



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Numbers: AA/08756/2015  
AA/08758/2015

**THE IMMIGRATION ACTS**

Heard at Field House  
On 26 July 2017

Decision & Reasons Promulgated  
On 17 August 2017

Before

UPPER TRIBUNAL JUDGE PITT

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NS  
VP

(ANONYMITY DIRECTION MADE)

Respondents

**Representation:**

For the Appellant: Ms J Isherwood, Senior Home Office Presenting Officer  
For the Respondents: Miss S Anzani, Counsel, instructed by Nag Law Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision promulgated on 22 February 2017 of First-tier Tribunal Judge Gaskell.
2. 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.

3. I refer to the Secretary of State as the respondent and to NS and VP, a couple from Sri Lanka, as the appellants, reflecting their positions before the First-tier Tribunal. The second appellant's claim is wholly dependent on the first appellant's claim so I can refer only to there being one appellant for the purposes of this decision.

### Background

4. The decision of First-tier Tribunal Judge Gaskell allowed the protection claim of the appellant. The basis of that claim was that he had been involved in shipping in Sri Lanka working as a bosun for many years. The last ship that he worked on unbeknownst to him had connections to the LTTE. When he returned to Sri Lanka on 23 June 2006 after having served on the ship he was arrested. He was detained until 1 October 2006 and seriously mistreated during that detention. A friend, J, paid a bribe to the contact within the Sri Lankan Terrorist Investigation Division (TID) to obtain the appellant's release. On his release, the appellant was told that he had to report every Sunday.
5. On return home the appellant suffered hostility from neighbours as someone believed to be involved with the LTTE. Also, TID officers continued to go to the appellant's home and made threats. The appellant and his wife moved to live with J as a result. He continued to report. Although the visits from the TID ceased after he moved to stay with J, the appellant remained concerned. He decided to leave Sri Lanka, doing so in April 2007. The couple came to the UK having obtained a visit visa. Their son was already living here. They overstayed their visas but were encountered by Immigration Services on 3 December 2014. They claimed asylum on 12 January 2015. The claim was refused by the respondent on 29 May 2015.
6. In addition to the matter set out above, the appellant maintained that after he had come to the UK, the authorities had realised that he had gone to live with J and had gone there looking for him as he had failed to report to the police station as required. J became concerned at the level of interest and consulted a Sri Lankan lawyer to establish whether an arrest warrant had been issued. The lawyer, Mr Rathnayake, went to the relevant Magistrates' Court and looked at a file for the appellant which included an arrest warrant. Mr Rathnayake provided a letter confirming that he had been instructed by J and confirmed that the documents that were enclosed had come from the court file. He provided details of his membership of the Bar Association of Sri Lanka. The appellant's solicitor also instructed another Sri Lankan lawyer, Mr Liyanage, to consult the court file and he provided a letter indicated that he had visited the court and seen the documents relating to the appellant.

7. Shortly before the hearing before the First-tier Tribunal the respondent provided a document verification report (DVR) dated 19 August 2016. It shows that an enquiry was made with the Terrorist Investigation Division (TID) director by fax using the reference number on the court documents and arrest warrant relied on by the appellant. The DVR indicates that the response from the TID that a court case with the reference number provided had not been filed by the TID and no arrest warrant with the reference number provided had been obtained by the TID.
8. The appellant's solicitors responded to the DVR in a letter dated 18 November 2016. The solicitors objected to the matter being referred to the director of the TID instead of to the issuing court. They maintain that the TID would not have authority to reveal details of court documents to a third party. They understood that the correct procedure was for a lawyer to be instructed to inspect the court file and enclosed an authority in order for the respondent to instruct a lawyer to do so. The solicitors also maintained that it was naïve to expect the TID to acknowledge that they had requested an arrest warrant given their history of denying arrests and mistreatment. The solicitors also maintain that the appellant's identity had been revealed to the TID and in those circumstances an additional risk to him on return had been identified which would certainly lead to mistreatment on return.

#### Decision of the First-tier Tribunal

9. Judge Gaskell dealt with this matter as follows in paragraphs 32 to 37 of the decision:

"32. In my judgement, this appeal can essentially be disposed of upon consideration of the certified copy of the arrest warrant. If the arrest warrant produced by the appellant is not a genuine document, then I accept the respondent's submission that its use would severely undermine the 1<sup>st</sup> appellant's credibility. In my judgement, it would then be impossible to conclude that he had told the truth about his arrest and detention; or his reasons for leaving Sri Lanka. This would lead to a conclusion that he was of no interest to the Sri Lankan authorities; and that it was safe for him to return. On the other hand, if I find that the arrest warrant is a genuine document, then, in my judgement, applying GJ, I must conclude that the 1<sup>st</sup> appellant is at risk upon his return. Further, the likely treatment he would receive during any period of further detention (after having absconded) would be such as to entitle him to asylum and humanitarian protection. I will therefore consider the question of the arrest warrant first.

33. I must consider whether the DVR is a report upon which I can rely. I am concerned that the only enquiries made on behalf of the respondent were directed to the TID: that is the very organisation which the appellant claims to be afraid of; there is ample evidence in GJ and elsewhere that TID is the branch of the Sri Lankan government is most involved with human rights abuses. If it is the case that TID has issued a warrant for the appellant's arrest, that organisation would fully understand the implications of an enquiry made by the British High Commission; the organisation would know that if the existence of an arrest warrant was confirmed it would make it less likely that the subject of the warrant would ultimately be returned to Sri Lanka; thus TID's intentions would be frustrated. There is therefore no incentive for TID to provide an accurate

response to such enquiries. In my judgement, it would have been sensible for the respondent to make enquiries of the court; or to instruct independent agents or staff from the High Commission to visit the court and establish for themselves whether the documents exist.

34. I have available written evidence from two Sri Lankan attorneys: the professional integrity and credibility of those individuals has not been questioned; I allow for the possibility that somehow J may have deceived Mr Rathnayake; but J was not involved at all in the evidence obtained from Mr Liyanage.
35. In the circumstances, on the balance of probabilities, let alone on the application of the lower standard of proof, I am satisfied that there is an arrest warrant pertaining to the 1<sup>st</sup> appellant. Accordingly it is highly likely that his name will appear on a 'stop-list' and that upon return to Sri Lanka he will be arrested and detained at least for further interrogation.
36. In my judgement, if the 1<sup>st</sup> appellant was to return to Sri Lanka he faces further detention and torture. I have no doubt that he is entitled to asylum and to humanitarian protection. To return him to Sri Lanka would also be a breach of Section 6 of the Human Rights Act 1998 – it would violate his rights under Article 2 and Article 3 ECHR.
37. For the sake of completeness I have given consideration to the other aspects of the appellant's account; I note the suggested inconsistencies identified by the respondent (Paragraph 27 above); I also take account of the provisions of Section 8 (Paragraph 28 above); but I have had the advantage of listening to the 1<sup>st</sup> appellant given evidence; I questioned him myself; and I found him to be a wholly credible and truthful witness. In my judgement, the fact of his previous arrest and detention; and his well-founded fear of a repetition; would entitle him to asylum even if there were no arrest warrant."

#### Submissions on Error of Law

10. The respondent challenged the decision of First-tier Tribunal Judge Gaskell on the following bases:
  - (a) The First-tier Tribunal had erred in its approach to the arrest warrant. The document was considered in isolation from the evidence as a whole, the statement at [32] that the appeal really turned only on the arrest warrant was not correct where the respondent had raised other potentially material concerns about other aspects of the case.
  - (b) The reasoning was inadequate. The First-tier Tribunal had not indicated why the respondent's concerns about, for example, the appellant not claiming asylum for 7 years after coming to the UK and only after being arrested was not found to carry weight, paragraph [37], in particular, containing inadequate reasoning for finding the appellant to be a "wholly credible and truthful witness".

11. At the hearing before me, Ms Anzani maintained that the First-tier Tribunal was correct to find that the existence of an arrest warrant requested by TID was sufficient to show a risk on return, referring to the Country Guidance case of **GJ and Others (post-civil war: returnees) [2013] UKUT 00319 (IAC)** at paragraph 7(d) of the head note in particular:

“(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

- (d) A person whose name appears on a computerised ‘stop’ list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a ‘stop’ list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.”

12. Ms Anzani also indicated that where the arrest warrant was requested by TID, even if it only referred to bail matters, that had to be sufficient to show a risk on return.

13. With regard to the respondent’s second ground Ms Anzani submitted that the First-tier Tribunal Judge at [33] gave sufficient reasons for rejecting the DVR. She also maintained that at [37] the judge had done enough by way of reasoning as to the appellant’s overall credibility and the other points made against him by the respondent including the point regarding a long delay in claiming. Miss Anzani relied in this regard on paragraphs [31] and [36] of the case of **JK v Secretary of State for the Home Department [2007] EWCA Civ 831**:

“31. These were findings of fact based on the appellant’s evidence which Judge Oliver found to be plausible. The degree of reasoning required to support a finding of fact must depend on the circumstances. If a judge disbelieves a witness in evidence, he must obviously state why he disbelieves it. If he believes a witness’s evidence, there may be not much more that the judge can say than to refer in summary to the main points advanced to the contrary, together with the witness’s response to them, in order to show that the judge has considered them, and to express his conclusion that he finds the witness to be credible.

...

36. Rejecting, as I would, the broad submission that it was the duty of the judge to pursue and address individually the particular points which the presenting officer had not pursued, I ask whether on the particular facts of this case the points identified by Judge Mather were of such obvious significance that the judge’s failure to address them amounts to a failure to give adequate reasons to support his decision accepting the credibility of the appellant. I would not accept that submission on the facts of this case. Whether the point made by the Secretary of State by reference to the particular extracts which he took from the appellant’s original interview was a particularly strong point was a matter of judgment.”

14. I was also referred to the following paragraph from **Tarlochan Singh v SSHD [1999]** EWCA Civ 1773:

“I have to say with respect that it might - and I say only might - be a criticism of the way in which the Special Adjudicator set out parts of his determination that it did not go into the attack on Mr Singh’s evidence and credibility as fully as some Adjudicators might have done. That however is a far cry from saying that for that reason, or for any other, his determination can be said to be perverse. The Special Adjudicator was quite clear that an important part of his analysis depended on his view of the applicant as a witness and he made that clear in two passages that I have already read.

The approach of the Immigration Appeal Tribunal, I have to say with respect, to some extent presents the matter in a way that undermines and gives insufficient weight to the Adjudicator’s assessment of Mr Singh as a witness. To complain that no reasoned basis was given for preferring Mr Singh’s evidence on those points really misses the point. The Adjudicator was entitled to say that he accepted Mr Singh’s evidence because, looking at the case as a whole, he found it credible. So far as reasoning is concerned, it is difficult to see how much further he could have gone. Certainly, in my judgment, the Immigration Appeal Tribunal was wrong to say, for the reasons they gave, that the conclusion was against the weight of the evidence or was perverse. They were wrong to criticise or differ from the Adjudicator on that ground.”

### Findings

15. It is my conclusion that the decision of First-tier Tribunal Judge Gaskell does contain an error of law such that it must be set aside to be remade.
16. Certainly, the arrest warrant was an important document and one, if found to be reliable, after consideration in the round, following Tanveer Ahmed [2002] UKIAT 00439\*, capable of showing a risk on return. The First-tier Tribunal judge here referred to Tanveer Ahmed\* at [12]-[13] but the reasoning at [32]-[37] of the decision does not apply the correct approach to the arrest warrant. The reasoning in [33] that the DVR was not reliable is not objectionable. The decision then goes on to find that the supporting evidence of the two Sri Lankan lawyers was sufficient for the arrest warrant to be found to be reliable. That is also uncontroversial in so far as it goes but the assessment then ends and no consideration is given to the wider evidence, specifically other credibility issues raised by the respondent. The First-tier Tribunal was clearly aware of some of those issues as they are set out at [27]-[28]. Consideration is not given to them until [37], however, after the conclusion in [35] on the arrest warrant.
17. Even if it were to be accepted that the consideration in [37] took place as part of the assessment of the arrest warrant and before a conclusion on that document was reached, the reasoning at [37] is not adequate. A judge does not have to address and give reasons on every aspect of a case, as indicated in the case law set out above, relied upon by the appellant. There is a requirement for points of “obvious significance” to be addressed, however. This decision at [37] does not indicate what reasons were found for not placing weight on the 7 year delay in claiming asylum, for example, a matter of “obvious significance” in my judgment. There is also

nothing indicating what the appellant's response to the points made against him was and why this led to the First-tier Tribunal finding him credible; see [31] of JK v SSHD.

18. The decision of the First-tier Tribunal is therefore in error in the approach to the assessment of the arrest warrant and adequacy of reasoning and must be set aside to be re-made *de novo*. The parties were in agreement that the case should be remitted to the First-tier Tribunal as the credibility findings must be re-made entirely.

**Notice of Decision**

The decision of the First-tier Tribunal discloses an error on a point of law and is set aside.

The appeal will be remade in the First-tier Tribunal before a judge other than Judge Gaskell. The appeal will be heard at Taylor House.

Signed 

Date: 16 August 2017

Upper Tribunal Judge Pitt