Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: AA/05877/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision And Reasons Promulgated**
On 24 November 2015	**On 27 November 2015**

Before

Deputy Upper Tribunal Judge MANUELL

Between

M H N S
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Harris, Counsel (instructed by Nag Law)
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge R A Cox on 19 October 2015 against the decision of First-tier Tribunal Judge K W Brown made in a decision and reasons promulgated on 21 September 2015 dismissing the Appellant's asylum, humanitarian protection and human rights appeals.

2. The Appellant is a national of Sri Lanka, born on 29 September 1991. He had appealed against the refusal decision taken by the Respondent on 11 March 2015. The Appellant had entered the United Kingdom as a Tier 4 (General) Student Migrant in October 2009. His Tier 4 (General) Student Migrant visa was subsequently extended until 29 October 2014 but was curtailed on 9 May 2011 until 8 July 2012. The Appellant claimed asylum on 9 January 2014. He stated that he feared to return to Sri Lanka because of his past LTTE involvement and family connections.

3. When granting permission to appeal, First-tier Tribunal Judge R A Cox considered that it was arguable that Judge K W Brown's adverse credibility findings were variously irrational, ill founded, inconsistent and reached to the wrong standard of proof.

4. The Respondent filed notice under rule 24 dated 29 August 2015 indicating that the appeal was opposed. Standard directions were made by the tribunal and the appeal was listed for adjudication of whether or not there was a material error of law.

Submissions

5. Ms Harris for the Appellant relied on the grounds of appeal previously lodged and the grant of permission to appeal. In summary Counsel submitted that there were multiple errors in the determination. There were inconsistent findings about the Appellant's Sri Lankan court documents, which were illogical, inconsistent and irrational. The judge had impermissibly allowed his own views about plausibility to inform his findings, as seen in his finding about the likelihood that the Appellant and his father had continued to run their business and to work with the LTTE, even after they had been challenged. The judge had applied too high a standard of proof, repeatedly using the term "unlikely" when the lower standard applied. The judge had incorrectly assessed the Appellant's documents, as seen in his dismissal of the Appellant's arrest warrant as a photocopy of a photocopy. It was plain from the document produced that there was writing on the court form. There should have been an assessment of authenticity made by the Respondent. The judge's treatment of the significance of the payment of a bribe for the Appellant's release was at variance with the observations in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). The decision and reasons should be set aside, and the appeal reheard before another First-tier Tribunal judge.

6. Mr Kandola for the Respondent relied on the Respondent's rule 24 notice. He submitted that the decision and reasons disclosed no error of law. There was no duty on the Respondent to seek to verify the Appellant's documents which in most cases would be impractical and inconclusive. The Appellant's complaints at most were just a disagreement with the judge's proper findings. The judge had explained why he found that there was no real depth to the

evidence and that the Appellant was not credible. The decision and reasons should stand.

7. Ms Harris wished to add nothing by way of reply.

No material error of law

8. In the tribunal's view, the terms of the grant of permission to appeal were far too generous a response to what was a feeble and repetitive reasons challenge. The tribunal agrees with Mr Kandola that the grounds are no more than disagreement with the judge's proper and sustainable findings.

9. The fact that the Upper Tribunal has had to provide country guidance on claims from Sri Lanka at various times is an indication of the large number of appeals from that source. Indeed, despite the defeat of the LTTE on 17 May 2009, now over 6½ years ago, asylum claims continue to be made, often after surprising periods of delay, as in the present appeal. Some claims are recognised as well founded by the Home Office and hence are never seen on appeal, so that judges see only the contested claims which as a group are likely to be weaker.

10. It is beyond dispute that Sri Lanka is an endemically corrupt country, where false documents are readily available: for a striking example in the public domain of the depths of such corruption see the www.Tamilnation.org report on the Katunayaka Airport bombing by the LTTE on 24 July 2001, which claims that Sri Lankan military officers were bribed. It may be almost too trite to say so, but asylum claimants in the United Kingdom have little or nothing to lose from pursuing the process as far as they can. The worst that can happen is that they might be returned at no expense to themselves at the end of what is all too often a long drawn out appeals process, during which time they are supported by the state if unable to work. Establishing the truth (or rather, the facts to the standard of a reasonable likelihood) can often be a difficult process.

11. Experienced First-tier Tribunal judges such as Judge K W Brown must be expected to recognise certain familiar elements to an appeal such as that advanced by the present Appellant, of which open entry on his own passport endorsed with a valid visa to the United Kingdom as a Tier 4 (General) Student Migrant and a long and unsatisfactorily explained delay in claiming asylum (measured in this instance in years) are frequently encountered. That was the background to the present appeal. It was on its face a weak and possibly contrived claim.

12. Despite those familiar and unpromising elements noted above, and without alluding to them in any manner whatsoever, the judge examined the case put forward by the Appellant in the round, with evident anxious scrutiny. The judge placed the claim into its context, setting out the Appellant's story and the country background information: see [12] to [23] and [34] and [35] of the determination.

13. There was no obligation on the Appellant to produce any documents or other from of potential corroboration, but as he chose to do so (some 5 years after entering the United Kingdom as a Tier 4 (General) Student Migrant), the judge was bound to assess them. There was no obligation on the Secretary of State to attempt to verify the documents and no obligation on the judge to make any such direction, which seemed to be Ms Harris's submission. At [47] of the determination the judge correctly applied Tanveer Ahmed* [2002] UKIAT 00439 to the selection the Appellant had provided.

14. The judge examined the Appellant's documents with care and in detail. It was not the judge's findings which were inconsistent or irrational, but rather the Appellant's confused and conflicting tale: see, e.g. [40] of the determination. The arrest warrant produced was fairly described by the judge as barely legible and by no means of the standard to be expected of a genuine official document. The judge correctly assessed all of the documents together.

15. Contrary to Ms Harris's submissions, the judge did not apply his own views of plausibility, but had first sought the Appellant's explanation of the issues of concern during the evidence: see [23] of the determination. The judge applied ordinary logic at [37] and [38] when finding that the Appellant's father would have been at as much at risk as the Appellant had their claimed business continued supplying the LTTE even after the Sri Lankan authorities had challenged them. It is obvious that such a business, supplying the sworn enemy of the state, would have been susceptible to the seizure and sequestration of its assets.

16. The judge's use of the term "unlikely" when discussing elements of the evidence was made in the light of the correct self direction set out at [6] of the determination. It is also plain that the judge was careful to consider alternative possibilities as a cross check on his conclusions: see [48] of the determination. It was a thoroughly bad point to submit that the wrong standard of proof had been applied by the experienced judge, a bad point which is taken far too frequently in this jurisdiction.

17. The judge's assessment of the consequences of the payment of a bribe at [40] was open to him and was not in any way in conflict with GJ (Sri Lanka) (above). The judge's findings as to risk were not based on the bribe claim alone, but on his assessment of the Appellant's evidence as a whole, in the round, as the judge reiterated at various stages: see, e.g. [47] and [49] of the determination.

18. In the tribunal's judgment, the judge's decision was a comprehensive reflection on the various issues raised in the appeal, and his findings were balanced and logical. The assertions of irrationality had no substance and should not have been made. There was no error of law. There is no basis for interfering with the judge's decision to dismiss the Appellant's appeal, which dismissal must stand.

DECISION

The tribunal finds that there is no material error of law in the original decision, which stands unchanged

Signed **Dated**

Deputy Upper Tribunal Judge Manuell