



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

Appeal Number: PA/13273/2016

THE IMMIGRATION ACTS

Heard at Liverpool

On 5th February 2018

**Decision & Reasons
Promulgated**

On 15th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MR THARINDU JAYAWEERA KANKANAMGE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Medley-Daley

For the Respondent: Mr C Bates

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 20th April 1992. The Appellant was originally granted leave on a student visa on 16th September 2009 and claimed to have arrived in the UK on 5th October 2009 with leave to remain until November 2010. That was extended until 30th April 2014.

However the Appellant's leave was curtailed on 10th July 2013 and expired on 8th September 2013. Thereafter he was served with an IS151A as an overstayer but failed on three subsequent occasions to attend and report. He claimed asylum on 9th May 2016.

2. The Appellant's claim for asylum was based on purportedly having a well-founded fear of persecution in Sri Lanka on the basis of his imputed political opinion. That application was refused by the Secretary of State on 15th November 2016.
3. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Gibbs sitting at Manchester on 27th January 2017. In a decision and reasons promulgated on 22nd February 2017 the Appellant's appeal was dismissed on all grounds.
4. On 14th June 2017 Judge of the First-tier Tribunal Astle refused permission to appeal concluding that the decision was open to the judge on the evidence before him and adequately explained. Renewed Grounds of Appeal were lodged to the Upper Tribunal on 4th July 2017 and on 14th September 2017 Upper Tribunal Judge Gill granted permission to appeal. In her reasons Judge Gill stated:

"I am just about persuaded that the judge of the First-Tier Tribunal may have erred in her approach to assessing the reliability of the documentary evidence, in that, she arguably considered whether they were reliable after she had assessed the credibility of the Appellant's own accounts."

5. The Secretary of State has not responded to the Grounds of Appeal pursuant to Rule 24. It is on that 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 legal representative Mr Medley-Daley. Mr Medley-Daley is familiar with this matter. He appeared before the First-tier Tribunal and he is also the author of the Grounds of Appeal. The Respondent appears by her Home Office Presenting Officer Mr Bates.

Submissions/Discussion

6. Mr Medley-Daley relies on both the Grounds of Appeal to the First-tier Tribunal and the renewed grounds. He starts by taking me to paragraphs 20 and 21 of the judge's decision contending the judge has not followed the required holistic approach when considering the documents provided by the Appellant purportedly from the Gampaha Police Station and when considering their reliability. He takes me through the paragraphs setting out that the Appellant had provided an explanation regarding the documents and reminding me that when he makes reference to having been only given verbal instruction in 2008 the Appellant was at that time only 16. Further the judge is, he points out, considering the Appellant's minority at paragraph 14 and 15 which he acknowledges is an appropriate step providing that an assessment is made bearing in mind the Appellant's

age. His concern is that the judge has only gone on to consider the Appellant as an adult. He considers the key phrase to be the opening line to paragraph 21 where the judge has said:

“Following this I am not persuaded that I can place weight on the documents ...”

He reiterates that the judge has failed to take a holistic approach to his analysis.

7. Secondly, he turns to the future risk to the Appellant which he states should have been considered under paragraph 339K of the Immigration Rules. He submits that there was evidence of the Appellant being of subsequent interest to the authorities in the finding he had to report and therefore the conclusion at paragraph 19 constitutes an error. Further he considers that the finding at paragraph 17 fails to take into account corruption at the airport which he reminds me is an issue of country guidance and that the judge has consequently fallen further into error in his analysis.
8. So far as the Lessons Learned and Reconciliation Commission (LLRC) are concerned he submits that the judge has fallen into error in his assessment at paragraph 21 and that findings of the judge failed to provide the Appellant with a fair hearing and that it would have been open to the judge to have resumed or adjourned the hearing if he had concerns regarding the documents but he chose not to do so. He asked me to find that there are material errors of law in the decision of the First-tier Judge and to remit the matter back to the First-tier Tribunal for rehearing with none of the findings of fact preserved.
9. In response Mr Bates accepts that corruption is rife and therefore it is necessary for documents to be considered in the round. However in response to the specific arguments put forward by Mr Daley he firstly turned to the Appellant's age and points out that at paragraph 14 the judge has clearly given due and proper consideration to the Appellant's age, and has made perfectly reasoned findings. He states that the judge's analysis at paragraph 17 is significant and that this is an Appellant who purportedly knowing the situation then delays in using a genuine passport to escape and therefore the judge was entitled to make his credibility assessment to consider how the Appellant got the passport and why he waited so long to use it assuming that he is telling the truth. He submits that the judge's findings are cogently reasoned.
10. Turning to documentary evidence he submits that the judge was always in a position to consider what documentary evidence was before him, to assess how credible the Appellant's testimony was and how much weight to give to the documents and at paragraph 21 he has thereafter gone on and considered these documents fully and properly. So far as Mr Daley's submissions regarding paragraph 21 and the LLRC are concerned he points out that the key issue is that the Appellant had not attended the Commission and merely letters had been sent and he submits that this is

not sufficient to bring the Appellant within the head note of *GJ and Others*. He asked me to dismiss the appeal.

11. In brief response Mr Medley-Daley submits that the judge has failed to look at all the evidence in the round.

The Law

12. 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.
13. 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

14. I have listened thoroughly to the submissions made by Mr Medley-Daley on behalf of the Appellant. However effectively they amount to little more than a mere disagreement with the assessment of the judge. I agree entirely with the approach adopted by First-tier Tribunal Judge Astle when refusing permission back in June 2017 in that whilst the judge rejects the Appellant's account for considering all relevant documents namely those from the police the decision has to be read as a whole and that it is quite apparent from paragraphs 14 and 15 that the judge had the issue of the Appellant's minority firmly in mind. Further with regard to the passport Judge Astle concluded there is just not the Appellant's ability to leave using it, issue was also taken with his ability to obtain one whilst being a subject of interest to the authorities. On reading the decision it is clear from paragraph 20 onwards as to why the judge found the documents unreliable. Further I am satisfied that the judge has taken a proper and correct approach in addressing issues at paragraph 21 and that he was perfectly entitled not to grant or even consider adjourning the matter.

15. The proper approach to credibility or as an assessment of the evidence and of the general claim the relevant factors can include the internal consistency of the claim, the inherent plausibility of the claim and the consistency of the claim with external factors of the sort typically found in country guidance. This is a judge who has looked generally at the consistency of the claim and has given cogent reasons as to his findings on lack of credibility. Contrary to the submission made by Mr Medley-Daley I am satisfied on a full consideration of the decision that this is a judge who has considered all the issues in the round.
16. This is a well constructed and well-reasoned judgment and discloses no material errors of law. For all the above reasons the appeal is consequently dismissed.

Notice of Decision

The decision of the First-tier Tribunal Judge contains no material error of law and the appeal is dismissed and the decision of the First-tier Tribunal is maintained.

No anonymity direction is made.

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