



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

Appeal Number: AA/03126/2014

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
on 5<sup>th</sup> May 2015**

**Determination  
Promulgated  
On 7<sup>th</sup> May 2015**

**Before**

**UPPER TRIBUNAL JUDGE HANSON**

**Between**

**N G  
(Anonymity order made)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr J Martin instructed by CK Law Solicitors  
For the Respondent: Mr Smart – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge Davey promulgated on the 29<sup>th</sup> December 2014 in which the Judge dismissed the appeal against the removal direction to Sri Lanka that accompanied the refusal of the application for leave to remain on the basis of a need for international protection.

## **Background**

2. The Appellant is a national of Sri Lanka born on 2<sup>nd</sup> October 1984. The Judge considered the evidence made available and set out his findings from paragraph 11 of the determination which can be summarised as follows:
- The purchase of mobile phone SIM cards was a matter of interest to the Sri Lankan authorities and that if an identity card was required to make such a purchase very great care would be taken to avoid the identity of the purchaser being discovered and investigated [11].
  - It was surprising many engines [from boats used by the LTTE] were coming and going for repair over a sustained period yet no interest was taken in the Appellants activities by the security forces at any time. It was found unlikely the Appellant was repairing engines at his home as claimed [12].
  - The Appellant claimed he stopped working on engines in 2008 and until he left in 2009 no action was taken against him. The Applicant claimed the garage was searched and SIM cards and medical and other material taken leading to the arrest of the garage owner, but no steps were taken to investigate the Appellant working there or at home [13].
  - It is surprising when the Appellants parents remain in Sri Lanka that there is no evidence from them concerning the activities of the Appellant in repairing numerous engines on their property or indeed their lack of knowledge as to why he was doing it to the extent he was [14].
  - There is no evidence from the Appellants father concerning the steps he took to secure the Appellants release from detention in 2013. The Appellant claims his parents were unaware of his activities at the material time and that his father refused to tell him such details [15].
  - No credible reason had been given as to why it was possible for the Appellant to have acted as he claimed over a sustained period and yet leave his parents in ignorance of his activities, especially when engine repairs were taking place in or on their own land. It was not accepted that the claim to have been repairing all the engines as claimed was credibly explained as being a part of an apprenticeship [16].
  - No documentary or other evidence of detention had been provided bar two documents: (i) a complaint made by the Appellants father to the police station at Kalpittya on 24<sup>th</sup> June 2013 citing event on 23<sup>rd</sup> June when it was said the Appellant had been taken away and his parents were unaware of his whereabouts [17] and (ii) a letter from an Attorney dated 10<sup>th</sup> June 2014 which states the Appellants father had made representations to the police to stop harassment, particularly of his wife, in his absence allegedly looking for the Appellant who had “escaped from custody of the authorities and

therefore there is an outstanding warrant for his release. Hence the authorities are looking for him". Concerns are recorded about the reliability of the information and the concluding paragraph of the letter was found to suggest an adverse view of the Government but which does not explain why the Appellant's life will be in danger let alone the basis of adverse interest in him. It was accepted there is evidence of the author of the letter being a Member of the Bar Association of Sri Lanka but it was found the letter raised more question than answers for why there would be any continuing interest in the Appellant [18].

- The submissions made by Mr Martin in relation PJ (Sri Lanka) [2014] EWCA Civ 1011 were considered [19].
- The Appellants account of his release is entirely his alone. It was open to the Appellant to adduce evidence from friends or family concerning arrest, detention and involvement in securing his release and detention. There are significant omissions in the evidence which substantially damaged the Appellants credibility [20].
- The Appellant was able to leave passing through multiple positions of checks being made upon his identity by different forces and able to do so without the presence of an agent. Given the number of checkpoints it makes "no sense" that the Appellant had through an agent bribed individuals in advance at each checkpoint [21].
- The evidence was considered in the round and as a whole and no document excluded from consideration [21].
- There is no evidence from Sri Lanka or the UK of medical treatment or the provision of herbal remedies [22].
- No photographs or medical evidence relating to the injuries claimed to have been sustained has been provided or in relation to the possible cause [23].
- It is material the Appellant failed to seek medical assistance in the UK when he was not at risk. The claim he was so disturbed that he could not bring himself to obtain such assistance is not accepted [24].
- Neither the Appellants father's statement to the police or lawyers letter assert detention, torture or release or the basis of adverse interest continuing [25].
- There may be some basis, although reasons are not provided as to why the SLA forces might take an interest in the Appellant, and it is inappropriate to speculate. The Appellant has not shown he was detained for the period claimed and ill-treated and tortured. He may have been detained for a short period but not in the circumstances claimed. The circumstances do not indicate that the Appellant is perceived as a threat to the integrity of the Sri Lankan single state or as having such a role during or post Tamil conflict [26].
- The evidence does not show the Appellants name is on the computerised stop list. This is consistent with the Appellant being

of no interest when returned. Mr Sabri Mohamed's letter was not found sufficient to support any adverse interest in or risk to the Appellant [27].

- The Appellant claimed to be with friends at a tea-shop when he was 'picked-up' in 2013 yet there is no evidence from any of them of his abduction or removal in June 2013 [28].
- The UK based activities are very limited. Considering GJ and Others the Appellant has not come to the attention of the authorities nor is likely to as being involved in either the Sri Lanka Diaspora or in political opposition to the current state authorities. The Appellant is not a refugee sur place [29].
- No real likelihood on return of persecution or ill-treatment contrary to the Refugee convention, Qualification Directive or Articles 2 and 3 ECHR has been proved [30].

### **Discussion**

3. A number of issues arose during the course of the hearing. These included the assertion the findings in relation to the boat engines was irrational as the Appellant worked at a boat yard. His apprenticeship is not disputed but the findings are arguably sustainable even though the Appellant worked at a boat yard. The Judge records that it was claimed that for a three year period 2006 -2009 the Appellant repaired engines for the LTTE but that his evidence was not convincing. The Appellant had claimed he repaired as many as 900 engines between April 2006 and October 2009 which was changed to the fact that two named LTTE members attended with engines, possible ten to fifteen, some of which were repaired at the garage in which he worked although the majority were repaired at his family home. Paragraphs 5-8 and 12 of the determination refer.
4. In granting permission First-tier Tribunal Judge Landes commented that it may be arguable that the Judge ignored what was said in the country guidance case of [GJ and Others \(post-civil war: returnees\) Sri Lanka CG \[2013\] UKUT 00319 \(IAC\)](#) and others about an appellant's ability to leave the country. At paragraph 170 of GJ and others the respondent conceded that "having left Sri Lanka without difficulty was not probative of a lack of adverse interest" - a point endorsed at paragraph 167 of the determination. It is accepted that some of adverse interest may be able to leave Sri Lanka without difficulty but this is not the Judges point. The finding is that as the Appellant travelled through many checkpoints manned by officials from different agencies and it was not accepted that the agent would have bribed each and every official in advance at each checkpoint, as such the fact he was able to pass without incident is strongly indicative of his not being of interest. This has not been shown to be a finding outside the range of those available to the Judge.
5. It is also said the Judge erred in paragraph 25 as the letter from the lawyer in Sri Lanka, Mr Sabri Mohammed, asserted detention and ongoing adverse interest. This letter forms the basis of the main head

of challenge to the determination which is based upon the decision of the Court of Appeal of PJ v SSHD [2014] EWCA Civ 1011 in which Mr Martin represented the appellant.

6. The first thread of argument was that as the Respondent was given the opportunity to undertake checks in relation to the lawyer and information to be found in the letter, yet failed to do so, she is prevented from raising any objection to the same. Mr Martin places reliance upon paragraph 31 of PJ in which the Court said:

31. In my view, the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process of verification is that the Secretary of State is unable thereafter to mount an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper enquiry. It follows that if a decision of the Secretary of State is overturned on appeal on this basis, absent a suitable investigation it will not open to her to suggest that the document or documents are forged or otherwise are not authentic.

7. Mr Smart was able to advise the Tribunal that following the adjournment enquires were made of the BHC in Colombo who indicated it was a pointless exercise due to the high incidence of fraud in Sri Lanka regarding documentation and the fact the only way to corroborate the claim of adverse interest was to check with the authorities directly which was not an option available. It is therefore arguable that the Respondent did commence the enquiry process in a case in which it transpired no further progress could be made. As such the Respondent is not excluded from suggesting the documents are forged or otherwise not authentic.
8. Such a blanket prohibition may also arguably fall foul of the Respondents right to a fair hearing and ability to put her case. There may be cases in which checks cannot be made for operational reasons during the timescale provided. It appears the need for such flexibility may have been recognised by the Court in the above paragraph where it refers to the undertaking of a 'proper process of verification'. What is 'proper process' is must depend upon the relevant facts of a case as it may vary from case to case and country to country. It also cannot be the case that the failure of the Respondent to undertake checks prevents a judge from assessing the evidence and deciding what weight her or she should attach to the same.
9. In any event, this is not a case in which the view of the Respondent is the relevant issue at this time. The challenge before the Upper Tribunal is to the determination of Judge Davey. The Judge did not find the lawyer in Sri Lanka did not exist or that the letter did not emanate from this source. The Judge specifically stated that no evidence was excluded from consideration. The Judge was not convinced, however, that the weight he was invited to place upon this evidence was as Mr Martin invited him to do.
10. In relation to the issue of weight it is a settled principle that on the whole the weight to be given to the evidence is a matter for a judge.

In this case Judge Davey clearly considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made. As such the weight to be given was a matter for him - SS (Sri Lanka) v SSHD [2012] EWCA Civ 155 refers. Mr Martin argues that this may ordinarily be the case but that PJ provides authority to support his submission that the Judge was incorrect in law.

11. It is important to refer to the terms of PJ in which the Court of Appeal held that both the First-tier Tribunal and Upper Tribunal were wrong in law to reject the probative value of the evidence obtained by two lawyers in Sri Lanka. It was held that in asylum claims, where local lawyers obtained documents from courts in the home country, that did not create a rebuttable presumption that the documents were reliable. On the facts, however, although it was undoubtedly the case that false documents were widely available in Sri Lanka, where it had been established that the documents in question originated from a court and had been obtained by two independent lawyers on two separate occasions it was difficult to see how the claimant could have falsified a letter from the magistrate of the relevant court and placed it in the court records to be later retrieved in this way and at the very least the evidence required detailed analysis and explanation. The case was remitted.
12. The nature of the evidence considered in PJ and that available to Judge Davey is materially different. In PJ official documentation from a reputable source was obtained by two separate lawyers. It had not been shown how the appellant could have falsified the same even with the problem of forged documents in Sri Lanka. Before Judge Davey was a letter from a lawyer recording what he claims to have been told. Such evidence is admissible, the issue being the weight to be attached to the same.
13. It is not the case that because the letter has been produced by a lawyer it must be accepted as being credible without more. Such a suggestion was rejected by the Court of Appeal at paragraph 29 of PJ in the following terms:

29. In my judgment, there is no basis in domestic or ECHR jurisprudence for the general approach that Mr Martin submitted ought to be adopted whenever local lawyers obtain relevant documents from a domestic court, and thereafter transmit them directly to lawyers in the United Kingdom. The involvement of lawyers does not create the rebuttable presumption that the documents they produce in this situation are reliable. Instead, the jurisprudence referred to above does no more than indicate that the circumstances of particular cases may exceptionally necessitate an element of investigation by the national authorities, in order to provide effective protection against mistreatment under article 3 ECHR. It is important to stress, however, that this step will frequently not be feasible or it may be unjustified or disproportionate. In *Tanveer Ahmed* the court highlighted the cost and logistical difficulties that may be involved, for instance because of the number of documents submitted by some asylum claimants. The enquiries may put the applicant or his family at risk, they may be impossible to

undertake because of the prevailing local situation or they may place the United Kingdom authorities in the difficult position of making covert local enquiries without the permission of the relevant authorities. Furthermore, given the uncertainties that frequently remain following attempts to establish the reliability of documents, if the outcome of any enquiry is likely to be inconclusive this is a highly relevant factor. As the court in *Tanveer Ahmed* observed, documents should not be viewed in isolation and the evidence needs to be considered in its entirety.

- 14. In this case Judge Davey considered the evidence as a whole and having done so found the Appellant had failed to discharge the burden upon him to prove to even the lower standard applicable that he will face a credible real risk of persecution or ill treatment on return to Sri Lanka for the reasons claimed or to warrant a grant of international protection for any proven reason.
- 15. Mr Smart also submitted it relevant that the Appellant had been able to pass through the airport when he returned in 2013 which supports the claim his name is not on a wanted list and that there is no warrant for his arrest as otherwise it is likely he would have been detained.
- 16. Having considered the decision, available evidence, pleadings and oral submissions, I find no legal error material to the decision to dismiss the appeal established.

**Decision**

- 17. **There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.**

Anonymity.

- 18. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Signed.....  
Upper Tribunal Judge Hanson

Dated the 6<sup>th</sup> May 2015