



IAC-FH-AR-V1

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

Appeal Number: AA/10503/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15th September 2014**

**Decision Promulgated
On 27th October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR M H H
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: None.

For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 26th September 1989 and a Muslim Tamil. He arrived in the UK as a student on 22nd January 2011 with leave to remain until 16th May 2012. He thereafter remained without leave until 5th November 2013 when he was encountered and arrested and claimed asylum.

2. He appealed against a decision to remove him dated 22nd November 2013 by way of directions under Section 10 of the Immigration and Asylum Act 1999 following a refusal to grant him asylum, humanitarian protection and protection under the European Convention on Human Rights. The respondent did not accept that the appellant had been arrested and detained or that a warrant had been issued for his arrested.
3. His appeal was dismissed following a hearing on 29th November 2013 before First-tier Tribunal Judge Maxwell under the fast track provisions. Upper Tribunal Judge King TD at the subsequent leave to appeal hearing on 16th December 2013 ordered that the decision be set aside and remade by way of a rehearing before the First-tier Tribunal and no findings were preserved.
4. He suggested that Asdur Marsook, a lawyer, should identify any earlier dealings he had with the appellant and that a copy of the arrest warrant should if possible be obtained. Mr Marsook wrote to the Tribunal on 28th November 2013 putting forward a couple of amendments in relation to the appellant's mother's affidavit, namely the date the affidavit was issued, November not August, but he stated he was not in a position to obtain a copy of the arrest warrant without written instructions from the appellant.
5. A second solicitor in Colombo was instructed in relation to the arrest warrant and a solicitor applied for an adjournment which was refused. This Sri Lankan lawyer instructed by Vincents was Mr Seneviratna.
6. On 20th March 2014 First-tier Tribunal Judge Woolley heard the appellant's appeal and dismissed his appeal on all grounds.
7. An application for permission to appeal was made to the First-tier Tribunal and dismissed by First-tier Tribunal Judge Andrew.
8. The application was renewed to Upper Tribunal Judge McGeachy who granted permission to appeal on all grounds.
9. On 12th September 2014 Vincent Solicitors confirmed that it did not have instructions to represent the client at the proposed hearing.
10. The grounds of appeal stated that the appellant obtained the services of two lawyers to confirm that there was an arrest warrant with his name and provided evidence that they were both members of the Sri Lankan Bar. In her determination Judge Woolley found that an accused could apply for a copy of an arrest warrant but it remained on file with the courts and a copy handed to the police. However, she then stated that she would have expected an explanation as to why one was not obtained by the appellant's Sri Lankan lawyer [62]. The judge then stated that she would have expected additional evidence in respect of
 - (i) when the lawyer Mr Marsook was instructed [64]
 - (ii) the case papers [65]

- (iii) the date the appellant was put on an escaped list [66]
- (iv) why the case came to be listed on 10th June 2011 [68]
- (v) whether there were any court proceedings prior to that [68]
- (vi) the nature of the warrant [68] and
- (vii) why the warrant was issued in Colombo [70]

11. The judge stated that she did not know what instructions were given to the Sri Lankan lawyers [68] and acknowledges that she was assessing the appellant's case in the light of the lower standard of proof [71]. Nonetheless she drew an adverse credibility finding in the light of the fact that the evidence she considered as missing and relevant (appeared to be readily available). The appellant submitted there was no support for that contention. First the judge noted herself that the evidence is that in the ordinary run of events an arrest warrant could not ordinarily be available, its absence cannot therefore rationally call for an explanation and the absence of an explanation could not rationally lead to an adverse inference.
12. In the absence of any evidence (beyond pure speculation) either lawyer had access to the case papers, the absence of details from those papers could not found an adverse inference.
13. Third, there was evidence before the judge in the form of the email to the Sri Lankan Bar Association that indicated that a lawyer was being sought to confirm whether there was a record of the arrest warrant.
14. In that context and in the absence of any suggestion that the instructions ought to have been wider, the judge had fallen into error in seeming to demand an explanation for the absence of the full narrative of the appellant's case from the Sri Lankan lawyer.
15. The case turned on whether there was an arrest warrant in existence and the appellant acted, properly asking his UK lawyer to liaise with a registered Sri Lankan lawyer to confirm whether such an arrest warrant was on the register. They confirmed it was. The judge's reasons for rejecting this evidence were speculative and unfair and amounted to an error of law.

The Hearing

16. At the hearing the appellant attended and had the assistance of a Tamil interpreter and I explained in outline the grounds submitted by his solicitors. He confirmed that he no longer instructed solicitors and was attending in person. He could not afford to instruct solicitors.

17. The appellant stated that his family would not be able to approach the authorities to ask for an arrest warrant. This was the reason he could not produce it.
18. Mr Whitwell stated that the judge had set out in detail why she rejected the evidence between paragraphs 58 to 70 and which lead to paragraph 71 where on assessment overall she found the evidence not credible in line with **Tanveer Ahmed**. She had set out the determination in reasoned findings which were open to her and which characterised the appellant's grounds as a mere disagreement with the judge's findings.

Conclusion

19. A particular issue in this case was whether there was evidence for an arrest warrant for the appellant and the judge approached the evidence by considering it overall.
20. The finding against an arrest warrant being issued is prefaced at [41] where the judge clearly states that she did not find the appellant's evidence credible, not least because in his screening interview he stated that he was arrested in 2009 and then in 2010 and then specified April 2010 after having read the letter from Mr Marsook, one of the lawyers.
21. Specifically, the judge found that she accepted that the appellant and his father may have been arrested from a shop in Jaffna and were detained in Jaffna police station but she found that this was an arbitrary arrest by the authorities and common, especially in the north.
22. The judge also found at [70] that she would have expected the arrest warrant to have been issued in Jaffna and there was no explanation as to why it should be issued in Colombo.
23. The fact is that there were two lawyers who were said to have submitted evidence in relation to the arrest warrant and the question before the judge was whether the lawyers had been instructed to produce a statement which was a fabrication or whether it was truthful.
24. The judge states it is not disputed that both of the lawyers were practising members of the Sri Lankan Bar and they both state that they have inspected an arrest warrant. She records at [61] that she carefully considered their evidence. The question is what weight she placed on their evidence. The judge stated that there evidence attracted 'careful consideration' [61]. At [62] in particular the judge states that although it is recorded in the country evidence it is difficult to obtain a copy arrest warrant, Mr Marsook's letter of 28 November "expects to be able to do so". She did state there was no explanation as to why a copy had not been forthcoming. Thus on the evidence of the lawyer himself the arrest warrant was expected. Clearly the judge anticipated that such evidence would be expected on the strength of the lawyer's representations. It was not produced.

25. The judge clearly had reservations about how the Sri Lankan lawyers were found [62] because an email to the Bar Association from the appellant's representatives rejected the request to find a lawyer and further she found that they were both initially instructed by the appellant's mother, on whose evidence she placed little weight. The judge also makes reference to Mr Marsook's letter where he states he was given the case [65]. She quite rightly states that she would have expected copies of the papers if not the warrant, and if Mr Marsook had spoken to the police she would have expected information as to under what circumstances they had received the arrest warrant. She further questioned if he had been instructed from the start why he was not at the court hearing. The explanation for this was not forthcoming and the judge was entitled to place weight on this.
26. Also at [66] the judge stated that once the lawyers had access to the case papers as they claimed they had she would have expected them to give details of when the appellant was put on the escapee list. No date was given and there was no explanation as to why if the appellant had escaped from detention in April 2010 had the police waited until June 2011 to apply for a warrant. Once again the explanation for this was not forthcoming and the judge was entitled to place weight on this.
27. The judge also disbelieved the evidence of Mr Marsook because at [67] she stated that he had cited the original warrant at the Magistrates' Court of Colombo whereas according to the country evidence the copy remains with the court and the original is given to the police.
28. Not least, although there was minimal reference to Mr Seneviratna the judge stated at [68] that although they both had appeared to have access to the court papers she would have expected information as to how the case came to be listed on 10th June 2011 and whether there were any court proceedings prior to June 2011 and why a warrant was issued on 10th June 2011 and whether any summonses had been issued previously, and she would have expected evidence as to the nature of the warrant.
29. Clearly the judge rejected the evidence that the lawyers had indeed been instructed because of the little detail submitted despite the fact that it was clear that their evidence was going to be scrutinised.
30. Indeed at [69] the judge states that she was not even certain that the lawyers had the correct appellant.
31. Finally the judge applied **Tanveer Ahmed IAT [2002] UKIAT 00439** which states that "in asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on" and further "a document should not be viewed in isolation. The decision maker should look at the evidence as a whole or in the round (which is the same thing)". In view of the judge's findings on credibility and bearing in mind that she had rejected the evidence of the appellant and rejected the evidence of the mother, and found that as it was the

mother who instructed lawyers in November 2013 and 2014, the judge found that the consequence was that the lawyers' evidence was undermined. She did not accept that the appellant was on a wanted list or there was a warrant for his arrest and her findings in this respect are clear.

32. The judge gave reasons for rejecting the appellant's evidence and that of the lawyer's and set this out in her determination. It was not speculation on the part of the judge to expect lawyer's to give details of their instructions which would have added credibility to their evidence.
33. Overall I find that the challenge is a disagreement with the judge's finding and the determination addressed the issue of the lawyer's evidence in full, contains no error of law and the determination shall stand.

Signed

Date 24th October 2014

Deputy Upper Tribunal Judge Rimington