



Upper Tribunal  
Immigration and Asylum Chamber

Appeal Number AA.08155.2012

**THE IMMIGRATION ACTS**

Heard at: North Shields  
On: 27<sup>th</sup> January 2014

Determination Sent  
On: 19<sup>th</sup> February 2014

Before

**Judge Aitken**  
**Deputy Chamber President (HESC)**

Between

1. **Mr Abdul Niyas Uthuma Lebbe**
2. **Mrs Ummu Hajira Adamlebbai**
3. **Hamdhan Ahmed Abdul Niyas**
4. **Ayesha Heenas Abdul Niyas**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

For the Appellant: Mr Talacchi  
For the Respondent: Ms Rackstraw (Home Office Presenting Officer)

**Decision**

1. The appellant's claim is set out at paragraphs 12 to 29 of the First Tier Tribunal Determination. In short the first appellant claims to have had a warrant issued for his arrest for LTTE activities and fears persecution for that reason. The First Tier Tribunal considered appeal claim but rejected it. This matter appeared before me following the decision of Upper Tribunal Judge Dawson and Deputy Upper Tribunal Judge Davey who decided on

3<sup>rd</sup> May 2013 as follows:

*“1. The Appellants, nationals of [Sri Lanka], appealed against decisions made by the Respondent to make removal directions on 21 August 2012. The decisions were in identical terms.*

*2. The Appellants' appeals came before First-tier Tribunal Judge Duff who on 16 October 2012 dismissed their appeals on asylum, humanitarian protection and human rights grounds. Permission to appeal that decision was given by First-tier Tribunal Judge Kamara on 8 November 2012.*

*3. The first ground of challenge related to the claim that the judge had failed to consider the evidence provided in letter dated 20 September 2012 by Mr Abdul Marsook, an attorney-at-law, who claimed to be the family lawyer, who had acted for the first Appellant.*

*4. The second ground related to the claim that the judge had failed to consider explanations made for the first Appellant's return to Sri Lanka on a number of occasions at a time when, on one account, there was risk for the first Appellant.*

*5. The third ground was that in the assessment of the documentation and in particular the consideration of a newspaper article, presented as an extract from the Malai Megam of 14 January 2012, relating to an attack on 26 December 2011. It was said that had a police report and a genuine death certificate of the victim of the attack described in the article, been taken into account a different view might have been taken of the claim.*

*6. The fourth ground, although not particularly pursued, related to the first Appellant's delay in claiming asylum and a failure to consider the explanation for delay put forward by the first Appellant.*

*7. Having considered the submissions made by the parties we found that it was clear that although there is passing reference to the evidence of Mr Marsook, there was no sufficient reasoning, in the sense contemplated by R (Iran) v SSHD [2005] EWCA Civ 982 to show why that letter was not given particular weight in the light of the submissions made. Accordingly we found that there was substance in the letter that needed to be addressed and dealt with adequate or sufficient reasons.*

*8. As to the second ground, we found that the judge had addressed the Appellant's claims in relation to his return to Sri Lanka and we did not see that there was any inadequate reasoning in addressing those matters.*

*Accordingly we did not find the second ground disclosed any error of law.*

9. *In relation to the third ground, Mr Khan correctly accepted that the form and layout and content of the newspaper article relied upon were subject to sustainable criticism by the judge; particularly at paragraph 45 of the determination. We did however not agree, as was suggested, that the death certificate and the police report rendered the newspaper article the more reliable or that together with the article would have drawn a different conclusion.*

10. *We noted that an Appellant, as much as the Respondent, is entitled to proper and adequate reasons. We found that there were not the clear findings essentially for a proper assessment of the risk factors as demanded by the cases of LP(LTTE area-Tamils-Colombo-risk?) [2007] UKAIT 76 and TK( Tamils- LP updated) [2009] UKAIT00049.*

11. *Further we noted that the findings simply did not clearly or sufficiently identify what view had been taken of the evidence. For example, at paragraph 44 of the determination, the judge said:*

*"I find that the documentation in this case carries little weight and, to some extent, positively undermines the Appellants' claims."*

12. *It therefore is by no means clear what weight was actually given to which pieces of the documentation and to what extent the claim was undermined other than to some unspecified degree. In the circumstances, we find that it is necessary for the matter of the evidence of Mr Marsook to be properly addressed in the context of the evidence as a whole.*

13. *We conclude that the original Tribunal's decision discloses a material error of law and cannot stand. The decision will have to be remade. We do not think it was necessary in the light of the President's guidance for the case to be remade in the First-tier Tribunal."*

2. They went on to make the following direction:

*"List for hearing 1½ hours to address the specific issue of the evidence of Mr Masook, particularly how and when it was acquired. It will be a matter for the Appellant whether that evidence is obtained in a statement signed by Mr Marsook."*

3. The hearing before me proceeded on the basis that the case now turned upon the reliability of an arrest warrant as vouched for by the letter from Mr Marsook, if reliable it disclosed a risk to the appellant if not reliable it

could not alter the conclusions of the First Tier Tribunal, since that is the effect of the decision and directions above.

4. This matter had previously been listed before me on 15<sup>th</sup> June 2013 when discussions took place about the effect of the Upper Tribunal decision to rehear the evidence relating to the lawyers, no hearing was possible because of the absence of an interpreter. As part of that discussion it was made plain to the Home Office that the appellant's case was now inextricably linked to the reliability of the lawyer's letter, and they should institute what enquiries they thought fit to deal with that point. Written directions were prepared on 25<sup>th</sup> July 2013 and although Ms Rackstraw indicated that they had not reached the Home Office she acknowledged that the Home Office had conducted as many enquiries as they wished into the veracity of the documents and background of the lawyers concerned.
5. The appellant gave evidence about the arrest warrant and its veracity indicating that he was told just to answer the questions asked in interview with the Home Office and as he understood matters the lawyer had been allowed to take a copy of the warrant and it had been sent to him because he had asked his father to seek proof. Under cross examination the appellant remained adamant as to the veracity of the attested warrant, he also produced a letter from the lawyers indicating that they had indeed copied a genuine warrant and sent it to him. He explained that he had not specifically mentioned a warrant at the end of the interview because he was unsure which documents would be supplied, but when they had arrived he had passed it to the Home Office.
6. Ms Rackstraw had a number of criticisms of the appellant's evidence, in particular that he should have mentioned the warrant in interview, that the appellant refers to being detained for 2 weeks and his lawyers mention several days. The appellant explains that he was told only to answer questions as asked in interview and when given the opportunity to comment at the end did mention producing documents, although at that stage he did not know the warrant would be one of them. I accept that the explanation for failure to mention the warrant is a reasonable one, as is his explanation for the apparent discrepancy between several days and a fortnight, which is that in Sri Lanka the word fortnight does not have a direct equivalent, and several days is a reasonable translation of the period. As regards the document it is suggested a lawyer would not use the term "To whom it may concern", I am not persuaded by that argument, it is not at all clear whether a Sri Lankan lawyer might use that phrase or not.

7. The Secretary of State has had an opportunity to check whether a lawyer of the name indicated is in practice and accepts that they are and that the details such as address on the verification documents are correct, nonetheless I am urged to find that the documents relating to the warrant are unreliable looking at the evidence overall. It seems to me that the documents relating to the warrant are broadly consistent, that the explanation given by the appellant is plausible, such checks as have been made indicate that such a lawyer exists, and there is nothing on the face of the warrant or supporting documents which indicates they are unreliable. Whilst other criticisms can be made of the appellant's case and indeed were by the First Tier Tribunal considering the low standard of proof it appears to me on the evidence I have that there is a reasonable possibility that a warrant may exist in the form claimed and in those circumstances there is no doubt that if it does exist that the appellant and his family would be at risk on return.

### **Decision**

The decision is remade.

The appeal is allowed on Refugee Grounds and Human Rights Grounds

A handwritten signature in black ink, appearing to read 'John Aitken', written in a cursive style.

Judge Aitken  
Deputy Chamber President (HESC)  
13 February 2014