



UPPER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: AA/10410/2013

THE IMMIGRATION ACTS

Heard at: Field House  
On: 13 October 2014  
Prepared: 16 October 2014

Determination Promulgated  
On: 27 October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

MR MOHAMMED HAREES MOHAMMED THAMBI  
NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr R Spurling, counsel (instructed by Nag Law Solicitors)  
For the Respondent: Mr P Duffy Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Sri Lanka, born on 17<sup>th</sup> May 1981. His appeal against the decision of the respondent to refuse to grant him asylum and to remove him was dismissed by the First-tier Tribunal Judge in a determination promulgated on 26<sup>th</sup> February 2014.
2. On 16<sup>th</sup> April 2014, Upper Tribunal Judge Eshun granted the appellant permission to appeal. The grounds contended that the Judge failed to consider the four arrest warrants, certain court documents as well as a detailed witness statement from the

appellant's father and his wife, which had been submitted by the appellant in support of his appeal.

3. The grounds also submitted that the Judge failed to address the timeliness of the submission of the Sri Lankan lawyer's letter, the corroborating documents provided therewith and the fact that the respondent could have easily confirmed its veracity.
4. Mr Spurling, relied on the grounds of appeal. In particular, he contended that there had been a "lack of anxious scrutiny" to the four arrest warrants, the court documents produced as well as the witness statements.
5. Amongst the documents that had been produced was a newspaper report of a bomb blast near the appellant's brother in law's grocery shop. In addition there were documents proving his brother in law's ownership of that shop as well as the death certificate proving that his brother in law was shot dead. These matters are said to have 'indirectly corroborated' the appellant's asserted persecution.
6. More significantly, he submitted, was the fact that the four arrest warrants were submitted in evidence including two which were issued against the appellant for failing to sign at the police station; these had not been mentioned at any point in the determination, even though the Judge had in fact listed the appellant's documentary evidence. Mr Spurling submitted that the determination suggests that no warrants had been submitted in evidence. Court documents did not include the four arrest warrants as they did not relate to the court proceedings, but the appellant's failure to sign at the police station.
7. In any event, the documents were not considered as part of any analysis in the determination other than to state at paragraphs 9-10 that the documentary evidence as a whole was rejected.
8. The arrest warrants he submitted are of particular significance, having regard to paragraph 7(d) of the headnote in the recent country guidance decision in **GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 319**. The names of individuals who have an extant arrest warrant against them will appear on a computerised "stop" list at the airport which places them in a current category of persons at real risk of persecution or serious harm.
9. He accepted that not all documents submitted had to be mentioned or analysed. However these were fundamental documents which had not even been mentioned by the judge: this demonstrates a failure to have proper regard to relevant and material facts.
10. Further, the detailed letter from the appellant's Sri Lankan lawyer was accompanied by his practising certificate and a letter from the UK solicitors on

record. The letter related to the issue of whether the appellant had been formally charged. The Judge had noted that it was detailed and supported his account.

11. The letter as well as the practising certificate had been submitted to the respondent prior to the adjourned appeal hearing in December 2013, namely seven weeks prior to the effective appeal hearing date on the 7<sup>th</sup> February 2014.
12. The full details, including the name, address, telephone number, the email address, the practising certificate and reference number relating to the appellant's court case in Sri Lanka had all been submitted to the respondent prior to 20<sup>th</sup> December 2013.
13. At the hearing, Counsel for the appellant drew the Judge's attention to that fact, contending that reliance could be placed upon that letter as a result. However, the Judge did not address this issue anywhere in his determination; this was a crucial document whose relevance and importance was obvious. The respondent could easily have confirmed its veracity. There was again a lack of anxious scrutiny.
14. Mr Spurling referred to **BJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011** and in particular at paragraphs 30-32. There, the Court of Appeal stated that simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take that step. Instead, it may be necessary to make an inquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection, and when a simple process of enquiry will conclusively resolve its authenticity and reliability.
15. In consequence of the decision that the national authorities are in breach of their obligations to undertake a proper process of verification, the secretary of state is unable thereafter to mount an argument challenging the authenticity of the relevant document unless and until the breach is rectified by a proper enquiry. In that case, the decision of the respondent was overturned on appeal on the basis that, absent a suitable investigation, it would not be open to her to suggest that the document or documents are forged or otherwise are not authentic.
16. I have also had regard to paragraph 41 of that judgment. Whilst it is undoubtedly the case that false documents are available in Sri Lanka, once it was established that the documents in question originated from a Sri Lankan court, a sufficient justification was required for the conclusion that the appellant does not have a well founded fear of persecution.
17. Mr Spurling therefore submitted that in this case, the respondent could have undertaken a proper enquiry relating to the verification and authentication of all these documents. This had not been done.

18. Moreover, the Judge stated at paragraph 10 that he was satisfied that in the light of his overall assessment of the appellant's credibility, he could not attach weight to the contents of the letter from the appellant's lawyer, the court documents and newspaper articles sought to be relied on.
19. During the course of his submissions, Mr Duffy originally sought to rely on the Rule 24 response, where it had been contended with respect to the documents that it was 'not for the respondent to make out the appellant's case for him' and it is entirely a matter for her as to whether she makes checks on documents. The Judge it had been contended, did have proper regard to those documents when assessing credibility.
20. However, Mr Duffy eventually accepted that the Judge had failed to assess the evidence, and in particular the lawyer's letter and the alleged court documents.
21. In the circumstances I found for all these reasons the the decision contained material errors on a point of law. Both parties agreed that the determination should be set aside. A 'complete re-hearing' would have to take place requiring substantial fact finding. Both parties submitted that this was an appropriate case for the appeal to be remitted to the First-tier Tribunal.
22. I find, having regard to the Senior President's guidelines in this respect, that this is an appropriate case for this appeal to be remitted. There will be substantial fact finding involved. Further, the appellant did not have a proper opportunity of having his case fully considered on the basis of the documentary evidence which he has sought to rely on.

### **Decision**

Having found that the First-tier Tribunal Judge made material errors of law, the determination is set aside.

The appeal is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made before another Judge. The date arranged is for 30<sup>th</sup> October 2014.

Signed

Date 16/10/2014

Deputy Upper Tribunal Judge Mailer