



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

Appeal Number: AA/08750/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8 May 2017**

**Decision & Reasons Promulgated
On 19 May 2017**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**M I N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Bayati instructed by Amirthan & Suresh Solicitors

For the Respondent: Mr Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I continue the anonymity order made by the First-tier Tribunal. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst

others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I do so in order to avoid a likelihood of serious harm arising to the appellant from the contents of the protection claim.

2. This is an appeal against the decision promulgated on 24 November 2016 of First-tier Tribunal Judge Gribble which refused the protection and human rights claim of the appellant.
3. The appellant's claim is that after the tsunami in Sri Lanka in 2005 he was involved in support work for survivors and came in contact with S who, unbeknownst to him, was involved with the LTTE. He maintains that in 2007 he was beaten up after attending an opposition party meeting. He later found out that S had been involved in the killing of a government minister. The appellant feared that this would place him at harm so he came to the UK to study, albeit he returned to Sri Lanka on at least one occasion.
4. In 2014 the appellant heard from his father that the authorities had visited the family home asking about the appellant. His father had been shown an arrest warrant for the appellant. The family were informed that the applicant was suspected of helping the LTTE to carry out attacks in Colombo. The applicant then claimed asylum on 4 August 2014.
5. The applicant also maintained that on 21 July 2016 the authorities again went to his home and showed his parents a photo which they maintained showed the appellant at an opposition demonstration in the UK. The appellant's father was beaten and arrested after he and his mother denied that the photo showed the appellant. His father was detained for two months and on release was subjected to a monthly reporting condition.
6. The First-tier Tribunal did not find the appellant's claim to be credible. The appellant challenges those credibility findings on a number of grounds, three of which were argued before me and proved sufficient to show a material error on a point of law such that the decision had to be set aside. It was therefore not necessary to consider the remaining grounds.
7. The first ground which had merit was ground 1 which argued that the First-tier Tribunal erred in making no findings at all on the evidence of the appellant's wife. Her evidence was contained in a witness statement dated 3 November 2016 and it is also recorded in the decision that she gave oral evidence.
8. The statement of the appellant's wife indicated in paragraph 4 that after the couple married in 2011 she was aware of the appellant having nightmares and when she asked why he would tell her that this was because he had been beaten up by the army. This was evidence going towards the appellant's claim of having been beaten in 2007. In paragraph 7 of her statement the appellant's wife records her knowledge that the appellant received a call from his family in July 2014 informing

him that the authorities had visited the home looking for him and that the family had been shown an arrest warrant. In paragraph 9 of the witness statement the appellant's wife states that she was also aware that in July 2016 the family in Sri Lanka informed her and her husband that the appellant's father had been arrested after a visit from the Sri Lankan authorities where the family were shown a photograph of the appellant at a demonstration in the UK.

9. The decision of the First-tier Tribunal makes no findings on the evidence of the appellant's wife. As indicated above, it went to the core of his claim of being mistreated in 2007 and the family in Sri Lanka having been subjected to adverse treatment including being shown an arrest warrant and photo of the appellant at an opposition demonstration in the UK. This evidence had the potential to corroborate the appellant's claim. Where the decision makes no reference to it in the findings and does not give any indication whether it was rejected or why that might be so, a material error of law arises.
10. The appellant's second ground of appeal concerns the finding in [67] that the appellant's claim to have been mistreated in 2007 was not credible. The judge says this towards the end of [67]:

"... What I cannot accept is that between July 2014 and October 2016 until the account given to Dr Dhumad there is no account of this event at all and the appellant is specific to Dr Lawrence that there was no traumatic event."
11. The difficulty with this finding is that the appellant did mention his mistreatment in 2007 between July 2014 and October 2016. He did so in his screening interview conducted in August 2014 and in his substantive asylum interview conducted in December 2014.
12. Also, the appellant's claim before the First-tier Tribunal was that he did not seek to rely on his first witness statement which came within the period mentioned here. That was because it had not been read back to him and was not signed by him as a result. He had concerns about the conduct of his previous solicitors which had been taken up for him by his current advisers. His case was these matters precluded weight being placed on the absence of a reference to the 2007 incident in the first witness statement. The decision here draws an adverse conclusion from the failure to mention the 2007 incident without addressing the appellant's evidence as to why it was not a reliable document. It was for the judge to decide whether or not the appellant's case regarding the reliability of the first witness statement was made out but where no findings were made, a further potentially material error arises.
13. Further, the appellant also set out why he did not mention the 2007 incident to Dr Lawrence who prepared a medical report. He maintained that the interview with Dr Lawrence had been problematic as his mental state at that time had led him to be extremely suspicious. The evidence of the appellant's wife was that he had been so unwell at that time she had

been obliged to tell him that the interview with Dr Lawrence was for her in order to induce him even to attend. Again, the First-tier Tribunal draws an adverse inference from the failure to mention the 2007 incident in the report of Dr Lawrence but does not address the appellant's explanation for that.

14. The appellant's fifth ground concerned an arrest warrant which was provided by his previous solicitors to the respondent. The First-tier Tribunal deals with this document at [73] of the decision stating as follows:

"Secondly it is a fact that reliance was placed by the appellant himself from the very first stage of the process on the existence of an arrest warrant as he uses it as the reason for his claim. In turning to the arrest warrant it cannot be verified as genuine and the appellant now seeks to place no reliance on it, accepting now that it was not genuine. The issue with the warrant is not how it came to be produced in my view, or who sent it to the respondent. The issue is that the appellant's account has consistently been that it is real because his father has seen it. His father's account was that he too had seen it and it was real. Regardless of the alleged conduct of the appellant's former representatives it is correct to note that the entirety of the case until shortly after the appellant changed solicitors hinged on the existence of and genuine nature of the warrant for the appellant arising out of the arrest of S."

15. The appellant's case before the First-tier Tribunal was that the provenance of the arrest warrant was important in assessing his credibility, however. The appellant had never claimed that he obtained or requested the arrest warrant from Sri Lanka but that his previous advisers told him that they could obtain it for him and that they did so. He had concerns about this which he raised with his current advisers. They wrote to the previous advisers on 29 July 2016 requesting information about how the arrest warrant had been obtained. This occurred two months before the respondent provided a Document Verification Report (DVR) indicating that the arrest warrant was not genuine. The appellant provided additional evidence to try to address this concern as his current advisers instructed a solicitor in Sri Lanka to investigate the arrest warrant and that solicitor also confirmed that it was not genuine.
16. The appellant's argument was, therefore, that this was not a situation where he had changed his evidence regarding the arrest warrant because of investigations of the respondent but because of his own independent concerns which were objectively verified by the letter from his solicitors to the previous advisers. It remained his claim that his father had told him that he had seen an arrest warrant and the appellant continues to maintain that aspect of his case, albeit accepting that a copy of the arrest warrant seen by his father has never been obtained.
17. In my judgment the First-tier Tribunal here was obliged to consider this aspect of the evidence rather than proceeding on the narrow basis that the appellant had sought to rely on the arrest warrant and then gone back

on this. This incorrect approach amounted to a further error on a core part of the appellant's claim

18. It is therefore my conclusion, on the individual points set out in the three grounds considered above and certainly when considered cumulatively, that a material error of law arises here. The holistic nature of a credibility assessment means that the credibility findings here are undermined to the extent that they must be set aside entirely and remade *de novo*.
19. Where there are no extant findings on the facts of this appeal, it is appropriate for it to be remitted to be remade in the First-tier Tribunal in line with the Senior President's Practice Direction.

Notice of Decision

20. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.
21. The appeal will be remade in the First-tier Tribunal, not before First-tier Tribunal Judge Gribble.
22. Since the hearing of the First-tier Tribunal, the appellant has moved to London and the remaking of the appeal will be at Taylor House.

Signed 
Upper Tribunal Judge Pitt

Date: 15 May 2017