



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

Appeal Numbers: PA/03838/2017
PA/04056/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 April 2019**

**Decision &
Promulgated
On 3 May 2019**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**S M F
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Nathan of Counsel instructed by S Satha & Co Solicitors

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Sweet promulgated on 1 February 2019.
2. I discuss below the circumstance of the Appellant having two appeal references herein. However, for the purposes of consideration of the issue of error of law it is convenient to approach the case as if there were a

single appeal – and indeed in substance the Appellant has advanced a single protection claim.

3. The matter comes before the Upper Tribunal pursuant to permission to appeal granted by First-tier Tribunal Judge Boyes on 6 March 2019. In granting permission to appeal Judge Boyes considered that it was arguable that there had been “*a wholesale [failure] to engage with any of the evidence*” and characterised the decision of Judge Sweet as being “*excruciatingly short*” in respect of ‘findings’.
4. I have little hesitation in finding a material error of law, and in accepting the essential basis of the challenge to the Upper Tribunal to the effect that the Judge’s reasons were inadequate.
5. In the circumstances, and where the decision in the appeal will require to be remade before the First-tier Tribunal with all issues at large, I do not propose to rehearse the full facts and circumstances of the Appellant’s case – which are a matter of record and adequately set out in the materials on file.
6. In my judgement the decision of the First-tier Tribunal is almost completely devoid of any reasoning. What little reasoning there is lacks coherence, and otherwise fails to address in any detail the substance of the Appellant’s claim and the extensive supporting materials filed in support of his protection appeal.
7. The Appellant had filed medical evidence, both in respect of physical injuries and his mental health. He relied on such evidence in support of a submission that he should be treated as a vulnerable witness, and his testimony be seen through that prism. The medical evidence was also relied upon as corroboration of his account of events. Yet further it was said to support a submission in respect of Article 3 of the ECHR with regard to suicide risk. The Appellant also filed supporting testimony from his father by way of a letter. He filed an arrest warrant. He raised arguments in respect of a risk from the redocumentation process in the event that he might be returned to Sri Lanka. All such matters were clearly articulated and presented to the First-tier Tribunal by way of a Skeleton Argument drafted by Counsel who appeared before the First-tier Tribunal.
8. There is no discernible engagement on the face of the First-tier Tribunal Decision with any of those matters. The documents in the appeal are listed at paragraph 12 of the Decision, but mere listing of the documents is not

adequate. There is brief reference to the Appellant's father's letter at paragraph 28, but no analysis or finding in respect of the weight or otherwise to be accorded to that evidence.

9. Mr Lindsay on behalf of the Secretary of State sought to make a virtue of the brevity of the Judge's decision, commending it. He submitted that providing a decision covered the issues in the appeal it did not have to be of any particular length, or cover every single piece of evidence. In principle the latter observation is sound. However, in my judgement, on the facts of this particular case it does not avail the Respondent.
10. Judge Sweet's analysis of the materials and evidence in the appeal is essentially limited to points in respect of a letter from a Sri Lankan lawyer that had been submitted by the Appellant. I acknowledge that the Judge's observations in respect of this letter demonstrate a degree of dissatisfaction with the contents of the letter and perhaps its provenance:

"Yet, the alleged robbery took place on 2003 and there was no explanation given to me why the complaint was not made until 21 March 2015, before the appellant left Sri Lanka. Furthermore he refers to the appellant with an additional name (Mohamed) - which is said to be his father's name - and appears to have a different email address [which is then cited] to that used by the appellant's UK solicitors [which is also then cited]. No explanation was given over the two different email addresses." (paragraph 27).

11. However, the Judge does not take this analysis any further forward, and does not state in terms what he makes of the rest of the contents of the lawyer's letter. Nor is there any finding in respect of the arrest warrant. The reader is, as it were, 'left hanging'.
12. There then follows a paragraph where essentially the Judge does no more than rehearse the contents of the Appellant's father's letter (paragraph 28). This is then followed by an expression of the Judge's conclusions:

"Taking all these factors into account I have not found the appellant to be credible. These events, if indeed they took place, took place a long time ago. He continued to work for the regional government over a long period and I am not persuaded that the appellant is at risk on return." (paragraph 29).

13. Paragraphs 27 and 29 contain the entirety of the Judge's reasons and findings.

14. As regards paragraph 29, given that the Appellant claims to have been arrested in March 2015, (shortly before fleeing to the UK in June 2015 and claiming asylum on 9 July 2015), it can hardly be said that the matters relied upon “*took place a long time ago*”. I acknowledge that potentially the fact that an asylum seeker was in employment by a regional government, (although it is to be noted not the national government), *might* be a matter of adverse weight depending on the circumstances; but this is not inevitably so. In the instant case the Appellant says in his narrative account that although he had come to the attention of the authorities on two previous occasions in 2003 and 2009 he had been released without charge; it might be considered that this signified that there was no continuing interest in him *at that time* such that employment by a regional government was not contra-indicated. His case is in significant part based on a resurrection of interest, and therefore it might be concluded that his intervening employment is not inevitably a matter that should count against him. It is a matter of nuance to be decided in all the circumstances of the case; it is not a matter that can bear near determinative weight in itself such as to obviate a need to make reasoned findings on the details of the claim. In my judgement the analysis and reasoning of the First-tier Tribunal falls far short of what the parties – and in particular the Appellant – could have expected in light of the case presented to the First-tier Tribunal.

15. I find the deficiency of reasoning material. I do not accept the Respondent’s submission that the Judge would have reached the same conclusion irregardless. In any event ‘materiality’ is not always to be determined solely on the basis that the same outcome would have been likely even if all such matters had been duly considered.

16. The consequence is that the decision of the First-tier Tribunal must be set aside. Because in substance the Appellant has not had a full and proper consideration of his appeal, the only just outcome is that the decision in the appeal be remade pursuant to a new hearing before the First-tier Tribunal by a Judge other than First-tier Tribunal Judge Sweet with all issues at large.

The Two Appeal References

17. Finally, it is to be noted that the Appellant’s case comes before the Upper Tribunal with two appeal references. The explanation for this can be found in part at paragraph 4 of the Decision of the First-tier Tribunal: the Appellant had made an application for asylum which had been initially determined, seemingly because of his failure to engage with the process on 19 November 2015; he lodged an appeal – considerably out of time on 19 April 2017 (ref PA/03838/2017); thereafter the Respondent

reconsidered the asylum claim, culminating in a second decision (12 March 2019), and a second Notice of Appeal (accorded reference PA/04056/2018). From paragraph 12 of the decision of the First-tier Tribunal it appears it was common ground between the parties that in substance it was the second decision that was the subject of the proceedings: *"It was agreed by both parties that the appeal relating to the second decision (of 12 March 2018) had subsumed the first decision 19 November 2015"*.

18. I raised with the representatives the question of whether the first appeal should not now be brought administratively to a conclusion. Mr Nathan was resistant to the idea for the sole reason that he wished to preserve the possibility of the Appellant securing a fee award in respect of both appeals were he to be ultimately successful in the proceedings.
19. In circumstances where the full procedural history was not immediately apparent from the materials available to him, Mr Lindsay indicated that he considered the prudent course of action would be to permit both appeals to return to the First-tier Tribunal whereupon any issues in respect of the formality of terminating the process in one appeal or the other, or deciding both appeals, and any consequent issues as to fee awards might then be resolved.
20. For the avoidance of any doubt: neither representative was able to state with any certainty that there had been either a withdrawal of a decision or a withdrawal of an appeal; further there was before no attempt by either party to withdraw one or other the decisions, or withdraw one or other of the appeals.
21. Perusal of the two appeal files subsequent to the hearing reveals, amongst other things, that the decision of the Respondent to reconsider the Appellant's application for asylum appears to have arisen subsequent to Directions issued by the Tribunal following appeal PA/03838/2017 being listed for hearing on 19 May 2017. On that occasion counsel for the Appellant successfully applied for an adjournment to allow the Respondent to consider the Appellant's substantive claim. Directions were issued on 17 June 2017 that the Respondent *"consider the Appellant's claim substantively including interviewing the Appellant"*, and also that the Respondent *"issue a supplementary letter dealing with the Appellant's substantive claim"*.
22. Putting aside the propriety of those Directions, it is to be noted that the Appellant was in due course interviewed by the Respondent. PA/03838/2017 was listed again for hearing on 22 November 2017, and

adjourned on the application of the Appellant - unopposed by the Respondent - on the basis that although an interview had taken place no consequent decision letter had yet been served. Appeal PA/03838/2017 was adjourned with further Directions.

23. It would appear from the foregoing that the 'new' decision of 12 March 2018 was anticipated within the proceedings of PA/03838/2018, and Directions had been given by the Tribunal to accommodate consideration of that decision within the scope of PA/03838/2018.
24. In such circumstances it is unclear why the Appellant - and/or his representatives - considered it appropriate to lodge the second appeal, PA/04056/2018. In so doing it has given rise to unnecessary correspondence attempting to link the two appeals, and indeed trying to unravel the history in this regard has taken me almost as long as resolving the issue of error of law. Be that as it may, it may be that ultimately the Appellant will need to take up the question of the fee for the second appeal - which may have been lodged unnecessarily - with his solicitors. However, as I have uncovered this procedural history subsequent to the discussion with the representatives, I have not heard argument on this particular issue.
25. Accordingly in all the circumstances it is presently administratively more convenient that both appeals return to the First-tier Tribunal - as was in any event the joint position of the representatives before me - and for any arising issues to be resolved there. In this context I merely note that the issue that Mr Nathan is anxious to protect - that of the fee award - will only arise if the Appellant is successful in establishing his grounds for protection; if he should at that point seek to recover both fees in full he may reasonably be expected to explain why the second appeal was lodged whilst his first appeal was still pending and the reconsideration of his asylum claim was taking place pursuant to Directions in that first appeal.

Notice of Decision

26. The decision of the First-tier Tribunal contained a material error of law and is set aside.
27. The decision in the appeals is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Sweet, with all issues at large.

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 his 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.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing to which I have added further comments pursuant to a consideration of the court files in respect of the history of there being two appeal references.

Signed:

Date: **30 April 2019**

Deputy Upper Tribunal Judge I A Lewis