



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11769/2017 (V)

THE IMMIGRATION ACTS

Heard at Field House via Skype for Business  
On Thursday 28 January 2021

Decision & Reasons Promulgated  
On Thursday 18 February 2021

Before

UPPER TRIBUNAL JUDGE SMITH

Between

W M  
[ANONYMITY DIRECTION MADE]

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Anonymity**

*Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008*

An anonymity order was made by the First-tier Tribunal. This is an appeal on protection grounds. It is therefore appropriate to continue that order. 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, amongst others, to both parties. Failure to comply with this direction could lead to contempt of court proceedings.

**Representation:**

For the Appellant: Mr N Paramjorthy, Counsel instructed on a direct access basis

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer.

DECISION AND REASONS

## **BACKGROUND**

1. The Appellant appeals against the decision of the First-tier Tribunal Judge Shore promulgated on 15 January 2020 (“the Decision”). By the Decision, the Judge dismissed the Appellant’s appeal against the Respondent’s decision dated 31 October 2017 refusing his protection and human rights claims. The challenge to the Decision relates only to the appeal on protection grounds. This is the second time that the appeal has reached the Upper Tribunal, an earlier appeal decision, also dismissing the Appellant’s appeal having been set aside by this Tribunal on 28 January 2019 and the appeal remitted for a de novo hearing with no findings preserved.
2. The Appellant is a national of Sri Lanka. He came to the UK as a student on 4 June 2011. He sought to extend his leave in that category in 2012 but his application was refused. He has had no leave to remain since April 2013. He claimed asylum on 31 May 2017. He claims to be at risk because the Sri Lankan authorities suspect him of assisting the LTTE in various ways. It is accepted that he was previously employed in the security division in Sri Lanka which was tasked with looking after the President and his family. The Appellant says that, in 2007, he facilitated meetings between a group of Tamils living in Malaysia and the President’s son at the request of his friend [TR]. His friend was part of a group of Tamils including a man named [KS]. The Tamils wished to invest in a golf course and hotel estate in Sri Lanka. KS introduced the Appellant to his Tamil friend, [J] who came from Jaffna. The Appellant assisted J to obtain a visa from the passport office. The Appellant says that he resigned from the army in September 2009 and that, in about October 2010, he was abducted and detained by the CID, who accused him of working for the LTTE. He was released on payment of a bribe and the Appellant says that he was told to leave Sri Lanka or that he would be killed. The Appellant left Sri Lanka on his own passport.
3. The Appellant has produced court documents including an arrest warrant which he says support his case to be at risk. After the appeal was remitted for redetermination, at a hearing in July 2019, the Respondent sought an adjournment to enable a verification report to be obtained in relation to the court documents. The adjournment was granted. The Judge directed the Respondent to file and serve a verification report by 4pm on Monday 25 November 2019 (see [6] of the Decision). The verification report, dated 1 November 2019, (“the verification report”) was not filed and served until 2 December 2019. The verification report concludes that the court documents/ arrest warrant produced by the Appellant are not genuine. The Appellant sought an adjournment in order to allow him to respond to the verification report which he had seen only seven days prior to the hearing. That was refused for reasons I will come to later. The Judge found that the court documents and arrest warrant were not genuine and concluded that the Appellant’s claim was not credible. He therefore dismissed the appeal.

4. The Appellant appeals the Decision on two grounds as follows:  
Ground one: The Judge erred by refusing to adjourn the hearing. The hearing was, as a result of that failure, rendered unfair.  
Ground two: The Judge erred in various material regards when determining that the claim was not credible. That includes errors said to be made in relation to the court documents.
5. Permission to appeal was granted by First-tier Tribunal Judge Grant-Hutchison on 17 February 2020 for the following reasons:

“...2. It is arguable that the Judge erred in law by failing to adjourn the Appellant’s appeal to allow the Appellant and his representative sufficient time to take instructions on the DVR and liaise with the Sri Lankan attorney who had attended the Colombo Magistrates Court and obtained a certified copy of the magistrates court documents. It is recorded in the grounds of permission that the Respondent had failed to comply with directions. She was directed to file and serve a copy of the DVR by 4pm on 25 November 2019 which was instead served on 2 December 2019 thus leaving less time for the Appellant to respond. This may have made a material difference to the outcome or to the fairness of the proceedings. (Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) is referred to for its terms).”

Although the Judge does not express a view on the second of the grounds, it is not suggested that permission is granted only on limited grounds and both grounds may therefore be argued.

6. The Respondent filed a Rule 24 reply on 4 March 2020 seeking to uphold the Decision.
7. Due to the interruption of normal Tribunal business by the Covid-19 pandemic, I issued a Note and Directions on 20 March 2020, indicating that it might be possible for the error of law issue to be determined on the papers and without a hearing. The views of the parties on that proposal were sought. No submissions were received. A second opportunity was given on 8 September 2020 for the parties to make submissions, but none were received.
8. On 27 October 2020, Upper Tribunal Judge Jackson again reviewed the file and directed that, due to the lack of response to the proposal to determine the issue without an appeal and that this is a protection claim, it was not in the interests of justice for the issue to be determined without a hearing. She therefore directed a remote hearing. That took place before me via Skype for Business which was attended by both representatives and by the Appellant. There were no technical issues, and the parties were able to follow the hearing. I had before me the documents which were before the First-tier Tribunal Judge.
9. Unfortunately, due to double booking, Ms Cunha was not present at the start of the hearing and had not joined some 15 minutes after the start. The hearing therefore

began without her. She was able to join after about 30 minutes. I summarised Mr Paramjorthy's submissions for her at that point and she was able to respond to all the arguments made.

10. The matter comes before me to determine whether the Decision contains an error of law and, if I so conclude, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so.

## DISCUSSION AND CONCLUSIONS

11. Mr Paramjorthy did not pursue all of the elements of the Appellant's ground two, accepting that, if I were not with him in relation to the first ground coupled with the challenge to the Judge's findings about the court documents, the independent challenges to other of the Judge's findings could not be made out.
12. I begin with the way in which the Judge dealt with the adjournment request. At [6] of the Decision, he says the following concerning the background to the verification report:

"I heard the appeal on 16 July 2019, when the Appellant was represented by Mr Jafar, as he was today. Counsel for the Respondent made an application for adjournment to enable a verification report to be obtained on an arrest warrant produced by the Appellant. I allowed the application as the document was very important to the Appellant's appeal and whether it could be relied upon would be of significant importance and it was in the interests of justice to await the report. I directed that the case be adjourned to 9 December 2019 and reserved it to myself, as I had spent some time reading into the documents. I also directed the Respondent to file and serve a verification report by 4:00pm on Monday 25 November 2019."

13. In relation to the verification report and the request for an adjournment on this occasion, the Judge said this:

"27. At 11:48 on 2 December 2019, the Respondent produced a document verification report (DVR) dated 1 November 2019 into the court report submitted by the Appellant from the Magistrates' Court Colombo under reference number B01284/11/8 in connection with the Appellant's alleged involvement with terrorist activities. The conclusion of the DVR was that the document submitted was not genuine.

...

29. At the start of the hearing, I discussed the case with the representatives. Mr Jafar made an application for an adjournment to allow the Appellant to respond to the DVR. He submitted that the Appellant should be able to examine the document in detail and that it had been served late, on 2 December 2019, rather than by the date directed by me - 25 November 2019. Ms Lasoye submitted that the Appellant had submitted the document which was the subject of the DVR [AB1-18-AB1-32] and a letter dated 25 June 2019 from Kandappu Gopalasankar, an attorney who says he attended the Colombo Magistrates' Court to obtain the document. Mr Jafar said that the relevant authority was the case of SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284.

30. I retired to consider my decision. I started from The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. Rule 2 sets out the overriding objective of the Tribunal Rules, which is to enable to [sic] Tribunal to deal with cases fairly and justly, which includes avoiding delay, so far as is compatible with proper consideration of the issues. The power to adjourn or postpone a hearing is contained in rule 4(3)(h). The document that was the subject of the DVR is at the centre of the Appellant’s appeal. He had obtained the evidence of an attorney in June 2019 as to the document itself, which increased the importance of the document in the appeal. The document had been obtained in 2017, but the statement from Mr Gopalasankar was dated a few weeks before the hearing on 16 July 2019. The Respondent decided to exercise her right to a DVR.

31. The DVR had been served late, but had still been served a week before the date of this hearing. That was more than enough time for the Appellant’s lawyers to take instructions on the DVR and make an application for an adjournment. No application was made until the day of the hearing. I did not find that the Appellant’s right to a fair and just hearing was compromised by refusing the application for adjournment because both parties have provided their own reports as to the veracity of the document and it is for me to determine the evidence I preferred. The application was refused. I gave Mr Jafar as much time as he needed to take his client’s instructions on the DVR and would be flexible in allowing Mr Jafar to ask the Appellant supplementary questions about the DVR.”

14. In order to consider Mr Paramjorthy’s arguments in context, it is also necessary for me to set out what the Judge says about the Appellant’s evidence and the parties’ submissions in relation to the arrest warrant and the Judge’s findings about that warrant, the verification report and the other documents purporting to verify the warrant as follows:

“53. The Appellant was then asked about the document that was the subject of the DVR [AB1 18 – AB1 32]. He confirmed that there was a warrant for his arrest and that the basis of the charge was his alleged support of the LTTE. He was asked if that was the same reason he had been detained in 2010 and said that he had been released because he had paid a bribe. It was an unofficial release. He was asked if he was now sought because he had been released after paying a bribe. The Appellant’s response was that when you pay a bribe, you get released. An official investigation is ongoing, so they are still looking for him. This had been confirmed by his lawyer in Sri Lanka. He had not obtained the document to bolster his appeal. Everything had been obtained through his lawyer. Ms Lasoye could contact the lawyer anytime if she wanted to.

...

**Closing Submissions – Respondent**

...

67. [The Appellant] relies on the warrant dated 5 July 2011 [AB1 20- AB1 32]. The DVR questions the veracity and authenticity of the document. It is submitted that the Appellant submitted false documents to the tribunal. The index number of the document to which the DVR relates was in respect of a report of a sudden death. The Appellant was not named on that document, but someone else is. That offence was committed on 22 March 2011. On the basis of the DVR, it was submitted that the document supplied was not genuine.

68. There is no open arrest warrant for the Appellant and no risk of persecution on return. The letter dated 25 June 2019 from the attorney, Kandappu Gopalasankar [SB10], says he attended the Magistrate's Court of Colombo, not the main court. Little weight should be given to the evidence. The attorney's practising certificate [SB12] had not been stamped by the court and contained different fonts.

...

### **Closing Submissions – Appellant**

...

76. The DVR is important. In every citation in the Appellant's documentation (the warrant and the letter from his attorney), there are nine digits. The High Commission representative went to the Chief Magistrates' Court, not Colombo Magistrates'. The High Commission representative sees 300 registers with either a 'B' or 'P' reference. There was no explanation of why there were so many. They don't explain the date and reference span referred to. The official looked for six-digit numbers, not nine-digit numbers. The additional digits on the Appellant's reference were 11/8 at the end of the reference number. It was submitted that asylum demands the highest standard of fairness. There was ambiguity in the Respondent's evidence. If the High Commission official had referred to nine-digit numbers, the information in the DVR may be worth something. They did not identify the relevance of the additional three numbers on the Appellant's documents. It was submitted that I should not find the DVR to be reliable because it lacks specificity and is inconsistent with the numbering set out in the Appellant's documents.

77. The Respondent had not contacted the Appellant's attorney. It was submitted that there was nothing suspicious in the Appellant's evidence. The extract from the Sri Lanka Bar Association [SB13] information on the attorney matches the letter at SB10. It was submitted that the Appellant's account is true.

...

### **Findings of Fact and Decision**

...

91. I then turn to the arrest warrant. I find that the way that the Appellant disclosed the document and the subsequent statement of his attorney raises suspicion about the reliability of both documents. The attorney's letter [SB10] raises more questions than it answers. He did not produce the letter of instruction dated 17 October 2017 from [KM]. He says he was asked to look for a specific case number: B01284/11/8, but nowhere is it explained how [Mr M] knew the case number. He says that the arrest warrant is dated 6 July 2011, but the document is dated 5 July 2011. The date of the envelope that is said to have contained the document is dated 21 June 2017 [SB32], which predates the date the attorney said he was instructed to obtain it. Given the findings of country guidance cases that forgeries are easy to obtain in Sri Lanka and the timing of its production, I would not have found that the Appellant could rely on either the letter or the warrant, to the lower standard, even if there was no DVR.

92. I reject Mr Jafar's submissions as to the reliability of the DVR. I find that the High Commission report was written by someone who has knowledge of the system. The alleged discrepancy in the reference number is no such thing. The author of the DVR explained their methodology. It is not for the Respondent to prove anything. It is for the Appellant to show to the lower standard that the document is reliable. He has failed to do so. I do not accept that the Appellant has shown to the lower standard that the warrant is genuine or that he can rely on the attorney's letter."

15. The documents said to have been obtained from the court with their translation appear at [AB/18-31]. The envelope in which they are said to have been received is at [AB/32]. The case number is shown as “B01284/11/8”. The documents bear the seal of the Magistrate’s Court in Colombo dated 23 October 2017. The documents consist of a report filed against the Appellant and an arrest warrant, the material parts of which read as follows:

“...The suspect has helped the LTTE by keeping close relationship with the LTTE terrorist organization, providing accommodation facilities to LTTE terrorist organization members, helping LTTE members to leave the country and receiving money for supporting the LTTE. However, the suspect has escaped from the custody whilst the investigations were pending.

The CID has information that the suspect has escaped from the country and seeking to issue an arrest warrant to arrest the suspect.

\*\*\*According to the section 42 of Code of criminal Procedure Act No. 15 of 1979, the court issuing hereby an open warrant to the Criminal Investigations Division, [K] Police Station to arrest the suspect immediately.”

The warrant is dated as signed on 6 July 2011. I note that the report on the preceding pages is dated 5 July 2011. According to the bundle index, the envelope at page [32] is the one in which the documents arrived. It is dated 21 June 2017.

16. The letter from Mr Gopalasankar, Attorney (“the lawyer’s letter”) dated 25 June 2019 appears at [10] of the supplementary bundle. His Bar Association card, admission certificate and directory entry are at pages [11] to [13]. The lawyer’s letter reads as follows:

I am an Attorney-at-law, I am mainly practicing at the Magistrate’s, District and High Court of Colombo. I have eight years experience in the Criminal and Civil matters.

On 16<sup>th</sup> October 2017, I was instructed by [Mr K M] to obtain the court certified copies of Case No. B01284/11/8 at Magistrate Court of Colombo concerning Mr [WM]. Mr [WM] sent me a fax on 17<sup>th</sup> October 2017 authorising me to obtain these documents from the Magistrate Court of Colombo.

I confirm that I attended at Magistrate Court of Colombo and met the registrar of Magistrate Court of Colombo on 18<sup>th</sup> October 2017 and requested a certified copy of the said file, and after paying a fee of Rs. 1250. The registrar issued these documents on 23<sup>rd</sup> October 2017 and I had these translated by Mr [L W], Government approved translator and gave it to Mr [K M]. I paid Rs. 2000 to the sworn translator for translating these documents from Sinhala to English. I charged Rs. 10,000 from Mr [K M ] as my professional fees for obtaining these documents and Rs. 3250 for court fees and translation.

I confirm that I personally went through the documents at the Magistrate Court of Colombo Case No. B01284/11/8. The Criminal Investigation Division (CID) has filed a case against the above named under case No B01284/11/8. There is an arrest warrant issued against the above named by the Magistrate’s Court of Colombo on

the 06<sup>th</sup> July 2011. The status of the arrest warrant is 'live' and I have had sight of the original arrest warrant.

It is my opinion that since an open warrant has been issued by the Colombo Magistrate's Court against the above named, he will be arrested at the airport on his arrival to the country. It is well known that the persons charged under similar offences face harsh treatment followed by the arrest.

I have issued this letter at the request of Mr [K M].

If you need any further clarification regarding this letter, I can be contacted at my office by the contacts detailed on this letter."

17. The verification report is headed as coming from the British High Commission in Colombo. The date of verification is given as 1 November 2019. It was completed by the "3<sup>rd</sup> Secretary". The purpose of the report is said to be a "[s]ite visit to verify what purports to be a court report issued by the Magistrates' Court Colombo under the reference number B01284/11/8 in connection to terrorist activities." The supporting documents are said to be a copy of the court report with English translation. The body of the verification report reads as follows:

"On 01/11/2019, I accompanied by a locally engaged Officer (B3) acting as translator, visited the Chief Magistrates' Court in Hultsdorf, Colombo 12.

I have attended this Court on a number of occasions and know to go straight to the Police Post located at the entrance to the compound. Being fully compliant with Article 22, we do not disclose any personal details or specific reference numbers and no documents were with us. The Officer-in Charge recognised us and was aware we would be seeking entry to the Registry. He permitted access and we were escorted by a police officer.

There are approximately 300 registers with either 'B' or 'P' reference numbers. There is no need to check each and every register. They can be searched by locating the appropriate date and reference span which are regarded on the spine. We located a register for the year 2011 containing the reference B01284. According to the records case no B01284 for 2011 relates to an investigation in to a sudden death of an individual. The accused is named [K F] of [address]. The offence was committed on 22/03/2011 and the accused was produced at the Colombo Magistrates court on 13/05/2011."

18. I remind myself that, when considering whether an appellant has been deprived of a fair hearing, I should apply the guidance laid down by this Tribunal in Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) as follows:

"If a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally. In practice, in most cases the question will be whether the refusal deprived the affected party of his right to a fair hearing. Where an adjournment refusal is challenged on fairness grounds, it is important to recognise that the question for the Upper Tribunal is not whether the FtT acted reasonably. Rather, the test to be applied is that of fairness: was there any deprivation of the



affected party's right to a fair hearing? See SH (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 1284."

The question is not whether Judge Shore acted rationally or reasonably in refusing the adjournment. It is for me to determine whether the refusal of the adjournment has deprived the Appellant of a fair hearing.

19. If the only question for me was whether Judge Shore had acted reasonably or rationally, I would have no hesitation in answering that question in the affirmative. He properly directed himself in accordance with the relevant rules, case law and the overriding objective. He took into account the importance of the documents to the proceedings and explained why he did not consider an adjournment to be warranted. On the basis of the reasons for seeking an adjournment given by the Appellant's Counsel on that occasion (not Mr Paramjorthy) as recorded at [29] to [31] of the Decision, I am not surprised that the Judge came to the conclusion he did.
20. However, I have to determine whether the hearing before Judge Shore was fair to the Appellant when looked at objectively now. I therefore turn to consider that question.
21. I begin by noting what Judge Shore says about the importance of the court documents and in particular the arrest warrant to the Appellant's case. Those documents are described at [6] of the Decision as "very important" and the reliance on them as "of significant importance". As Mr Paramjorthy submitted, and I accept, they are likely to be central to the claim as, if the Appellant is indeed of continuing interest to the authorities for his perceived support for the LTTE, he may well be at risk on return.
22. I asked Mr Paramjorthy what purpose would have been served by an adjournment of the hearing. After all, if the only thing that the Appellant could do would be to ask the attorney to comment on the verification report, it is difficult to see how any further evidence would have assisted (as Judge Shore observed). It would be the word of an attorney instructed by a close relative of the Appellant against the word of a representative from the British High Commission. It did not seem to me in that regard that the criticisms of the verification report on behalf of the Appellant (as recorded at [76] of the Decision) had any merit. Mr Paramjorthy agreed that there was no obvious discrepancy between the case number given on the documents, the attorney's letter and the verification report. The writer of the verification report was fully aware that the case was said to have been issued in the Colombo Magistrate's Court. There was no evidence that I can see to show that this was any different to the Chief Magistrate's Court but, even if it were, there is no evidence that the records kept by the Chief Magistrate's Court which follow the same numbering as the case number in the documents and attorney's letter do not include those of the Colombo Magistrate's Court. Had I been in Judge Shore's

position, I too would have rejected the submissions made in that regard (as he did at [92] of the Decision).

23. Mr Paramjorthy informed me however that this is not the sort of evidence that he would have wanted to obtain had the opportunity been given. He said that, if he had the opportunity, he would instruct an expert, Dr Chris Smith whose team are familiar with the verification of Sri Lankan court documents. He did not seek to suggest that a representative of the British High Commission is not independent; rather he said that access to the court documents is controlled by the police and therefore the representative would not have free, unobstructed access to the documents. He freely admitted that no efforts had been made to carry out such checks since the Decision but told me that this was because he is acting on a direct access basis pro bono and the Appellant was unable to raise the funds to instruct Dr Smith. He would only be able to do so if legally aided and he would not be given legal aid unless the Decision were quashed, and the appeal re-heard. The central point was, though, that there were steps which could be taken by the Appellant to respond to the verification report in evidence, but the Appellant had lost that opportunity because of the very short period of time which he had to consider the verification report.
24. Mr Paramjorthy also pointed out to me that Judge Shore had given the Respondent a period of about four months to obtain the verification report but was not willing to give the Appellant any more than what amounted to about four working days. That at the very least could be perceived as being unfair. He also pointed out that the verification report was dated 1 November 2019, but the Respondent had not produced it until about one month later.
25. I also asked Mr Paramjorthy to explain the unfairness in light of the other evidence on which the Judge had relied when reaching his conclusions about the reliability of the court documents. He had not simply relied on the verification report but had made criticisms of the attorney's letter and the warrant itself (see [91] of the Decision). The findings made at [91] and [92] are criticised in ground two also on the basis of the Judge's reasoning.
26. I did not understand Mr Paramjorthy to dispute that the timing of the production of the court documents including the arrest warrant and the attorney's letter was something on which the Judge was entitled to rely (as I have already observed I accept). The documents are said by the attorney to have been given to the Appellant's relative when they were obtained in October 2017 and yet the attorney's letter was not produced until nearly two years later. The court documents are dated in 2011 and yet were not obtained until over six years later. There is also force to the Judge's point about how the Appellant's relative would know the case number in order to instruct the attorney to make the search (which relates also to the point made about the lack of production of the instructing letter).

27. However, as Mr Paramjorthy pointed out, the discrepancy relied upon by the Judge in relation to the dates of the documents (5 versus 6 July 2011) is not in fact a discrepancy. The report is dated 5 July 2011. The warrant was issued on 6 July 2011. Although Mr Paramjorthy was forced to accept that the envelope at [AB/32] is said in the index to be that in which the court documents were obtained, and that this is dated before the attorney is said to have obtained the documents, he submitted that in all likelihood, this was an error made by the previous solicitors and that it was more likely that it was the documents which follow that envelope in the bundle which were received in it.
28. For those reasons, although the Judge does make some cogent points against the court documents and attorney's letter and valid points in favour of the verification report, his reasoning is at least to a minor extent undermined by the misunderstanding of the court documents.
29. Although Mr Paramjorthy did not rely on ground two save in relation to the criticisms made of [91] and [92] of the Decision, I have carefully considered the other criticisms made. For completeness, I deal with those briefly below:  
Paragraphs [87] and [88]: Finding that the Appellant's claim has remained broadly consistent but has evolved piecemeal and the claim was made late. It is asserted that the Judge has failed to indicate which documents have emerged later. One only has to look at the attorney's letter for the answer to that (and see also what I say in relation to timing of the court documents). The Judge was also entitled to rely on the timing of the claim itself. The weight to be attached to that delay is a matter for the Judge.  
Paragraph [89]: Finding that Appellant probably was a member of the President's security division. It is accepted that the Judge has referred to the correct test in relation to the standard of proof for protection claims at [12] of the Decision but it is said that this finding reflects an application of the wrong standard. There is no merit to this submission. The Judge is here making a factual finding (which is in the Appellant's favour) rather than assessing whether the claim as a whole is made out.  
Paragraph [89.1] to [89.11]: Adverse credibility findings. The only challenge to these findings is in relation to the standard of proof (dealt with above), wrong burden of proof (as to which there is no evidence of misapplication – the grounds muddle the concepts of burden and standard) and fairness of hearing by refusal to adjourn (dealt with separately).
30. Ms Cunha accepted that the Respondent had produced the verification report late in the day. She did not offer any explanation why that was so (although I accept that she probably did not have access to the Home Office file). She pointed out that the Appellant was legally represented before Judge Shore and that the points made by Mr Paramjorthy now were ones which could have been made by the Appellant's previous representatives.

31. Given the Judge's findings as regards the Appellant's credibility more generally and that the verification report was at least undermining of the documentary evidence so that it could not be relied on in support, Ms Cunha submitted that the failure to adjourn could make no difference. The Appellant had been given a fair opportunity to put his case and had not been deprived of a fair hearing.
32. I have carefully considered the Judge's findings. As I have already noted, the grounds fail to identify any error of law in the findings save at [91] of the Decision when dealing with the court documents and attorney's letter. As Ms Cunha submitted, if one were assessing the attorney's letter and the court documents alongside the verification report, it is highly likely that any judge would have formed the view that the court documents and attorney's letter could not be relied upon. The verification report is persuasive evidence.
33. That leaves only the first of the Appellant's grounds regarding the fairness of the hearing. Again, if I had been conducting this hearing at first instance, based on the submissions then made about why an adjournment was necessary, I would almost certainly have reached the same view as Judge Shore. I am however persuaded by Mr Paramjorthy's submissions that the refusal to adjourn has deprived the Appellant of a fair hearing.
34. I do not place much weight in that regard on the difference between the period which the Respondent was permitted to verify the court documents and that which the Appellant had to consider the verification report. The Appellant was represented at the previous hearing when timescales had been agreed and did not apparently object to the deadlines given, namely the filing of the verification report on 25 November and the hearing on 9 December. He had therefore agreed to a very short period between production of the verification report and the next hearing. The verification report was filed seven days late but there was no evidence that this delay had prevented action which could have been made in fourteen days but could not be made in seven. As Judge Shore also pointed out, the Appellant's solicitors at the very least could have made an application to adjourn in that seven-day period. The attorney in Sri Lanka had given contact details including a telephone number. There is no reason why he could not have been contacted in that time if that was the evidence which the Appellant wished to obtain. The Respondent on the other hand had to instruct representatives in Sri Lanka for the first time. Those representatives have other formal roles to perform and also have to interact with the court and police system no doubt via diplomatic channels.
35. However, it is now explained what the Appellant wishes to do in order to have the court documents checked by another independent source. I have already set out the Judge's comments about the importance, indeed the centrality of the court documents, to the Appellant's case. If there is indeed an extant arrest warrant against him, that changes the complexion of the Appellant's case and provides strong support to his claim as a whole. Although the grounds challenging the other reasons for rejecting the Appellant's credibility are unmeritorious, if it

subsequently transpires that the verification report is inaccurate and the court documents are indeed genuine, that will support the Appellant's claim. At the very least, another Judge will have to consider the appeal on the basis that the Appellant was of interest to the Sri Lankan authorities in 2010/11 for assisting the LTTE.

## CONCLUSION

36. For those reasons, I am satisfied that the refusal to adjourn has deprived the Appellant of a fair hearing. It is therefore appropriate to set aside the Decision. In light of the significant importance of the court documents to the Appellant's case and that their reliability is central to the credibility of the Appellant's case, it is inappropriate to preserve any of the findings made.
37. I have carefully considered whether it is appropriate to remit the appeal or retain it in the Upper Tribunal. That is particularly so given that this would be the second remittal. However, the claim will need to be considered completely afresh which will require extensive fact finding. I have also found that the previous first instance hearing was unfair to the Appellant and it would be inappropriate to deprive him of one level of appeal in consequence. I am therefore persuaded that it is appropriate to remit the appeal. Both representatives agreed.

## DECISION

**I am satisfied that the Decision involves the making of a material error on a point of law. The Decision of First-tier Tribunal Judge Shore promulgated on 15 January 2020 is set aside. No findings are preserved. The appeal is remitted to the First-tier Tribunal for re-hearing before a Judge other than Judge Shore and Judge Aujla (who determined the appeal on the first occasion).**

Signed *L K Smith*  
Upper Tribunal Judge Smith

Dated: 5 February 2021