



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06298/2019

THE IMMIGRATION ACTS

Heard at Field House
On 10th February 2020

Decision & Reasons Promulgated
On 3rd March 2020

Before

UPPER TRIBUNAL JUDGE COKER

Between

NV

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Miszkiel, instructed by Greater London Solicitors Ltd
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. 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 appellant in this determination identified as NV. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings

1. The appellant, a Sri Lankan national, was granted permission to appeal a decision of the First-tier Tribunal dismissing his appeal against a refusal of his international protection and human rights claims. First-tier Tribunal judge Bristow dismissed his appeal for reasons set out in a decision promulgated on 3rd October 2019.
2. The appellant had previously claimed asylum, that claim being refused, and his appeal dismissed by First-tier Tribunal judge Gurung-Thapa for reasons set out in a decision promulgated on 3rd March 2014.

Error of law

3. The appellant relied upon five grounds of appeal.

Ground 1

4. The appellant had submitted evidence to the First-tier Tribunal of his *sur place* activities with and membership of the TGTE. Mr Melvin accepted that there was no reference to the TGTE in the First-tier Tribunal decision but that the evidence relied upon was one letter which was flimsy and lacking in detail; that no-one from the organisation had attended, his activity such as it may have been was some considerable time ago and no detailed submissions were made.
5. In fact the evidence before the First-tier Tribunal consisted not only of the letter but also various news articles. The skeleton argument relied upon by the appellant before the First-tier Tribunal listed the supporting *sur place* activity documents and made detailed submissions.
6. It may be that the activity was some time ago and the First-tier Tribunal judge may have had reasons for placing little or no weight upon it; but the evidence was there. It was relied upon by the appellant as a significant element of his asylum claim and that evidence should have been assessed by the judge in reaching his findings.
7. The First-tier Tribunal judge erred in law in failing to address what was a significant part of the appellant's evidence.

Ground 2

8. The appellant had produced various letters in support of his claim that there was an outstanding arrest warrant. The First-tier Tribunal judge considered those documents as follows:
 30. The appellant seeks to rely again on documents that were before the Tribunal in the earlier appeal, particularly the documents referred to in ... Those have previously been found to be unreliable.
 31. The appellant additionally relies upon documents that are dated after the last hearing. The first is a letter from T.Sivanathan, Attorney at Law dated 01 June 2017....The writer states that he has examined the file for case number B/943/13 in the Record room at Batticaloa Magistrates Court and that the arrest warrant for the Appellant is still "alive". The second is another letter from T Sivanathan, Attorney at

Law dated 18th January...in which he refers to three letters dated 20 November 2013, 10 January 2014 and 01 June 2017 (the first new letter I have referred to above.) He confirms that the documents and enclosures are genuine.

32. I find that these documents are not reliable. The two letters dated 20 November 2013 and 10 January 2014 pre-date the earlier hearing. The judge considered a receipt in the name of T Sivanathan at the earlier hearing [85]. [In fact the documents were considered by that first First-tier Tribunal judge in [82, 83 and 84]¹]. The judge found the documents produced in that hearing to be unreliable. I am not satisfied, even to the lower standard, that a subsequent letter from the same author, previously named in unreliable documents, remedies that deficiency. Moreover, it is clear from the High Commission letter referred to by the earlier judge that it is difficult for copies of arrest warrants to be obtained by an accused and that forged documents are readily available.
 33. The Appellant additionally relies on the letter of K Yogeswaran dated 27 January 2018...This does post-date the earlier hearing. I find I can attach little weight to this document. It has appeared in the proceedings, by which I mean the proceedings commenced by the asylum claim on 30 October 2013, very late. It refers to a case which was apparently filed in Batticaloa Magistrates Court before the previous Tribunal hearing. It adds little if anything to the evidence already considered by the Tribunal at the earlier hearing. Again I also keep in mind the letter from the High Commission. I do not find this letter to be reliable.
9. The appellant submitted, relying on *PJ (Sri Lanka)* [2014] EWCA Civ 1011, the First-tier Tribunal had failed to engage with the content and provenance of the letters relied upon. In particular he submitted
- (a) The history of the documents was relevant: the first letters before the First-tier Tribunal had been obtained by lawyers other than those instructed by the appellant in this claim and appeal;
 - (b) Correspondence in this instance was sent 'lawyer-to-lawyer' and not through other parties;
 - (c) There is no allegation that any of the lawyers were either not qualified or were engaged in 'discreditable conduct';

¹ 82. ...There is a letter from the registrar of the Magistrates Court in Batticaloa confirming that they attached a certified copy taken from the complete file of Case no 934/13 of the Batticaloa Magistrates Court....The next document is entitled 29/04/2013....it is said to be written by the Officer-in-Charge of the Special Unit for Prevention of Terrorism attached to the Batticaloa police station reporting that the Special Task Force arrested (on suspicion) a person called Mathan Fernando ...and handed him over to the police station on 28/04/2013. It asserts that upon enquires it came to light that one of his close contacts was [NV] ...and that he had used him to carry out terrorist activities in the region for the LTTE. The information asserts it is now necessary to arrest [NV] who had committed crimes ... An arrest warrant was requested from the court against [NV] and the first suspect namely Mathan Fernando was remanded in prison.

83. The other document is the summons...This indicates that Mathan Fernando was remanded until....and further remanded on 24/06/2013. In respect of [NV] as arrest warrant was requested on 29/04/2013, on 27/05/2013 and for an open warrant on 24/06/2013. The arrest warrant dated 24/06/2013 appears....There is a cash receipt in the name of T. Sivanathan indicating that the amount of 18 rupees was paid on 06/02/14 for the certified copy in Case B/934/13...I note at paragraph 10.19 [of the 2012 COIR report] it is reported that a court summons can be obtained fraudulently and at Sections 27.01 and 27.02 it again refers to the correspondence from the British High Commission which states that due to the high level of corruption at all levels forged and fraudulently obtained official documents can be obtained...

84. I find [these documents] are no more reliable than the appellant's account. I am satisfied that they provide no support or corroboration for the appellant's claim.

- (d) The current lawyers had contacted the writer of the first letters and obtained confirmation direct from him;
 - (e) Both lawyers' professional details were either produced or found on the Sri Lanka Bar Association website;
 - (f) The appellant's evidence in relation to the circumstances that led to the arrest warrant is consistent with the documents.
10. Mr Melvin submitted the appellant's case did not fall within *PJ*, that the judge had approached the documents correctly and there was no error of law.
11. *PJ* is not authority for the proposition that the involvement of lawyers creates a rebuttable presumption that documents 'across borders' are reliable. But detailed consideration does have to be given to the source of the documents relied upon. In [41] the Court of Appeal referred to the route by which the documents in that case were obtain namely the source was the court in Sri Lanka obtained by two independent lawyers who sent them directly to the solicitor in the UK. *PJ* goes on to state that
- 41.In the absence of a sufficient reason for concluding otherwise , the inescapable conclusion to be drawn from this material – retrieved independently, it is to be stressed, by two lawyers from the Magistrates court on separate occasions – is that the appellant will be arrested on his return to Sri Lanka.....without an adequate explanation, it is difficult to understand how the appellant could have falsified a letter from the Magistrate of the relevant court to the Controller of Immigration and Emigration ordering the appellant's arrest which he then placed in the court records so that it would later be retrieved by two separate lawyers....
12. Neither the First-tier Tribunal judge nor Mr Melvin submitted that the lawyers involved and referred to were in any way discreditable. The burden of proof is of course not on the respondent to prove that documents are in some way falsified or unreliable. But the First-tier Tribunal judge simply did not address how the documents could have been falsified or be unreliable in the circumstances of two separate independent lawyers corresponding with two different sets of UK solicitors. The fact that forged documents are available in Sri Lanka is not justification for the conclusions that the documents obtained in the circumstances in which these documents were obtained are false or unreliable.
13. The First-tier Tribunal judge erred in law in failing to consider the evidence regarding the documents in the round in the particular circumstances in which they were obtained.

Ground 3

14. The appellant submits the First-tier Tribunal judge erred in his consideration of the medical evidence in concluding that although the appellant is suffering from PTSD, he has not proved to the lower standard that it was caused by his arrest and detention.
15. The report by Dr Halari refers to earlier reports which include attempted suicide and disappearance. It is also to be noted that the appellant was found unfit to

give evidence. The medical evidence that the First-tier Tribunal judge has not referred to includes a scarring report.

16. The appellant submitted that on arrival in Sri Lanka he would, irrespective of other matters be questioned. The scale of his mental health problems are such that he either would not answer or his answers would be confused. This would inevitably lead to second stage questioning.
17. Mr Melvin submitted that the First-tier Tribunal judge had dealt with the medical evidence adequately; the reports referred to in the most recent medical evidence pre-dated the first First-tier Tribunal when the first First-tier Tribunal decision was taken.
18. The First-tier Tribunal judge's consideration of the medical evidence in the context of an asylum claim is lacking. The judge does not refer to the appellant's scars. That Dr Halari finds it difficult to identify the actual causes of the appellant's mental health problems does not mean that they should not be addressed both holistically in terms of the appellant's overall claim and in terms of the impact of these issues on return to Sri Lanka and probable questioning.
19. The First-tier Tribunal judge erred in failing to approach the medical evidence as a whole and as a part of the assessment of the asylum claim.

Ground 4

20. The appellant submitted the First-tier Tribunal judge failed, in referring to the appellant's stabilising family, to factor in the actual medical evidence; failed to consider the impact of questioning on return, failed to recognise and factor in the appellant's cognitive difficulties and failed to consider GJ and the level of medical facilities available in Sri Lanka.
21. Mr Melvin did not address this directly save that he submitted the judge had dealt with the evidence adequately.
22. I do not agree with Mr Melvin. There has been a failure by the First-tier Tribunal judge to consider and reach a reasoned decision on the medical evidence overall and its impact both in terms of the asylum claim and Article 3.

Ground 5.

23. The appellant made limited submission on Article 8 save that she submitted the judge had, because of the other errors, failed to adequately address Article 8. She confirmed that in the event that the appellant succeeded on one or any of the other grounds, it was her submission that the appellant succeeded on that ground as well.

Discussion

24. The First-tier Tribunal decision has numerous errors of law as set out above. They are significant and go to the heart of the decision on the appellant's claim.
25. I set aside the decision to be remade.

Remaking the decision

26. The appellant would, on arrival in Sri Lanka be questioned. His mental health is such that either he would not answer questions, or the answers to questions would elicit information about his involvement with the TGTE albeit some considerable time ago. Even if the appellant is selectively and voluntarily mute and could, in circumstances that he would anticipate cause him harm, be expected not to behave so, there is evidence of past involvement with the TGTE even if the letter is ignored and even though it is some time ago.
27. The evidence supports a finding that there is an arrest warrant; to conclude otherwise would fly in the face of the evidence that has been produced. The independent evidence from the lawyers, sent separately to two separate UK lawyers would have involved extensive, deliberate and co-ordinated deception being exercised by a number of individuals both in the UK and in Sri Lanka.
28. It follows that I remake the appeal on international protection grounds and allow it.
29. In the light of my findings on international protection, I allow the appeal on human rights grounds.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision

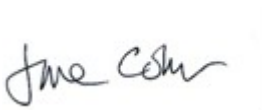
I re-make the decision in the appeal by allowing it.

Anonymity

The First-tier Tribunal made an order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008).

Date 19th February 2020



Upper Tribunal Judge Coker