to verify them, clearly it was open to the Respondent in that regard, if she so wished, to seek an adjournment but no such request was made and in that regard the submissions made by the Respondent were simply in terms of the lateness of the documents and the fact there was no requirement for the Respondent to check the validity of those documents. What was not raised as a submission by the Respondent at that time was any doubt regarding the legitimacy of the activities undertaken by Ms Amarathunga. The judge's finding was that there "*would no doubt be lawyers in Sri Lanka and sometimes the UK willing to participate, for payment, in activities that are dishonest.*" That finding was not actually based upon any submission made by the Respondent. Indeed before the judge there was seemingly no evidence to substantiate such a finding or even the possibility that in fact these documents had been obtained for payment and that there is something dishonest about Ms Amarathunga's activities. Clearly obviously as Mr Melvin submitted in his oral submissions there is concern as to whether or not the documents

from Sri Lankan attorneys are genuine, but there was no actual evidence put before the judge in that regard and seemingly no evidence upon which the judge could formulate such a finding.

15. When assessing the credibility overall there has to be consideration of all of the evidence and in that regard the findings made have to be based upon evidence rather than speculation on the part of the judge. I do find that in fact the finding that there is a possibility that these documents were obtained for payment by dishonest activities is speculation and was not part of the Respondent's case. There is no evidence to suggest that the lateness of the documentation itself meant that they were obtained by dishonesty and in that regard I do find that the judge has made a finding which was not based upon the evidence, when considering the genuineness of that documentation.
16. Whether or not there was actually a valid arrest warrant is clearly in my judgment a significant feature when considering the overall corroboration of the Appellant's account and also the risk upon return. In that regard I therefore do find although the judge has given other reasons regarding the tardiness of the documentation for rejecting the documentation, the fact that the judge has taken account and made findings at least partially based upon speculation, I do find is a material error of law. Although other reasons have been given, I cannot say the judge would necessarily have reached the same conclusion had that error not been made.
17. It is also relevant in that if there was a valid and genuine arrest warrant then, as Mr Melvin properly concedes, there is also merit in respect of what is said in the third Ground of Appeal.
18. The judge went on to find in paragraph 23 that even if there was an arrest warrant for the Appellant's arrest that would not actually mean that he was on a stop list and that therefore the Appellant would necessarily be at risk on return. In that regard, looking at paragraph 7 of the head note in the country guidance case of **GJ & Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319** and subparagraph (7):

"The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise do include:

(d) A person whose name appears on a computerised 'stop' list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a 'stop' list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant."
19. Clearly, as Mr Melvin quite properly concedes if there was an extant arrest warrant that that would mean that the Appellant was at risk given the fact his name would then be on a computerised stop list and the findings made by the judge in that regard were not open to her regarding the assessment of the risk categories within subparagraph (7) of the heading of **GJ**.

20. Given the fact that I find that the judge's assessment of reasons for rejection of the evidence of the attorney regarding the court file is inadequate for the reasons set out above, I do find that in light of the further error made by the judge regarding the potential risk faced by the Appellant if his name was genuinely on extant court order or arrest warrant does mean that there is a material error of law in this case.
21. I set aside the decision of First-tier Tribunal Judge O'Rourke in its entirety given that credibility will need to be assessed holistically. That is not a case where it is appropriate to retain any findings of fact in this case and I therefore set aside the judgment of First-tier Tribunal Judge O'Rourke in its entirety.

Notice of Decision

The decision of First-tier Tribunal Judge O'Rourke does contain a material error of law and is set aside in its entirety.

The appeal is remitted back to the First-tier Tribunal for rehearing before any First-tier Tribunal Judge other than First-tier Tribunal Judge O'Rourke.

Anonymity

I do make an order in respect of anonymity such order having been sought by Ms Anzani given the circumstances of this Appellant's asylum appeal. In such circumstances no record of transcript of these proceedings may mention the Appellant or any member of his family either directly or indirectly by name. This order applies both to the Respondent and to the Appellant. A breach of this order may lead to contempt of court proceedings.

Signed

Date 27th November 2017



Deputy Upper Tribunal Judge McGinty