



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

Appeal Number: AA/08301/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 13 December 2018**

**Decision & Reasons
Promulgated
On 6 February 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

**KSM
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, of Counsel instructed by Nag Law Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant arrived in Britain in February 2011 on a student visa and thereafter received extensions of stay until March 2016, however her leave was curtailed in April 2014. In November that year she applied for asylum and her application was refused on 13 May 2015. The appellant appealed. Her appeal was heard in June 2016, but a successful application was made for permission to appeal and that decision was set aside by the Upper Tribunal in a decision promulgated on 20 December 2016. The appeal was remitted to the First-tier Tribunal and was heard on 3 January

2018 and dismissed. Permission was again granted to appeal further to the Upper Tribunal and in a decision promulgated on 1 November 2018 I set aside that decision. My decision is annexed to this decision.

2. I preserved two findings: that the appellant had been an attorney in Sri Lanka, and that she had represented applicants in applications to the courts on human rights issues. I directed that, save for those findings, the appeal be heard afresh in the Upper Tribunal. In these circumstances the appeal came before me on 13 December 2018.
3. The appellant qualified as an attorney in 2007. She stated that she represented applicants in approximately twenty human rights claims and named a number of those whom she had represented. She stated that she received anonymous, threatening phone calls telling her that she should not get involved in human rights work and should not represent Tamils. The Secretary of State was unable to trace court proceedings against the first person she said she represented, but could trace proceedings against others whom she said she had represented, but noted that two had still been detained in March 2013 and the third had been released in that month. It was after representing those three that she said that unknown people had come to her office and pointed a gun at her head and threatened that she would be killed.
4. She also referred to unknown people coming to the house where she was boarding and said that she had been “jumped on” and her room “trashed” and her documents, including cases which she had brought home from the office, set on fire. She said that she had reported this to the police, but she did not believe they had continued with their investigations.
5. She said that in 2009 she had returned to her home village as she had been given notice to vacate her office premises. She had continued to commute to Colombo but had not taken on other new clients apart from that relating to a Lasantha Wickamathunga who had published stories in his paper about the cases where she had represented and she felt under obligation to take on his case. She said that unknown people had come to her home when she had taken on the case. The Secretary of State, in the letter of refusal, pointed out that, as her work was not mentioned in his writings, there was no indication that she had been involved with Mr Wickamathunga.
6. The appellant had gone on to say that in April 2010 plain clothes officers from the CID had come to her family home and told her family that she should hand herself over. They had threatened to rape her sisters if they did not do so. They had fired shots in the house and left. The appellant then stayed with a friend in another town and at her senior lawyer’s house until she left Sri Lanka in February 2011. The family had moved during this time but the authorities found out where they were. She said that she had remained in Sri Lanka for ten months without being detected by the authorities.

7. The appellant also claimed that since she had been in Britain her sister had been threatened that if she wanted to carry on her university studies the appellant must return to Sri Lanka and also that somebody had attempted to kidnap the appellant's sister. She said that in January 2015 her brother had been taken away for questioning by the authorities and had not been returned.
8. The Secretary of State did not consider that the appellant was credible and therefore refused the application. It is of note that when interviewed the appellant said that she had never been arrested or charged, and asked if she had been subject to an arrest warrant she said she did not know, but it was highly likely that there was an arrest warrant because the authorities had been searching for her. However, before the first hearing of her appeal the appellant stated that she had discovered that a case had been filed against her in the Magistrates' Court in Colombo and a warrant issued for her arrest. Certain documents relating to that were produced, the first being described by the First-tier Judge as a report to the Magistrates' Court in Colombo made by a Senior Inspector of the TID on 9 June 2012, under reference number B6214/12, referring to the appellant's suspected activities in support of the LTTE. The report appeared to request an arrest warrant and a request for an order to the Controller of Immigration and Immigration to arrest her if she tried to enter the country.
9. A letter from an attorney in Sri Lanka was also produced. He said that he had been instructed by the appellant's father in January 2015 after the disappearance of her brother and that he had found that the authorities had filed an action against the appellant and that he had obtained certified copies of her case in the Magistrates' Court. These documents led to the appeal being adjourned briefly while the respondent obtained a document verification report which showed that on 9 February 2016 a written request was faxed to the Director of the TID, the apparent complainant, to ask whether a court case with the reference B6214/12 had been filed by the TID. The reply was that that reference did not relate to the TID and that no case had been filed by them.
10. The first First-tier Judge did not find the appellant's claim to be credible and in part relied on the verification report. When the appeal first went to the Upper Tribunal to a panel comprising the then President, Mr Justice McCloskey, and The Honourable Mrs Justice Whipple, sitting as a Judge of the Upper Tribunal, the Tribunal focused on the issue of whether or not it was appropriate that the respondent should have contacted the complainant in the action against the appellant, but concluded that in any event the judge had not made sufficiently clear findings of fact. The appeal was then remitted to the First-tier and it was the judgment of that second First-tier Judge which I set aside.
11. At the hearing of the appeal before me the appellant relied on three witness statements, the first being dated 10 November 2015, the second being dated 21 December 2017, and a further statement which was dated 6 November 2018. The first bundle of documents produced contained the

report to the Magistrate from a Senior Inspector of the Terrorist Investigation Division (TID) which gave considerable information about the assertion that the appellant had been involved in activities with "Sinhala Koti" which it was asserted was the Sinhala counterpart of the LTTE. The report argued that the appellant had misused her position as a lawyer in obtaining the release of LTTE suspects and that she had had connections with the LTTE since 2007. The report is detailed and ends with a request that an arrest warrant be issued. There is a copy of a letter from the Magistrate stating that he had issued a warrant of arrest and asked the Immigration Controller to arrest the accused if she tried to re-enter the country. There was also a report by the appellant's father, dated April 2010, about the harassment which he and his family had suffered. A further report, dated 4 June 2016 related to damage at the appellant's parents' house. There was a further affidavit from the appellant's mother relating to the harassment which the family had suffered and about the abduction of the appellant's brother.

12. In the second bundle there is a letter from an attorney in Delgoda in Sri Lanka who said that she had gone to the Magistrates' Court and spoken to the Chief Registrar who said that he had not passed any information to the High Commission and went on to say that she had found that the document provided was a true and accurate copy of the documents in the file of the court case number B/6214/12. The letter went on to say that the document verification report which alleged that the file B6214/12 had been filed for a "marriage-related offence" was completely wrong. Marriage-related offences would not carry the letter B. The document stated that the document verification report therefore could not be true. Further documents related to the human rights cases with which it was alleged the appellant had been involved.
13. The third bundle related to a further report from another lawyer in Sri Lanka setting out his visit to the Colombo Magistrates' Court, which again confirmed that the report had been filed by the TID. His report gave reasons why the document verification report might have said that that file related to a marriage-related offence, pointing out that there could have been a case number 6214 of 2012 relating to a claim for maintenance which was not related to the claim B/6214/12 which related to the report made by the TID. A copy of the warrant of arrest was also produced as well as a report to the Human Rights Commission regarding the abduction of the appellant's brother.
14. In cross-examination the appellant was asked by Ms Everett if she was instructing a lawyer in Sri Lanka about the charges against her. The appellant confirmed that she was, but that she was not aware that he had told the court specifically that she was in Britain. She stated that the fact that her home had been searched must have related to the court case and that she had therefore instructed the lawyer. She explained that she had not been aware of the original arrest warrant when she had made the claim for asylum because she had not been informed about it, and she had not instructed a lawyer then as she did not have any clear evidence as the

notice of summons had not been sent to her, nor had anyone received it on her behalf. She had only found out later through the lawyer that the warrant existed.

15. She said that she had been in hiding and so the police had not been able to arrest her before she left Sri Lanka. She described the circumstances in which she had given up the human rights work she was doing, although she stated that she had felt under moral obligation to carry on working on the case of Lasantha Wickrematunga after he was assassinated - because of the support that he had given to her she felt that she should support his editorial staff and his family. She accepted that she was not mentioned in any of his articles but said there was no reason why she should have been. No-one had as yet been convicted of his killing.
16. She was then asked about her marriage and why her husband had not given evidence - her reason was that he had cancer, and although he knew of her work, he would not know about individual cases. When she was in hiding in Sri Lanka he had known where she was, but she had not thought it necessary that he should give evidence regarding that period of her life. She stated there was a lawyer involved in trying to find what had happened to her brother but that no attempts had been made to publicise the disappearance because of her mother's poor health. The last time that the authorities had come looking for her had been in January 2015.
17. In summing up Ms Everett relied on the Reasons for Refusal Letter save for the preserved findings. She argued that the appellant had been vague about her situation stating that it was surprising that the lawyer she instructed had not thought of informing the authorities that she was in Britain. While she accepted that there had been many disappearances in Sri Lanka, this appellant had the added advantage of being Sinhalese and she suggested there was no real evidence of an arrest warrant in 2014. The country guidance case of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** referred to the Sri Lankan authorities having sophisticated intelligence and therefore they should have known that she had left the country. She also asked me to place weight on the fact the appellant's husband had not given evidence. The fact that the appellant was a lawyer did not mean that she would be at risk.
18. In reply Mr Martin relied on his skeleton argument and asked me to find that the respondent's verification reports were plainly deficient. He argued that there were clear reasons why it should be accepted that the appellant had a well-founded fear of persecution in Sri Lanka and that there was no reason why the TID should be trusted to give truthful evidence in respect of enquiries regarding arrest warrants for wanted individuals. He pointed out moreover, that there was evidence that the appellant had visited detainees and that she had assisted the Legal Aid Foundation and the Human Rights Centre of the Bar Association of Sri Lanka.

19. He referred to the risk categories in **GJ** and set out a considerable amount of case law regarding the approach to documents produced in immigration appeals. He argued there was clear evidence that should the appellant be detained on return she would suffer persecution for a Convention reason.

Discussion

20. The burden of proof lies on the appellant to show that there is a real risk that she would suffer persecution on return to Sri Lanka. I apply the detailed guidance set out by the Court of Appeal in the judgment in **Karanakaran v SSHD [2000] INLR 122**.
21. In considering this case the first question before me is what was the nature of the appellant's work in Sri Lanka and, secondly, was there a reasonable likelihood that that work could have led to the harassment she suffered before she left Sri Lanka. Thirdly, I must consider whether or not the documentary evidence produced showed that there was an attempt to obtain an arrest warrant against her and to put her on a stop list should she re-enter Sri Lanka, and fourthly, whether or not there is a real risk that she would face persecution on return.
22. I note the submissions of Ms Everett, but the reality is that the authorities would have known that the appellant was abroad and therefore I consider there was no particular reason why the appellant's attorney should have informed them of that, and secondly, that the appellant's husband did not give evidence. The reason given by the appellant is that he has cancer and that that would be stressful for him and he would not be able to state anything further. There is considerable evidence in the papers regarding the treatment which he is receiving, and I can therefore understand why she would not wish him to have the stress of giving evidence. Even so, I consider that that might have assisted her case. I note Ms Everett did not stress that the appellant was able to leave Sri Lanka on her own passport and I consider that she was right to do so.
23. I have preserved the findings that the appellant qualified as an attorney in Sri Lanka and that she dealt with human rights cases. There is considerable documentary evidence in the papers relating to the work which she undertook and moreover the respondent was aware of the arrests of some of those whom she said she represented, and indeed the death of Mr Wickrematunga. Indeed, I accept, having heard her evidence about her reasons for continuing with this case when she had effectively given up her other work. I can find no reason why her work should have been mentioned by him as he was dealing with the facts relating to the individuals who had been detained.
24. When considering whether or not she would face persecution on return harassment I take into account the guidance given in **GJ** which specifically states that:-
- “... (7)(b) Journalists (whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan

government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government”

are at real risk of persecution.

25. I note moreover those whose names appear on a computerised “stop list” accessible at the airport would be stopped and handed over to the appropriate Sri Lankan authorities. It is also clear from that decision that those who are detained do suffer persecution, and indeed also that disappearances “still continue and that the behaviour of the Sri Lankan authorities when they search for individuals of interest to them can be brutal”.
26. I now consider the events which took place after the appellant came to Britain. These relate both to visits to her home by the authorities and also to the abduction of her brother. I note the documentary evidence produced relating to the latter event, and in particular the police reports made by the appellant’s father and the affidavit of her mother. I consider that these, to an extent, provide corroborative evidence of what happened. In considering that evidence, however, I must consider the issue of whether the TID applied for a warrant to arrest the appellant or to put her on a stop list. When considering the documentary evidence I apply the principles set out in **Tanveer Ahmed**. There is considerable evidence relating to the credibility of the TID report and the documents flowing therefrom, indeed, not only is the TID report before me, but also of course the document verification report. The document verification report asserts that the TID report is not genuine, placing weight on the court number of the document and the assertions of the TID themselves that they had not made such a report. The reality is of course that the TID would have many reasons to deny that such a report was made and to assert that the report put forward was not genuine.
27. When I consider the issue surrounding the case number of the report I note the affidavits from the two attorneys instructed by the appellant. They refer to visits to the Magistrates’ Court and I have to consider whether or not the letters from the attorneys are dishonest, in effect that they are lying about the procedure followed and their assertions of what they were told by the court or, of course, that the letters themselves are a complete fabrication and are not genuine. In considering those documents I have to consider the very large number of documents which there are relating to the TID report and other court documents which were produced. I note the appropriate low standard of proof. I find, having viewed the documents in the round, and taking into account all the documentary evidence and the appellant’s evidence, as well as the background documentation relating to the human rights situation in Sri Lanka and the letters from the attorneys instructed by the appellant, and having considered the very detailed report and the comments of the TID thereon -and I would emphasise that it is clear from the TID report that the complaint was not merely that the appellant was acting for LTTE

supporters, but that she herself was involved in some way over and above her professional involvement with their cases, (although the TID report does not go into particular details of that)- I can only conclude that , on balance, the application for the arrest warrant by the TID including the application for the “stop order”, is genuine and therefore that there is an arrest warrant outstanding for the appellant and that she would be picked up on a return and then handed over to the authorities. I would add that taking that finding into account, and taking into account the statements of the appellant’s parents, I also find that there is a reasonable likelihood that her brother was picked up by the authorities. For or the above reasons, having set aside the decision of the Judge in the First-tier Tribunal I remake the decision and allow this appeal.

Notice of Decision

The decision of the Judge in the First-tier Tribunal, having been set side, I remake the decision and allow this appeal.

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: 31 December 2018

Deputy Upper Tribunal Judge McGeachy

Annex:

DECISION AND DIRECTIONS

1. The appellant appeals with permission against a decision of Deputy Judge of the First-tier Tribunal A A Wilson, who in a determination promulgated on 11 January 2018 dismissed the appellant's appeal against a decision of the Secretary of State made on 13 May 2015 to refuse her application for asylum.
2. It was accepted that the appellant was an attorney in Sri Lanka, representing people making human rights claims against the Sri Lankan government. The judge referred to the relevant country guidance case of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)** and correctly stated that applications made by those who had worked as lawyers in human rights claims required anxious scrutiny.
3. The judge dealt at some length on the issue of whether or not an attempt made by the respondent to verify a court document on which the appellant relied by approaching a court in Sri Lanka was appropriate and it appears that he placed weight on the fact that the verification report indicated that the court document was not genuine and disregarded the evidence of the appellant and members of her family, which had claimed that harassment of members of the appellant's family and damage to the appellant's property had taken place after she had come to Britain in 2011.
4. The determination contains a very large number of what can most kindly be described as typographical errors which means that it is difficult to understand what the judge is finding or to what he is referring. The incoherence of those various points is concerning. However, when the judge writes in paragraph 12:

"Overall I am satisfied that the appellant as a junior lawyer did assist and did take part in acting for persons accused of terrorist activities. I am satisfied however that this work the nature or confidence that places her now at a real risk on return."

Simply, that sentence is unclear and appears to contradict the other findings of the judge.

5. It is trite law that in a determination a judge should deal with all the evidence before him and should give reasons for his decision which can be understood by an appellant. That is clearly not the case here. While there are the typographical errors to which I have referred and indeed the fact that the judge does not appear to give reasons for disregarding the supporting evidence put forward by the appellant, what he writes in paragraph 12 simply does not make sense. Mr Tufan agreed that in these circumstances it was appropriate that the decision of the First-tier Judge should be set aside.

6. I therefore now, having found this error of law in the determination, set aside the judge's decision. Given that this appeal has already been considered once in the Upper Tribunal and remitted, it is appropriate that the appeal remain in the Upper Tribunal for further determination.

Directions

- (1) The decision of the judge in the First-tier Tribunal is set aside. The appeal will remain in the Upper Tribunal for a hearing afresh on all issues save that it is accepted that the appellant was an attorney in Sri Lanka who represented applicants in applications to the courts on human rights issues.
- (2) The appellant's Counsel must prepare a bundle of documents including any affidavit evidence on which the appellant wishes to rely as well as a skeleton argument setting out the appellant's case. The bundle and the skeleton argument must be served on the Tribunal and on the appellant's representatives fourteen days before the resumed hearing of this appeal.

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

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Signed: 

Date: 26 October 2018

Deputy Upper Tribunal Judge McGeachy