



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/06136/2013

**THE IMMIGRATION ACTS**

Heard at Stoke  
on 15<sup>th</sup> January 2014

Determination Promulgated  
On 21<sup>st</sup> March 2014

Before

UPPER TRIBUNAL JUDGE HANSON

Between

VIJAYARASA KANAPATHEPILLAI  
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Shilbi instructed by Nag Law Solicitors.

For the Respondent: Mr Lister – Senior Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal against a determination of Designated Judge of the First-tier Tribunal Coates, promulgated following a hearing at Stoke on 13<sup>th</sup> September 2013, in which he dismissed the Appellant's appeal on asylum, humanity protection and human rights grounds.
2. Having considered the evidence he was asked to consider Judge Coates set out his findings, the key elements of which, may be summarised as follows

- i. There are many discrepancies and inconsistencies in the account which go to the core of the claim [51].
- ii. The claim that having evaded arrest on 3<sup>rd</sup> February the Appellant spent two months at the home of an agent and another two months at an address in Colombo before being taken to the airport on 20<sup>th</sup> April indicates a chronology which is clearly impossible and that the Appellant was unable to explain when the inconsistency was put to him in his oral evidence [52].
- iii. The Appellant's claim that he was required to report to the Sri Lankan Army camp for 21 years is implausible. A further discrepancy in his evidence arose regarding when he was required to sign on and the period he was held at the camp when he attended [53].
- iv. The Appellant asserted in his grounds of appeal that he lived in an area controlled by the LTTE yet in his oral evidence he denied living in such an area and claimed both the army and LTTE went there from time to time [54].
- v. The Appellant's claim to have received assistance from a lawyer in relation to his dealings with the Sri Lankan Army was raised very late in the day. He also claims he was of interest to the authorities even though they failed to arrest him when he claims he attended to report on the morning of 3<sup>rd</sup> February yet allegedly went looking for him at his home address later in the same day. This element of the account was not accepted as being plausible [55].
- vi. The Appellant's account of escaping from his home when the army attempted to arrest him on 3<sup>rd</sup> February is implausible and it found highly improbable that the army would not have searched for the Appellant if they were genuinely looking for him [56].
- vii. The Appellant's account of his departure from Colombo Airport was also found to be implausible [57].
- viii. His claim that on arrival at Heathrow airport he was able to deal with immigration procedures without having to present travel documents in person to an immigration official was not believed, especially as he arrived on a flight from Sri Lanka

using a German passport but cannot speak the German language [58].

- ix. Having examined all of the documents relied upon by the Appellant with care the Judge found them to be "manifestly unreliable". The Appellant is not a witness of truth, his claim to have been arrested by the authorities is not believed nor his claim to have any political profile in Sri Lanka. The claim a warrant has been issued for his arrest is not believed or the claim he would be of interest to the Sri Lankan authorities when he left his country and will be of no interest to them now. The Judge was not satisfied the Appellant had a profile which will cause him to be of adverse interest to the authorities on his return to Sri Lanka and he has not engaged in any activities in the United Kingdom so as to create such an adverse profile. He will be returned as no more than a failed asylum seeker who has not established a real risk on the basis of the country guidance case law. The Judge noted that the Appellant's wife and children remain in Sri Lanka, apparently without problems, and there is no reason why the Appellant could not be reunited with them [59].

## Discussion

3. The first challenge to the determination relates to the Judges treatment of four documents included in the appeal bundle which are said to be of fundamental importance to the Appellant's claim, namely a Magistrates Court record setting out details of proceedings issued against him in the Sri Lankan courts for 24<sup>th</sup> May 2002 to 25<sup>th</sup> March 2013, a Magistrates Court summons dated 24<sup>th</sup> May 2002, an arrest warrant dated 18<sup>th</sup> February 2013 and an open arrest warrant dated 25<sup>th</sup> March 2013, which are said to largely corroborate each other and the Appellant's account.
4. It is accepted in the grounds that the Judge referred to documents submitted in support of the claim but asserted that the phraseology used by the Judge cannot be relied upon to establish that he did so. It is submitted that there was nothing in the determination to show the documents were probably considered as there is no reference to the same and so it is impossible to say that if they were considered, they were considered properly, as there is a failure to give adequate reasons. It is submitted the Judge should have done more than he did with regard to the documents especially as they corroborate the Appellant's account.
5. Mr Shibli also claimed that there is a structural failure in the way the Judge considered.

6. It was conceded at the hearing that paragraphs 8, 9, and 10 of the grounds providing an alternative explanation and alleging the Judge erred by not considering an alternative explanation was not the Appellant's strongest point.
7. The Judge's findings regarding use of the German passport are also criticised but in relation to the passport issue the Judge correctly noted that the Appellant had used a German passport to which he was not entitled. The Judge did not find the Appellant's account plausible as he did not accept a 48-year-old male arriving from Sri Lanka will be able to pass through immigration control in the United Kingdom without having to provide proper documentation. No legal error is proved in the Judge's finding that a false document was used which damages the Appellant's credibility pursuant to section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004.
8. The claim the Judge erred in failing to give specific reasons in relation to each and every element of the evidence he was asked to consider has no legal merit. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) Blake J) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.
9. The need to give adequate reasons enabling an individual to understand why a judge had come to a particular conclusion has been repeated by the Upper Tribunal in the recent decision of MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC), in which it was held that (i) It was axiomatic that a determination disclosed clearly the reasons for a tribunal's decision. (ii) If a tribunal found oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it was necessary to say so in the determination and for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight was unlikely to satisfy the requirement to give reasons.
10. I have considered the documents the Appellant sought to rely upon and had the four documents specifically mentioned in the grounds been all the evidence that was available to the First-tier Tribunal it is arguable that the Appellant may have succeeded with his appeal. They were, however, not the only evidence Designated Judge Coates had available as he had the opportunity of not only considering all the documentary evidence but also seeing and hearing the Appellant give oral evidence. Having done so the Judge clearly undertook his

analysis of the merits of the case by applying the most anxious scrutiny to all the evidence he was asked to consider. It is clear from the determination that the Judge did not find that the documents were forged, as there was insufficient evidence to support such conclusion, but he found that he could not attach the weight to those documents that he was being invited to by Mr Shibli.

11. I indicated during the course of the hearing that I will be finding that Designated Judge Coates applied the most anxious scrutiny to the evidence and I repeat that finding here. The Judge also gave adequate reasons explaining why he came to the conclusions that he did regarding the lack of credibility in the claim. This is not a Judge who has made bare statements he did not find the Appellant to be credible as he set out reasons why this was so, based upon material discrepancies in relation to elements that go to the core of the claim. As the most anxious scrutiny has been applied and adequate reasons given the weight to be attached to the evidence was a matter for the Judge – see SS (Sri Lanka) [2012] EWCA Civ 155.
12. When one analyses the grounds of challenge carefully it can be seen that, in reality, this is a challenge to the weight the Judge gave to the documentary evidence relied upon by the Appellant. It is said that such documentary evidence should, in effect, have been determinative and that based upon the nature and quality of those documents (which it is asserted corroborate not only themselves but also the Appellants account) the appeal should have been allowed.
13. Designated Judge Coates considered the weight he could give to those documents and correctly applied the principles arising from the case of Tanveer Ahmed [2002] Imm AR 318. Such principles include [38]:
  1. In asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely on can be relied on.
  2. The decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
  3. Only very rarely will there be the need to make an allegation of forgery, or evidence strong enough to support it. The allegation should not be made without such evidence. Failure to establish the allegation on the balance of probabilities to the higher civil standard does not show that a document is reliable. The decision maker still needs to apply principles 1 and 2.
14. Judge Coates clearly found that he could not attach the weight to the documents that he was being invited to following a correct legal self-direction and way of proceeding in accordance with paragraph (2) above. I find no legal error

established in relation to Judge Coates approach in relation to the documentary evidence.

15. The findings Judge Coates made which were found to damage the Appellant's credibility have not been shown to be perverse, irrational, or contrary to the evidence, and are findings that are clearly within the range of findings the Judge was entitled to make on that evidence. Assertions that the Judge took into account irrelevant factors when assessing the account of travel to the United Kingdom and alleging that it was entirely inappropriate for him to assess documents of "fundamental importance" to the Appellant's claim in the way he did have no arguable merit. The law does not distinguish between documents that are fundamental to a claim and those that may be of less importance, as the principles regarding the burden of proof and the way in which documentary evidence needs to be assessed applies to all such evidence. Any implication that as the documents from Sri Lanka were of a more fundamental nature the Judge should have applied a lesser burden upon the Appellant or given less weight to material discrepancies which could impact upon the weight given to such documents, is not supported by any legal authority.
16. I have considered whether there is any evidence of a structural failure in the determination such as may occur if the Judge makes adverse credibility findings having only considered a limited aspect of the evidence and then uses those adverse findings to reject expert or other evidence, without considering such evidence as part of the overall assessment of the credibility of the account relied upon. Having looked at all the evidence in this case and having considered the determination in detail I do not find it made out that there is any arguable merit in a claim that such a structural failure exists, such as to render the adverse credibility findings unsustainable.
17. In an appeal of this nature when a Judge has approached the evidence as he was required to do, applied the appropriate degree of anxious scrutiny to that evidence, given adequate reasons for findings made which themselves have not been shown to be susceptible to challenge on any basis, mere disagreement with the weight attached to that evidence by the Judge or a desire for a more favourable outcome does not establish any legal error material to the decision to dismiss the appeal.

### **Decision**

18. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

19. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. I make no such

order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 as no request for anonymity was made and no basis for making such an order is established on the facts.

Signed.....  
Upper Tribunal Judge Hanson

Dated the 12<sup>th</sup> March 2014