



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07842/2017

THE IMMIGRATION ACTS

Heard at Field House
On 25 May 2018

Decision & Reasons Promulgated
On 6 June 2018

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MRS F P
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel, instructed by Nag Law Solicitors
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Sri Lanka, has permission to challenge the decision of Judge Paul of the First-tier Tribunal (FtT) posted on 28 February 2018 dismissing her appeal against the decision made by the respondent on 8 August 2017 refusing her protection claim. The basis of the appellant's claim was that when she and her father sought to report the abduction of her uncle at a railway station to the police the latter treated them as persons suspected of involvement with the LTTE and when she and her mother sought to complain to the Red Cross and the Commission of Inquiry of

Lessons Learned and Reconciliation (CLLRC), a warrant was issued against her alleging she was a terrorist.

2. Two main grounds are advanced by the appellant. As Ms Anzani agreed, the principal contention is that the judge's approach was flawed since it treated as determinative of the assessment of the credibility of the appellant's account the fact that she had produced documentary evidence late. The other ground raised contends that the judge also erred by failing to consider whether there was a duty on the respondent to verify the appellant's documents.
3. Having considered the written and oral submissions, I am persuaded that the judge materially erred in law. Despite setting out at paragraph 20 that:

"20. The core issue in this case, of course, relates to the credibility of the appellant's account. That must be assessed in two ways. The first is in relation to the appellant's evidence, and whether the account provided can be seen to have at its core a credible and compelling element. The second relates to the circumstances in which the supporting documents were received."

the judge essentially collapsed his inquiry into one, considering that the circumstances in which the appellant's supporting documents were received entailed that her core account was not credible. Having noted in paragraphs 21 and 23 that the arrest warrant produced was issued in 2014 but not produced until September 2017 (i.e. a date after the respondent's refusal of her asylum claim), the judge concluded at paragraph 24 that:

"24. It follows, from what I have said above, that I consider that the core reliability of the appellant's account is fundamentally undermined by the fact that such relevant evidence was not obtained until after her asylum application had been refused. She clearly had the benefit of advice from an early stage. Furthermore, although of limited significance, it was surprising that no evidence was called by way of her husband to corroborate her account as to the circumstances of the threatening phone calls and other difficulties experienced in Sri Lanka. Bearing in mind that it is for the appellant to prove her case, it would have seemed an obvious course to try and adduce as much corroborative evidence as possible. I consider that the lack of that evidence is a further reflection on the core reliability of the appellant's case."

5. Nowhere, contrary to his own self-direction, did the judge examine the contents of the documentary evidence or consider whether it corroborated the appellant's account. Failure to carry out this task was particularly problematic in the appellant's case because the documentary evidence comprised not simply the arrest warrant/court documents but a letter from the Commission of Inquiry of Lessons Learned and Reconciliation (LLRC) and a Tamilnet news report confirming the disappearance of the appellant's uncle in February 2009.


6. It is possible to glean from the judge's decision that he did consider whether the appellant had given a satisfactory explanation for the lateness of the arrest warrant (noting at paragraph 22 that she had had a lawyer acting for her in 2014), but there is no indication he considered whether there was such an explanation for the other documents.
7. While accepting that the judge failed to examine the contents of the appellant's supporting documents, Ms Ahmad submitted that it did not amount to material error because judges cannot be expected to refer to every consideration. In this regard she sought to rely on a passage from the decision of McCombe LJ in **VW (Sri Lanka) [2013]** EWCA Civ 552 at [12]. I do not find that this passage assists her argument since it addresses failure to deal with particular matters "less fully". In the instant case the judge failed to deal with the contents of the documentary evidence at all. Certainly the judge was entitled to consider lateness of submission of documentary evidence as a relevant consideration (and indeed in relation to the arrest warrant it appears from questions 130 – 135 of the appellant's asylum interview that her evidence was that this warrant had actually been delivered to her home in 2014), but to treat it as determinative constituted a failure to consider the totality of the evidence. Plainly this failure was capable of having a material impact on the outcome of the appellant's appeal.
8. In light of my conclusion as regards the appellant's principal ground it is not necessary for me to rule on the appellant's other grounds. I am very doubtful that the appellant's documentary evidence falls into the category of evidence giving rise to a duty on the respondent to take active steps to verify it, but it must be a matter for the next Tribunal Judge hearing the case to consider whether the guidance given by the Court of Appeal in **PJ (Sri Lanka) v SSHD [2014]** EWCA Civ 1011 and **MA (Bangladesh) v SSHD [2016]** EWCA Civ 175 has any application in the appellant's case.
9. For the above reasons I set aside the decision of the judge for material error of law. I see no alternative to remitting it to the FtT (not before Judge Paul).

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

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify her or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed:

Date: 5 June 2018



Dr H H Storey
Judge of the Upper Tribunal