



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/12707/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided under rule 34 (P)**

**Decision & Reasons Promulgated**

**On 24 September 2020**

**On 29 September 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEKIĆ**

**Between**

**C N R**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

**Representation (by way of written submissions)**

**For the appellant: No submissions received**

**For the respondent: Mr E Tufan, Senior Home Office Presenting Officer**

## **Background**

1. This appeal comes before me following the grant of permission to appeal to the appellant by First-tier Tribunal Judge Gumsley on 7 April 2020 against the determination of First-tier Tribunal Judge Samimi, promulgated on 26 February 2020 following a hearing at Hatton Cross on 29 January 2020.
2. The appellant is a Sri Lankan national born on 19 April 1988. He entered the UK as a Tier 4 student in February 2009 and obtained extensions of leave until 15 September 2017 although his leave was curtailed on 11 March 2016 to expire on 15 May 2016 after he made an unsuccessful application under the EEA Regulations on the basis of a relationship with a Romanian national. His appeal was dismissed in June 2016 and he was served with removal directions thereafter. He failed to report and was treated as an absconder. In October 2019 the appellant was encountered during an enforcement operation and detained and served with an IS.19. He claimed asylum the following day. The application was refused on 18 December 2019, giving rise to these proceedings.
3. Judge Samimi did not believe the appellant's claim and concluded that the claim was a fabrication. Accordingly, she dismissed the appeal.
4. The grounds argue that the judge erred on three counts: (i) by maintaining that the appellant had not given oral evidence when he had; (ii) by making sweeping adverse credibility findings without proper reasoning; and (iii) by rejecting the appellant's documents because she had found that he was not credible.
5. Permission was granted on the third ground. Although the others were found to be weak, permission to argue them was not withheld.

## **Covid-19 crisis: preliminary matters**

6. The usual procedure would then have been to list the matter for hearing but due to the Covid-19 pandemic and need to take precautions against its spread, this did not happen and instead directions were sent to the parties on 18 May 2020. They were asked to present any objections to the matter being dealt with on the papers and to make any further submissions on the error of law issue within certain time limits.
7. No response was received from either party within the set time limits so on 31 July further directions were sent out giving the parties a further opportunity to reply. This time submissions were received from the respondent dated 13 August 2020 but to date no correspondence has been forthcoming from the appellant. I note that the respondent's submissions were also forwarded to the

appellant. Having satisfied myself that the appellant has now had three opportunities to comply, I proceed to consider the matter in the absence of his submissions.

8. In doing so I have regard to the Tribunal Procedure (Upper Tribunal) Rules 2008 (the UT Rules), the judgment of Osborn v The Parole Board [2013] UKSC 61, the Presidential Guidance Note No 1 2020: Arrangements during the Covid-19 pandemic (PGN) and the Senior President's Pilot Practice Direction (PPD). I have regard to the overriding objective which is defined in rule 2 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as being "*to enable the Upper Tribunal to deal with cases fairly and justly*". To this end I have considered that dealing with a case fairly and justly includes: dealing with it in ways that are proportionate to the importance of the case, the complexity of the issues, etc; avoiding unnecessary formality and seeking flexibility in the proceedings; ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; using any special expertise of the Upper Tribunal effectively; and avoiding delay, so far as compatible with proper consideration of the issues (Rule 2(2) UT rules and PGN:5).
9. I have had regard to the grounds, the determination, the submissions and to all the evidence before me before deciding how to proceed. A full account of the facts are set out in the papers on file and the issues to be decided are straightforward. There are no matters arising from the papers which would require clarification and so an oral hearing would not be needed for that purpose. I am satisfied that the appellant has been given several opportunities to make any further submissions on his case but has not done so. I am satisfied that I am able to fairly and justly deal with this matter on the papers before me and I now proceed to do so.

### **Submissions**

10. Mr Tufan's submissions for the respondent are dated 13 August 2020. he sets out the many detailed adverse credibility findings the judge made in her determination and submits that these were made on the totality of the evidence. He distinguishes the case from Mibanga ['2006] EWCA Civ 1153. He submits that the reference to the appellant not having given evidence was a typographical error as the judge later sets out the oral evidence. He urges the Tribunal to find that the determination contains no material errors and to uphold the decision to dismiss the appeal.

### **Discussion and conclusions**

11. I have considered all the evidence, the grounds for permission, the determination and the submissions for the respondent.

12. The appellant puts forward three complaints although the second and third ground overlap as they both pertain to the judge's assessment of the evidence. The first is that anxious scrutiny was not given to the matter because at paragraph 10 the judge states: "*The appellant did not give evidence*" when in fact he had done so. This ground is without any merit. It is plain from the determination that the judge was aware that the appellant had given oral evidence as this is acknowledged and set out at paragraph 17. The sentence at paragraph 10 is clearly a typographical error and although regrettable it does not support the contention that anxious scrutiny was not given to the claim particularly in the absence of any other examples of why this is said to be the case.
  
13. I turn now to the complaints regarding the judge's assessment of the evidence but find that there is nothing in them to render the determination unsustainable. The judge confirms repeatedly that she considered the evidence as a whole before making her findings (at 10, 23, 28 and 30). She commences her decision making at 18 and makes the following adverse credibility findings: (i) that the authorities would not have arrested the appellant for selling explosives from his vehicle to the LTTE without any search of the said vehicle; (ii) that the appellant would not have been suspected of such an offence when the premises where he worked were not searched and that his father who owned those premises was not questioned; (iii) that he had sustained no injuries despite his claim of having been beaten and ill treated for two days; that if the appellant had been arrested but released for the same reason a year earlier, it was not credible that he would have been re-arrested without any interest shown in him in the intervening period; (iv) that the appellant would not have been able to leave Sri Lanka through the proper channels with a UK visa had he been of interest to the authorities and been on a stop list; (v) that had his claim been genuine, he would not have voluntarily returned to visit Sri Lanka four years later and encountered no problems at the airport on either his arrival or departure or during his period of stay; (vi) that the appellant had given conflicting accounts of where the alleged argument with his uncle over family land had taken place; (vii) that the issue of an arrest warrant following his uncle's decision to report him to the authorities (following a family land dispute) was not credible because by doing so he was risking disclosure of his own previous involvement with the appellant's release and jeopardising his position in the CID and risking his own safety; (viii) that this was even more unlikely because the uncle had already taken over the land which he and the appellant allegedly argued about; (ix) that the appellant did not know when in 2015 the arrest warrant was issued; (x) that despite claiming that the warrant was issued in 2015, he did not ask his parents to arrange for the attorney to send it to him until 2019 and that he did not claim asylum until after his arrest for overstaying in 2019. The judge applied Tanveer Ahmed to the

consideration of documents. She found he did not fall into any or the risk categories of GJ (Sri Lanka) CG [2013] UKUT 00319.

14. There is nothing in the judge's assessment to suggest that she rejected the documents because she had already found the appellant had fabricated his claim. It is plain that she had considered the totality of the evidence and that she came to her conclusions on that basis. Her findings are comprehensive and do not justify the complaint that no reasons were given. From the numerous findings set out at 18-30, it should be perfectly clear to the appellant why he lost his appeal.
15. No article 8 claim has been pursued.

**Decision**

16. The decision of the First-tier Tribunal does not contain any errors of law and it is upheld. The appeal is dismissed.

**Anonymity**

17. I continue the anonymity order made by the First-tier Tribunal.

Signed

R. Kekić  
Upper Tribunal Judge

Date: 24 September 2020