



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

Appeal Number: AA/05848/2014

THE IMMIGRATION ACTS

Heard at Field House

On 20 January 2015

**Decision & Reasons
Promulgated**

On 29 January 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**T R
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy of Counsel instructed by LG Law Chambers

For the Respondent: Ms A Holmes, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Scobbie signed on 29 September 2014 dismissing the Appellant's appeal against the Respondent's decision dated 2 August 2014 to remove him from the United Kingdom in consequence of refusing his application for asylum.

Background

2. The Appellant is a national of Sri Lanka, born on 30 November 1986. He arrived in the United Kingdom on 6 September 2010 holding entry clearance as a student that he states was obtained for him by an agent. He did not claim asylum on arrival. An application for asylum was made on 21 October 2013, and in due course refused for the reasons set out in a 'Reasons for Refusal' letter ('RFRL') dated 31 July 2014. The removal decision was made in consequence of the refusal of asylum.
3. The Appellant appealed to the IAC. His appeal was dismissed for the reasons set out in the decision of First-tier Tribunal Judge Scobbie.
4. The Appellant made an application for permission to appeal to the Upper Tribunal which was granted on 3 November 2014 by Designated First-tier Tribunal Judge Zucker.

Consideration

5. The details of the Appellant's claim for asylum are summarised at paragraphs 8-19 of the First-tier Tribunal's decision. It is unnecessary to reproduce those paragraphs here.
6. The Judge accepted the Appellant's account of having been tortured in Sri Lanka, stating this at paragraph 49:

"My conclusion from this is that I accept the Appellant's account in so far as it related to him having been tortured. This does not necessarily mean that I have accepted the remainder of his account".
7. The Judge then went on to reach the following conclusion at paragraph 57:

"I have certainly accepted that the Appellant was a Tamil and that he was tortured in detention at one time. However I do not accept that the authorities have been actively looking for him at any time after his release from prison for the reasons set out above".
8. The Judge thereafter, having reviewed 'country guidance', stated his conclusions in the appeal in the following terms at paragraph 62:

*"In all of these circumstances and adopting the issues set out in the case of **Gj and Others** I concluded that the Appellant was not a person who would be of any interest to the authorities in view of their priorities at the present time. There is nothing in his past or present conduct to suggest that he would be perceived as a present threat to the Sri Lankan state. He would not be at risk of persecution in Sri Lanka if returned. His asylum claim fails."*
9. The Judge also rejected the Appellant's claim under Articles 2 and 3 of the ECHR and also rejected his claim in respect of family and private life with reference to paragraph 276ADE and Article 8 of the ECHR.
10. A core element of the Appellant's asylum claim, and the primary focus of the issues before the Upper Tribunal in respect of risk on return, was the Appellant's claim to be the subject of an arrest warrant issued by the Magistrates' Court in Batticaloa. (A copy of the purported arrest warrant is to be found in the papers on file.)

11. The Appellant referred to the fact of an arrest warrant at his substantive asylum interview conducted on 17 December 2013. The following exchange takes place over questions 75-77 in respect of the authorities attending at the Appellant's parents' home:

"Q 75: What did they say?

A: Where is your son, he is missing from jail.

Q76: Did they have an arrest warrant?

A: Yes

Q77: Was this given to your family?

A: Yes"

As already indicated the Appellant in due course produced a copy, which was sent to the Respondent following the interview.

12. The Respondent did not accept that the arrest warrant was genuine. The explanation for the Respondent's decision in this regard is set out at paragraphs 9-13 of the RFRL in the following terms:

"9. You are aware that the conflict in Sri Lanka ended five years ago, in May 2009. However, you explain that you are sure that you are being sought in Sri Lanka, citing the existence of an arrest warrant (AIR, Q135-136). Careful consideration has been given to the submitted arrest warrant (Annex D). However, this document is not of the professional quality expected of an official document. For example, your name is spelled incorrectly, omitting the 'e' from your forename. 'Failure' is spelt as 'filure'. Although it is understood that spelling mistakes can occur even in official documents, it must be noted that this word is spelled incorrectly twice. Furthermore, the official stamp for the court omits the 's' from 'Magistrate's Court' instead reading 'Magitrate's Court' (Annex D). It is considered highly unlikely that an official stamp would contain such a spelling mistake. This document cannot be relied upon.

10. Further consideration has been given to this document. You claim to have escaped from prison in February 2010 (AIR, Q68). No explanation has been received as to why this arrest warrant was not issued until eight months later in October 2010, the month after you left the country. It is considered likely that your absence from prison would have been noted long before then. The document also refers to your 'filure' to attend court. However, you have failed to mention or submit any correspondence or court summonses related to this offence. The document is also an email scan rather than an original document, further reducing the weight that can be applied to it.

11. Furthermore, a letter from the British High Commission in Colombo dated 14 September 2010 reported that: 'Formally it is difficult for the accused to be able to obtain a copy of his/her own arrest warrant. When an arrest warrant is issued, a copy is kept on the legal file and the original is handed to the police. An accused cannot apply for copies of the arrest warrant to the relevant court. However, in practice forged documents are easily obtainable throughout Sri Lanka. Additionally given ongoing and well documented concerns over corruption in the police it would probably not prove difficult to obtain a

copy of an arrest warrant although it would probably require prior contact within the police service' (COIS report, para 10.17). You have not explained how your family were able to obtain a copy of this arrest warrant. The objective information clearly states that arrest warrants are not handed to the accused or their family. This information reinforces the belief that the submitted arrest warrant cannot be relied upon.

12. *Moreover, this arrest warrant, amongst the other documents relating to an attack you suffered in early 2009, must be considered in line with the principles set out in **Tanveer Ahmed Pakistan [2002] UKIAT 00439...** However, due to the credibility concerns outlined above, it is considered that little weight can be attributed to the submitted documents.*
 13. *It must also be noted that fraudulent documents are widespread in Sri Lanka. A British High Commission letter of 14 September 2010 stated that: 'The high level of corruption in Sri Lanka and the unscrupulous actions of government officials at all levels, somewhat undermines the issuing process for many official documents' (March 2012, COIS Report on Sri Lanka, para 27.02). The high levels of corruption in Sri Lanka also reduce the weight that can be applied to the submitted documents. Your submission of these documents does not further your asylum claim. Rather, as a result of the issues identified above with the arrest warrant, they further undermine the credibility of your asylum claim."*
13. The First-tier Tribunal Judge also did not accept that the arrest warrant was genuine. He stated the following at paragraphs 51-56:
51. *I have grave concerns relative to whether or not an arrest warrant was issued for the Appellant. Firstly, the Appellant had been released some considerable time by his own account before an arrest warrant was issued. Further, perhaps conveniently from his point of view, it was issued after he had left the country.*
 52. *I make the above comment because the Appellant managed to leave the country on his own passport having obtained a visa. He did say that he used an agent but the fact remains that he used his own passport. It is not absolutely definite proof that he was not being looked for by the authorities but it is in my view somewhat of a credibility issue nonetheless.*
 53. *Further, the Appellant has not really satisfactorily answered the point that arrest warrants are said by the Respondent not to be obtainable by anyone other than the police and also held on file. The Appellant has not given a satisfactory explanation for this or quoted any background information which contradicts what the Respondent said.*
 54. *Further, there are the many errors in the documentation. Some of it may be caused by careless policemen but how a date stamp from a magistrate's court could spell the word magistrate wrongly is beyond my comprehension.*
 55. *My overall conclusion from this is that the arrest warrant cannot be relied upon and in my view the Appellant has not established even to the lowest standard that any arrest warrant was issued for him.*

56. *I say this not only because of the unsatisfactory nature of the document itself but because the Appellant managed to leave the country on his own passport and because the arrest warrant was allegedly issued such a lengthy time after the Appellant left prison."*

14. The grounds of challenge to the decision of the First-tier Tribunal Judge that have been settled by Mr Paramjorthy, who did not appear before the First-tier Tribunal, criticise the Judge's reference to the Respondent's position at paragraph 53 of the decision as being incomplete.
15. As indicated in the quotation cited above the Judge stated that the Respondent had indicated that arrest warrants were "*not to be obtainable by anyone other than the police*". As is apparent from the passages already cited from the RFRL, this is not, strictly speaking, an accurate statement of the Respondent's position. The Respondent acknowledged in the RFRL that it might be possible to obtain such documents through the use of bribery.
16. In those circumstances I accept that the Judge's reference is indeed truncated and incomplete in a way to render the sentence at paragraph 53 inaccurate.
17. However, in my judgment this does not avail the Appellant. This is because even if in certain circumstances it is possible to obtain an arrest warrant, for example through the use of bribery, the Appellant does not give any such account but simply states that the document was handed over to his family when the authorities attended at their address. The evidence indicates that such documents are not simply handed over. To that extent the First-tier Tribunal Judge is correct in stating at paragraph 53 that the Appellant had not given a satisfactory explanation for the way in which he had obtained the arrest warrant, or more particularly the way in which it had come into the possession of his family members notwithstanding that this issue was very clearly raised at some length in the RFRL.
18. Further this submission does not begin to address the other serious defects in the presentation and form of the arrest warrant, most notably the misspelling on the official stamp purportedly from the Batticaloa Magistrates' Court.
19. Yet further in this regard it is to be noted that the Judge identified other credibility issues at paragraph 58.
20. In all such circumstances it seems to me the Judge's analysis of the documentation and the analysis of the way in which it came to be in the Appellant's possession is not impugnable as being materially wrong in law - either in itself or in combination with the second aspect of the challenge raised on behalf of the Appellant.
21. The second aspect of the Appellant's challenge is in respect of the Judge's references to the Appellant leaving Sri Lanka through the usual channels in his own identity: see paragraphs 52 and 56.
22. It is indeed the case that the Appellant stated at his interview that he left Sri Lanka with the help of an agent. It is apparent that this is asserted not

only in the context of obtaining the necessary entry clearance to embark for the United Kingdom, but also that the Appellant was assisted by the agent to proceed through the checks at Colombo Airport (AIR, Qs89-101 and as noted in the RFRL in the summary of the Appellant's history at paragraph 3).

23. In the premises of the grounds, Mr Paramjorthy identifies by reference to paragraph 394 of the country guidance case of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** that the pervasive use of bribery and corruption including at the airport in Colombo is such that it is possible for persons even if wanted to pass through the various checks and controls. Accordingly, it is submitted, the Appellant's ability to do so should not have been a material consideration in the way in which the Judge appears to have had regard to it. In this context Mr Paramjorthy had in mind in particular the passages at paragraphs 52 and 56 of the determination.
24. Again I accept these points raise valid issues in the abstract: but in my judgment, on the particular facts of this case, the defects in the arrest warrant and the manner in which it was obtained as being discrepant with the available country information, and the Appellant otherwise not having addressed the substance of the RFRL in this regard, any issue as to the Appellant's ability to pass through Colombo Airport are effectively rendered immaterial. Given the defective content of the purported arrest warrant and the absence of any adequate explanation of how it was obtained, I consider there was only one realistic outcome to the decision in respect of the validity or otherwise of the arrest warrant. Necessarily, as identified in the RFRL, a rejection of the genuineness of the arrest warrant not only undermined the Appellant's assertion to be at risk on return as a person wanted by the authorities but also undermined his credibility more generally.
25. The remaining grounds advanced on behalf of the Appellant are essentially premised on the existence of a valid arrest warrant and necessarily fail in light of my conclusion that the Judge did not materially err in law in his approach to this issue and reached conclusions that were open to him and were sustainable on all of the available evidence.
26. Accordingly I find no material errors and the decision of the First-tier Tribunal stands.

Notice of Decision

27. The decision of the First-tier Tribunal contained no material error of law and stands.
28. The Appellant's appeal is dismissed.

The above represents a corrected transcript of an ex tempore decision given at the hearing on 15 January 2015.

Signed

Date: 27 January 2015

Deputy Upper Tribunal Judge I A Lewis