



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-001040

First-tier Tribunal No: PA/02988/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 25 July 2023

Before

UPPER TRIBUNAL JUDGE FRANCES
DEPUTY UPPER TRIBUNAL JUDGE JARVIS

Between

NDPL
(ANONYMITY ORDER 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 A. Nolan (Senior Home Office Presenting Officer)

Heard at Field House on 10 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant and any member of his family are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the Appellant and/or any member of his family. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of Judge Dineen (hereafter “the Judge”) who dismissed the Appellant’s international protection appeal by way of a judgment promulgated on 10 November 2021; permission to appeal to the Upper Tribunal having been given by Upper Tribunal Judge Lindsley on 18 May 2022.
2. In the grant of permission, the Upper Tribunal Judge considered that it was arguable that the First-tier Tribunal Judge’s reasoning in respect of his rejection of the documentary evidence provided by the Appellant was inadequate (at para. 61).

The appeal to the Upper Tribunal

3. In summary form, as the Appellant is legally represented and is aware of the decision under appeal, the Judge recorded the Appellant’s claim to have witnessed a white van abduction of a man called Mr T on 8 October 2008 (see para. 16 of the judgment).
4. The Appellant claimed to have approached the human rights commission in Sri Lanka on 9 July 2009 in order to lodge a complaint and provide a statement about the abduction and subsequent murder.
5. On 21 July 2009, the Appellant claims that police officers came to his house and required him to accompany them to the police station for questioning; during that time, he was threatened that he should not make a complaint about the police (para. 27).
6. The Appellant further claims that he was released by the police the following day on a monthly reporting condition which was subsequently varied to three monthly reporting but that he breached the terms of his release when he travelled to the United Kingdom.
7. The Appellant asserts that he approached the Lessons Learnt and Reconciliation Commission (“LLRC”) on 5 November 2010.

The judgment

8. Having reminded himself of the lower standard of proof at para. 42, the Judge then laid out his findings of fact from para. 44 onwards. In those subsequent paragraphs the Judge noted a series of adverse credibility issues in the evidence including by comparison of the Appellant’s claim to the content of the two TamilNet reports:
 - a. The TamilNet reports make no reference to the Appellant notwithstanding that he claims he was the sole eyewitness to the abduction (para. 44).

- b. The report also indicated that the abduction occurred on 9 October 2008 whereas the Appellant stated that this occurred on 8 October 2008 (para. 44).
- c. The report also records that complaints were made by Mr T's mother and wife to the police on 10 October 2008 which conflicted with the Appellant's evidence that it was he and his wife who went to the police on 8 October 2008 and that Mr T's wife went on 9 October 2008; the Appellant had made no mention of Mr T's mother being involved (para. 45).
- d. The death certificate relied upon by the Appellant records the name of Mr T's mother as ST but the TamilNet report named her as AS (para. 46).
- e. There was no reference in the cause of death form to the second TamilNet report's record that Mr T's post-mortem was carried out at the Negombo teaching Hospital (para. 47).
- f. There was also a difference between the second TamilNet report in respect of when the body was discovered in comparison to the Appellant's evidence, the first TamilNet article, the cause of death form and the death certificate (para. 48).
- g. The Judge also noted a discrepancy in the Appellant's evidence as to when it was that he lodged a complaint with the Human Rights Commission (either being 9 July 2009 or 9 June 2009) and the Appellant had no explanation as to why he was not given a subsequent appointment when he was not able to return to the commission on 30 July (para. 49).
- h. The Appellant also gave different dates for his arrest between the screening interview (15 July 2008 until 9 July 2009) which was corrected to 15 July 2009 by his solicitors, in comparison to question 89 of the asylum interview (conducted on 4 December 2019) in which he said that this occurred on 9 July 2009 and also by comparison to his appeal witness statement in which he gave the date as 21 July 2009 (para. 50).
- i. The Appellant initially stated that he had been required to report to the authorities on a three-monthly basis but then altered his evidence after the production of the "B report" (a report of an offence by the Criminal Investigation Department (stamped on 6 September 2022)) in June 2021. The Judge also noted that despite Mr H (the Appellant's lawyer in Sri Lanka) having sought the documents from the court in Sri Lanka there was no official record of the Appellant's bail condition being varied from one month intervals to 3 month intervals (para. 51).

- j. The Judge also noted discrepancies in the Appellant's evidence as to when it was that the authorities visited his home in Sri Lanka (para. 52).
 - k. The Judge also expressed concern that it had taken the Appellant nearly 10 years to gather official documents after his mother approached Mr H on 3 September 2020 notwithstanding that the Appellant's evidence was that Mr H had acted for him as long ago as 2010 when he made his statement to the LLRC (para. 53).
9. In the latter paragraphs of the judgment, the Judge reiterated his concerns as to the absence of any reference to Mr T's mother as eyewitness to Mr T's abduction in the TamilNet reports (para. 55). The Judge also took into account that inconsistencies in the evidence might arise due to the lapse of time between the events claimed and when the evidence was given (para. 56).
10. The Judge however concluded that it was not credible that the Appellant would have forgotten that he was initially required to report monthly or that he would think it unnecessary to mention this in his statement bearing in mind that he claims to have felt oppressed by what he took to be official surveillance (para. 57).
11. The Judge also considered that it was not credible that the Appellant would have engaged with the LLRC after his difficulties with the authorities having previously involved himself with the Human Rights Commission in such a way as to jeopardise his potential escape route from the country (para. 58).
12. The Judge also applied section 8 of the 2004 Claimants Act and concluded that the Appellant had not given a reasonable explanation for why it had taken him 7 ½ years to claim asylum after arriving in the UK. In making that finding, the Judge expressly rejected the evidence that the Appellant delayed in the hope that his wife's claim might be successful; and also rejected his evidence that he would have been deterred from claiming asylum because of the advice of his wife's uncle and that, at the very least, he would have sought professional advice (para. 59).
13. At para. 60, the Judge sought to bring together all of the evidence in the round and concluded that neither the Appellant nor his wife were credible witnesses in respect of the asylum claim.
14. At paragraph 61 the judge said:
- "[f]or the same reasons, I am not satisfied that any weight should be attached to the documents produced by the Appellant's lawyer in Sri Lanka."*

The Grounds of Appeal

15. In the Grounds of Appeal settled by Ms Anzani on 24 November 2021, the Appellant contends that the Judge materially erred when rejecting the core of the credibility of his international protection claim.
16. In the hearing, Ms Anzani spoke to the Grounds which ultimately criticise the Judge for failing to either directly consider or to meaningfully assess the documentary evidence provided by the Appellant: this evidence consisted (inter alia) of a letter from the LLRC to the Appellant dated 15 November 2010 confirming the receipt of his statement relating to the disappearance of Mr T; a letter from Mr H confirming that he had assisted the Appellant in his approach to the LLRC in 2010 with a further assertion that an arrest warrant had been issued against the Appellant.
17. There was also a separate B report produced by Mr H which had been filed against the Appellant as well as a copy of the arrest warrant in question issued by the Columbo Magistrates Court.
18. Ms Anzani particularly emphasised the absence of any direct finding by the Judge in respect of the arrest warrant and the B report as provided by Mr H.
19. Before us Ms Anzani did not seek to challenge any of the other findings from para. 44 onwards but asserted that they were materially infected by the Judge's failure to properly assess the documentary evidence and provide adequate reasons.

Findings and reasons

20. In respect of the Appellant's criticisms of the Judge's decision as they are detailed in the written grounds of appeal and as developed orally before us by Ms Anzani, we have ultimately concluded that there are no material errors.
21. In assessing the Appellant's challenge we have kept in mind the Court of Appeal's recent summary of the principles to be deployed when assessing an appeal against a Judge's findings of fact in T (Fact-Finding: Second Appeal) [2023] EWCA Civ 475 at §57.
22. In this appeal the issue effectively boiled down to two sets of competing evidence: the evidence of the Appellant and his wife, (as well as the documentary evidence which we have already referred to) and the evidence contained in the Respondent's main bundle and, importantly, the supplementary bundle.
23. In the Respondent's supplementary bundle are two TamilNet news reports: the first report is dated 11 October 2008 and records that Mr T was abducted on Thursday, 9 October 2008; the second report is also from TamilNet (dated 22 October 2008) which records that Mr T had been found dead.

24. The Respondent's case was that the two TamilNet reports did not support or corroborate the Appellant's account to have been the sole eyewitness to the abduction of Mr T in October 2008.
25. In considering the Appellant's challenge to the way in which this Judge considered the documents produced by the Appellant, especially those emanating from Sri Lanka, we note that the Judge was required by law to consider all of the evidence in the round and apply the lower standard of proof.
26. The public law requirement was for the Judge to give sufficient reasons to explain why he had decided the case against the Appellant when looking at the issues materially in dispute between the parties as per South Bucks District Council v. Porter [2004] UKHL 33, [2004] 1 WLR 1953.
27. We are satisfied that the judge did lawfully apply Porter and Tanveer Ahmed; we find that he gave sufficient reasons to discharge the legal duty upon him.
28. Firstly, we note that the Judge made a clear list of the relevant documents produced by the Appellant at paragraph 12 of the judgment and so it cannot be said that the Judge was unaware of the arrest warrant.
29. We accept that it may have been preferable for the Judge, for the sake of completeness, to have made reference to the weight to be attached to the arrest warrant but we conclude that the series of findings which we have summarised above were sufficient to explain why the Appellant's credibility was being rejected at the lower standard and why this also impacted materially upon the weight to be attached to the documents emanating from Sri Lanka.
30. Secondly, it is clear that there are discrepancies in the Appellant's evidence as highlighted by the Judge in the paragraphs which we have summarised above and this was fairly accepted, to some extent, by Ms Ansari in her submissions by reference to paragraph 51 of the judgment. We also note that the Appellant has not otherwise challenged those findings other than to the extent explained in this decision.
31. The Judge also recognised that there was some discrepancy between the two TamilNet reports (see para. 48) and specifically noted the Appellant's submission that the TamilNet reports at least corroborated the Appellant's narrative to some extent: that being that there had been an abduction and murder as claimed.
32. Overall, we find that the Judge did not unlawfully excise the documentary evidence from the assessment of the Appellant's oral evidence and his core claim. Whilst para. 61 read in isolation does not conform with the principles in Tanveer Ahmed, we nonetheless accept the submission from Ms Nolan that the judgment must be read as a whole.

33. Taking that approach, we conclude that the Judge did give sufficient reasons in totality for making an adverse finding as to the core of the Appellant's (and his wife's) evidence and was entitled to factor into that assessment the further adverse points: that it had taken the Appellant 10 years to obtain the documentary evidence from Sri Lanka; the very significant delay in the Appellant claiming asylum (7 ½ years) which had not been reasonably explained and the various discrepancies including between the Appellant's account/evidence and the TamilNet reports produced by the Respondent which were not themselves challenged in terms of their reliability by Ms Anzani.
34. We note that in her submission, Ms Anzani indicated that she was not suggesting that the TamilNet reports were unreliable but that they were just not in accordance with the Appellant's timeline. She also submitted that the Appellant had been careful because he was Sinhalese and the victim was Tamil; he had not been interviewed by the newspaper and did not live in the local area. In our view some of these submissions amounted to a re-argument of the substance of the case.
35. In our judgment it is clear that some of the discrepancies/credibility points as highlighted by the Judge were more significant than others but we nonetheless conclude that the Judge did not materially err in making the findings that he did and that it was open to him to reject the Appellant's core credibility including the reliability of the documentary evidence.
36. The Judge was entitled to place weight on the TamilNet articles in the absence of any challenge to the reliability of the reports and gave sufficient reasons for finding that they, as part of the overall evidence, undermined the Appellant's core claim. The Judge therefore gave sufficient reasons for explaining why the Appellant's documents were not reliable.

Notice of Decision

37. We therefore conclude that the Judge did not materially err in his assessment of the Appellant's documentary evidence in the broader context of the overall claim and we dismiss the Appellant's appeal.

I. Jarvis

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 July 2023