



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: PA/12301/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 28 November 2018**

**Decision & Reasons
Promulgated
On 3 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

[S L]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R. Popal, Counsel instructed by Nag Law,
Solicitors

For the Respondent: Mr D. Clarke, Home Office Presenting Officer

REASONS FOR FINDING AN ERROR OF LAW

1. I have considered the documentation provided by the appellant to the First-tier Tribunal Judge. The references I make in square brackets are the page numbers extracted from the Index to the Appellant's Bundle.
2. The centrepiece of the appellant's claim was that he was a witness to the abduction of Mr Abdul Majeed on 28 December

2008. On 6 January 2010 some years prior to the appellant's asylum claim on 19 May 2017, the appellant swore an Affidavit [13-14] directed to the Commission of Inquiry on Lessons Learnt in which he gave evidence to the Commission of the abduction. The Commission acknowledged receipt of the complaint by letter dated 14 January 2011 [15].

3. By letter dated 16 November 2017, the appellant's solicitors, Nag Law, wrote to an Attorney-at-Law in Sri Lanka. This was solicitor-to-solicitor correspondence. Nag Law continue to act for the appellant and there is no suggestion this letter [16-17] is a fabrication.
4. The Sri Lankan Attorney responded on 7 December 2017 [18] in which the Attorney provided certified copies of court documents which included a warrant for the appellant's arrest. The Attorney confirmed that he had no objection to the appellant submitting the documents to the Immigration Tribunal in the United Kingdom. The Attorney included in his documentation his accreditation as a member of the Bar Association of Sri Lanka. The documents submitted also included the information report provided by the appellant himself on 28 December 2008 to the police station in Maradana [21]. This was a witness statement recounting the abduction of Mr Majeed.
5. The arrest warrant issued by the Magistrate was, apparently, supported by information from an officer in charge of the Criminal Investigation Department in Colombo alleging that the appellant was actively working for the LTTE.
6. In her determination, the judge refers to the bundle of documentation by reciting its presence before her but no more, see paragraph 21 of the determination. She attached no weight to it, see paragraph 25 of her determination. She did so, in part, because she did not accept the Sri Lankan authorities would issue an arrest warrant for the appellant 7 to 8 years after the incident in 2008 and after five years of inactivity relating to the case of Mr Majeed and five years after the appellant had left Sri Lanka. No doubt these are proper considerations to have been in the judge's mind. However, this does not address the provenance of these documents. Assuming that this was indeed solicitor-to-solicitor correspondence initiated by Nag Law, an Attorney in Sri Lanka has written to solicitors in the United Kingdom with a response to his enquiries in the knowledge that this material will be placed before the Tribunal in the United Kingdom. In other words, the provenance of the documentation falls into a different category by reason of its being sought by, and produced to, solicitors in the United Kingdom.

7. It was necessary for the judge to make findings about whether Nag Law wrote the letter in the terms appearing in the bundle. If they did, it would be necessary to consider whether the Sri Lankan response is a carefully contrived fabrication by the Attorney, presumably prompted in some clandestine fashion by the appellant: how else would the Attorney have been able to concoct a fabricated account consistent with the appellant's fabricated claim? The judge was required to make appropriate findings upon this.
8. It was not open to the judge to place no weight on the documentation unless and until he had made suitable findings as to its provenance. This was an integral part of his consideration of whether it was likely that the Sri Lankan authorities would show a continuing interest in the appellant after so many years have elapsed since the abduction of Mr Majeed and the appellant's departure from Sri Lanka.
9. The determination of the First-tier Tribunal reveals a material error of law and I set it aside.
10. Since the re-making this decision will require a thoroughgoing reassessment of all the material, including, of course, the material to which I have referred in this decision, this can only properly be achieved by the appeal being remitted to the First-tier Tribunal for re-making.

ANDREW JORDAN
DEPUTY UPPER TRIBUNAL JUDGE
28 November 2018