



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

Appeal Numbers: UI-2024-001135 &

001136

First-tier Case Numbers: PA/50843/50839/2023

LP/01746/01745/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued
9 September 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MMNS - 1st Appellant
MMS - 2nd Appellant
(Anonymity orders made)**

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr A Slatter, Counsel

For the Respondent: Ms S Leconte, Home Office Presenting Officer

DECISION AND REASONS

Heard at Field House on 29 August 2024

The Appellants

1. The appellants are both citizens of Sri Lanka. The 1st appellant, born on 10 March 1972, is the father of the 2nd appellant who was born on 1 June 1998. The appellants appeal against a decision of the First-tier Tribunal dated 19 February 2024 which dismissed their appeals against decisions of the respondent dated 25 January 2023. The respondent's decisions

refused the appellants' applications made on 8 August 2022 for international protection. The appellants and their dependents arrived in the United Kingdom on 29 July 2022 in possession of visit visas issued for six months valid from 24 June 2022.

2. **Anonymity.** Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant has been granted anonymity, and is to be referred to in these proceedings by the initials MMNS and MMS. 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.

Failure to comply with this order could amount to a contempt of court.

The Appellants' Case

3. The appellants' case was that the first appellant assisted by the second appellant had organised anti-government demonstrations at least one of which had take place at Galle Face in Colombo the capital. The appellants had also been involved in demonstrations against the Sri Lankan government whilst in the United Kingdom and thus had a sur place claim. Arrest warrants were issued by the Sri Lankan authorities against the appellants and the appellants had only been able to leave Sri Lanka because they had paid a bribe to airport officials. The respondent does not accept the credibility of the appellant's claims but if the appellants were found credible in their claims then the respondent conceded that they would be at risk upon return.

The Decision at First Instance

4. At [16] the judge summarised why she did not find the appellants to be credible. Their evidence had been internally inconsistent. It was vague and lacking in detail and the appellants had avoided answering questions by talking about different matters. The judge noted that the first appellant had had to be asked three times about when he received the arrest warrants before finally admitting that he could not remember. The judge found that the appellants must have passed through security at the airport when they left Sri Lanka because their passports had been stamped there. The judge did not accept that any arrest warrants had been issued against the appellants because of the ease with which they had left the country despite the levels of security at the airport.
5. As an example of vagueness the judge noted that the second appellant who claimed to have attended a demonstration on 18 May 2023 as a sur place activity did not know before he arrived at the demonstration what it was for. The sur place claim did not attract any risk for the appellants because the second appellant had only attended two protests and the evidence showed only a minimal role in those protests. The judge did not

accept that the appellants would be on any kind of stop list or watch list and therefore would have been able to leave Sri Lanka without any difficulties. She dismissed the asylum appeals and noted that no claim under article 8 had been presented to her.

The Onward Appeal

6. The appellants appealed against this decision on grounds settled by Counsel who had appeared at first instance. The grounds made two main points. The first was that the judge had erred in placing no weight on the arrest warrants which had been issued on 12 July 2022 and 12 August 2022 or on a supporting letter from a Sri Lankan lawyer dated 10 January 2023. The second ground argued that the judge's finding that the appellants were of no interest to the authorities because they had been able to leave Sri Lanka without difficulties was flawed. There was country background evidence that exits from Sri Lanka could be obtained through bribery as the appellants had claimed. The judge had not dealt specifically in her determination with the appellant's explanation of how they had been able to leave Sri Lanka. Permission to appeal was granted by the First-tier on both grounds.

The Hearing Before Me

7. In consequence of the grant of permission the matter came before me to determine in the first place where there was a material error of law in the decision of the First-tier Tribunal such that it fell to be set aside. If there was then I would make directions on the rehearing of the appeal. If there was not the decision at first instance would stand.
8. For the appellants, counsel (who had not appeared below) relied on the grounds of appeal dated 23 February 2024. The judge had wrongly said that the arrest warrants were not signed by a judge but they had in fact been signed. The disregard of the arrest warrants was a key part of the judge's overall credibility findings. There was a pro forma of the arrest warrants and they had been completed in English. The judge also wrongly said it was not clear which was the relevant court that the arrest warrants applied to as that was clear from the documents. The registrar had signed the documents and once could say which level of court was concerned. The consideration of credibility was bound up with the consideration of the arrest warrants.
9. As to ground 2 the judge had failed to consider relevant evidence regarding the appellant's ability to leave Sri Lanka without difficulties. The appellants had paid ₹2 million to be taken through the airport security checks. The judge not taken this into account. If she had she would not have been able to rely on ease of leaving in her findings.
10. In reply the presenting officer relied on the rule 24 response dated 28 March 2024 submitted by the respondent after permission to appeal was

granted. The response characterised the appellants' grounds of appeal as being merely a disagreement with the judge's findings. The arrest warrants produced to the judge had been poorly photocopied and there were blank sections above the word "judge" at various points which may have led the judge to consider that the arrest warrants were not signed. The appellants had elected not to produce translations of documents into the English language. Pursuant to rule 12 (5) (b) of the Tribunal Procedure Rules 2014, "if a document provided to the Tribunal is not written in English it must be accompanied by an English translation". The judge could not ascribe weight to untranslated documents.

11. As to ground 2, the judge's findings in relation to the ease of exit did not rely solely on her findings in relation to the arrest warrants. The judge had made numerous adverse findings of credibility against the appellants which had not been challenged in the grounds of onward appeal. In any event just because the judge had not mentioned the appellant's claim to pay a bribe did not mean that it had been ignored by her.
12. In oral submissions the Presenting Officer argued that the judge had made clear comments about the reliability of the documentation, the judge had not trusted the appellants' evidence. She approached the documents with some scepticism. If the first appellant had been unable to tell the court how he became involved in the organisation of demonstrations, that was a valid critique of the appellant's evidence. There was a delay by the appellants before they made their departure from Sri Lanka and no explanation why they had waited if they thought they were at risk of arrest. The decision should be upheld.
13. In conclusion counsel argued that it would be an error for the judge to have made negative credibility findings and then considered whether that finding was undermined by further evidence. That would offend the **Mbangi** principle. There was a duty on the judge to look at all relevant factors. If the judge accepted that the arrest warrants were genuine there was no dispute that the appellants would have had difficulties on return.

Discussion and Findings

14. This is essentially a reasoned based challenge to the judge's determination. In a lengthy determination the judge analysed the evidence presented to her and for the reasons stated therein explained why she had not found the appellants' claim to be credible. The grounds of onward appeal make two points which overlap. The first is they take issue with the judge's findings in relation to the arrest warrant documentation. Secondly they take issue that the judge does not specifically refer to the appellants' claim that they were able to leave Sri Lanka even though they were of adverse interest to the authorities because they paid a substantial bribe to go through the security checks at the airport.

15. The judge's view was that the arrest warrant documentation was clearly unimpressive. The documents were poorly photocopied and had passages in an untranslated foreign language and apparently unexplained blank sections. It was a matter for the judge what weight she placed on the copy documentation supplied to her. Although it is arguable that the judge may have made some criticisms of the arrest warrants which were weaker than other criticisms, for the reasons given by the respondent in the rule 24 reply it is clear that the judge was looking at the documentation in the round. She had of necessity to set out her conclusions on the various aspects of the evidence in some form of order but I do not read the determination as falling foul of **Mbangi** nor do I find that the judge made up her mind on credibility and then proceeded to examine the arrest warrants in that light.
16. Rather a fair reading of the determination as a whole shows that the judge weighed up the evidence and in some detail gave her reasons why she did not accept that the arrest warrants were genuine. Once she had found that the arrest warrants were not genuine it followed that the appellants were not of any interest to the authorities. In that respect the claim to have paid a bribe was something of a red herring because on the basis of the judge's findings there was no reason why the appellants should have to pay a bribe. They had been issued with visit visas to the United Kingdom, they waited over a month after issue of the visas before travelling to the United Kingdom. Their documents were duly stamped by security officials as they exited the airport.
17. The judge was entitled to find that they were not genuine documents. This was a case in which an assessment of the two appellants' credibility lay at the heart of the decision. The appellants had not made good witnesses as can be seen from the determination. I remind myself that the judge had the benefit of seeing and hearing the appellants give evidence and an appellate court should be slow to interfere with a judge's findings of fact in those circumstances. I agree with the respondent's submission that the grounds of onward appeal in this case amount to no more than a disagreement with the cogent findings of the judge and are an attempt to re-argue the appeal.
18. Whilst there is evidence in the country guidance case of **GJ 2013 UKUT 00319** that an exit from the country can be obtained through bribery and that ease of exit does not of itself preclude someone being of adverse interest to the authorities, it remains as the cases point out that it is a question of the individual facts of the case. It is clear, given the judge's adverse credibility findings in this case, that she did not accept the appellants' account of how they were able to leave the country because she found they were not on a stop list or a watch list. There being no obstacles to their exit, there would be no point in paying a bribe. During the hearing I was referred to the authority of **MM Sri Lanka 2014 EWCA Civ 36**. It is important to note that in that case the Court of

Appeal were reluctant to go further than the country guidance case of **GJ** even though they were invited to do so during the course of the hearing. Each case turns on its own facts.

19. In conclusion I do not find that the appellants can show a material error of law in the determination of the First-tier Tribunal. Accordingly I dismiss the onward appeals in this case. The determination of the First-tier Tribunal will therefore stand. I continue the anonymisation order made herein.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold the decision to dismiss the Appellants' appeals.

Both appellants' onward appeals dismissed

Signed this 29th day of August 2024.

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Judge Woodcraft
Deputy Upper Tribunal Judge