



**The Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/01248/2015**

**Appeal number:**

**AA/01249/2015  
AA/01252/2015  
AA/01258/2015**

**THE IMMIGRATION ACTS**

**Heard at North Shields  
On March 15, 2016**

**Promulgated  
on 12 April, 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**[N P]**

**[R M]**

**[M H]**

**[Y P]**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation:

For the Appellant: Mr Butterworth, Counsel, instructed by Vasuki  
Solicitors

For the Respondent: Mr Mangion (Home Office Presenting Officer)

**DECISION AND REASONS**

1. The Appellants are citizens of Sri Lanka. The First-named appellant came as a visitor on February 21, 2013. Her visa expired on August 6, 2013 and she applied for asylum on September 13, 2013. The Second-named appellant came as a visitor on March 12, 2013 with a visa valid until August 6, 2013. He claimed asylum on August 5, 2013. The third and fourth-named appellants are dependants on his application.
2. The second and third-named appellants are husband and wife and they are the parents of first and fourth-named appellants as well as the other daughter who gave evidence on their behalf.
3. The respondent refused under paragraph 336 HC 395 the first-named appellant's claim on January 9, 2015 and the second-named appellant's claim on January 12, 2015.
4. The appellants appealed on January 26, 2015 those decisions under section 82(1) of the Nationality, Immigration and Asylum Act 2002.
5. Their appeals came before Judge of the First-tier Tribunal Fisher (hereinafter referred to as the Judge) on June 1, 2015 and in a decision promulgated on June 15, 2015 he refused their appeals on all grounds.
6. The appellants lodged grounds of appeal on June 30, 2015. Permission refused by Judge of the First-tier Tribunal Chambers on July 10, 2015. Permission renewed to the Upper Tribunal on August 3, 2015 and on November 30, 2015 Upper Tribunal Judge Finch granted permission.
7. A Rule 24 response dated December 30, 2015 was filed by the respondent. In short, the respondent submitted the judge reached findings that were open to him.
8. The matter came before me on the above date and I heard submissions from both representatives. I agreed that if there was an error in law then it would make sense to remit the matter to be heard alongside the other daughter's ([HP], date of birth [ ] 1990) which was listed for a hearing at North Shields on May [ ], 2016.
9. The First-tier Tribunal made an anonymity direction and pursuant to Rule 14 of The Tribunal Procedure (Upper Tribunal) Rules 2008 I extend that order in the light of the sensitive matters raised in this appeal arising out of the appellant's international protection claim. This order prohibits the disclosure directly or indirectly (including by the parties) of the identity of the appellant. Any disclosure in breach of this order may amount to a contempt of court. This order shall remain in force unless revoked or varied by a Tribunal or Court.

## **SUBMISSIONS**

10. Mr Butterworth adopted the reasons given by Upper Tribunal Judge Finch who found it was arguable that the Judge had erred by concentrating on the second-named appellant's conviction for forgery and the delay in claiming asylum. He submitted the Judge had failed to consider the documentary and other evidence linking the second-named appellant to an MP who had been assassinated and the man, [DS], whom he feared. Mr Butterworth argued these were errors of law. Whilst accepting the Judge was entitled to take into account the appellant's conviction and elements of delay he should have looked at the documentary evidence when considering his credibility and the risk on return. There was no evidence the Judge had had regard to any of the following evidence contained in the respondent's bundle namely:
  - a. D10 (This letter shows he had more than just links. Judge does not refer to it. The author of the letter refers to the second-named appellant's arrests and the fact he was both her and her father's bodyguard).
  - b. D39 (The Judge does not consider the letter and even if he felt it was fraudulent he should have addressed it).
  - c. D42 (Further evidence of being arrested and the Judge gave no reasons for rejecting it).
  - d. D43 (Further evidence of wanting to remand him).
  - e. D44 (Further evidence on bail).
  - f. D26 (Police report made made on October 15, 2012 by him).
  - g. D29 (Further report made on May 3, 2012 claiming house burnt down. He refers to this in his interview).
  - h. D32- (Report made on November 20, 2011 and incident referred to in his interview).
11. The Judge failed to demonstrate he had considered any of these documents. In addition, the respondent was in possession of all of these documents and sent them to National Fraud unit and they made no finding they were forged. If the respondent could not say they were forgeries, then some degree of weight should have been attached to them. At no point has the Judge considered them.
12. There was also evidence of his political evidence as evidenced on pages D15 to D24 of the respondent's bundle. The Judge failed to recognise that the second-named appellant was not only connected to a member of parliament but he was also politically active. By failing to address these documents and he erred.

13. Whilst there were credibility issues for the second-named appellant it was not open to the Judge to find the first-named appellant and her sister lacking credibility because of his actions. The First-named appellant's evidence corroborated his account. It was an error in law to simply say she fabricated her account without giving reasons. Her evidence should have been given due weight. I say simply saying she fabricated is not enough.
14. As for delay whilst there was a delay in claiming this does not explain why no weight should be attached to the documents. Mr Butterworth invited me to find there had been an error in law.
15. Mr Mangion submitted the Judge did consider all of the evidence and he gave a reason for rejecting the evidence. That reason covered all of the documents as he considered them in the round and in considering them he was entitled to take into account he had concealed matters. It was clear that he had rejected the second-named appellant's account in its entirety. The fact he has skills as a forger drastically reduced the weight that could be attached to the documents that are now relied on. The fact he was a member of party did not assist the issue of him being a bodyguard or being present during the assassination. The Judge had regard to section 8 credibility issues and the fact the documents were not confirmed as forgeries was not a concession they were genuine. The finding about the witness was open to him because the witness had been outside of Sri Lanka at the relevant time. The findings were open to the Judge and there was no material error.
16. Mr Butterworth responded there was nothing in para [32] of the Judge's decision that demonstrated he had engaged with the evidence. Whilst the Judge was entitled to find against him he still had to give reasons for his decision and address the evidence especially when he was considering the documents in the round. The fact the second-named appellant was convicted of forgery did not mean the documents submitted were fraudulent.
17. I reserved my decision.

### **DISCUSSION AND FINDINGS**

18. The thrust of Mr Butterworth's submissions is that in deciding the credibility of the second-named appellant's claim the Judge failed to have regard to a plethora of documents that had been submitted. In his oral submissions Mr Butterworth referred me to documents that he submitted the Judge should have addressed and by failing to do so he had materially erred.

19. At paragraph [4] of the decision the Judge referred to the fact he had considered all of the documentary evidence as well as the oral evidence from two of the appellants along with the witness's evidence. The Judge did not set out which documents he considered but even if he had done so the issue I would have had to consider is whether he had engaged with that evidence.
20. In considering the second-named appellant's credibility the Judge was troubled by two press reports that appeared in the respondent's bundle. These reports suggested that a prison guard with the second-named appellant's name had been convicted of forgery. When initially challenged about these claims at the hearing the second-named appellant stated the articles were not about him but when further challenged by the respondent's representative he admitted the articles were correct.
21. It was against the background of that conviction for forgery the Judge considered the documents that had been submitted in his appeal. Between paragraphs [6] and [12] of his decision the Judge set out matters raised in cross-examination and a number of inconsistencies and the second-named appellant's explanation for not claiming asylum earlier than he did. I am left in no doubt the Judge was aware of the second-named appellant's claim and what he was claiming.
22. The Judge also detailed the first-named appellant's evidence and the Judge noted that she backed her father's claim. The Judge then noted the evidence given by the second-named appellant's other daughter and the fact she feared persecution in her own right because of what had happened to her father in Sri Lanka. The Judge did not set out the representative's submissions but indicated they were recorded in detail in his record of proceedings.
23. At paragraph [25] the Judge noted that credibility was the key issue in this appeal. The Judge engaged with the evidence about the assassination incident and described in detail the video he had watched at the commencement of the hearing. He noted the second-named appellant acted as coffin bearer at the MP's funeral and that members of his family sat close behind the deceased's widow. The Judge further noted the background evidence of the person implicated in the MP's killing.
24. Against this background the Judge considered the credibility of his claims and he did this at paragraph [27] of his decision. Where appropriate he gave the appellant the benefit of the doubt but the second-named appellant's answer in the screening interview at Q4.1 and the "lie" at Q70 of his substantive interview and his initial denial at the hearing were not matters the Judge felt could be

ignored because the second-named appellant had been convicted of forgery and was now asking the Tribunal to accept the authenticity of documents, which he produced, that he said supported his account.

25. Mr Butterworth submits the Judge should have either given more weight to the documents submitted or given reasons for rejecting documents that appeared to support his account. In considering whether this amounts to a material error it is important not to take arguments in isolation but instead to consider the Judge's approach to the overall claim.
26. The Judge considered whether the second-named appellant had fled whilst on bail but ultimately he rejected this claim for the reasons he went on to give from paragraph [28]. If what the second-named appellant claimed was true, then the Judge found it unreasonable that he did not claim asylum when he arrived here. He considered his explanation that he was awaiting documents but found that he had acted unreasonably and his lack of action was factor he held against him. At the beginning of paragraph [32] he set out why he found the second-named appellant to lack credibility and those factors led to him rejecting second-named appellant's claim.
27. I do not accept the Judge had to set out every document to demonstrate that he had considered all of the evidence. It is clear he engaged in detail with the second-named appellant's claims and whilst the documents could have provided credible support for his claim the Judge found for the reasons given in paragraph [32] that he could not rely on that evidence. The Home Office had the documents that were submitted examined by her fraud department. Whilst there was no negative finding there was similarly no acknowledgement they were genuine.
28. The Judge had to assess credibility and key to the appellants' claims was what was said to have happened to the second-named appellant. Whilst the other witnesses provided some support for what their father claimed the Judge was not satisfied that the second-named appellant's evidence was something that could be relied on. The Judge's finding on the authenticity of the documents was a finding open to him given the second-named appellant's acceptance he had been convicted of forgery in the past. The Judge accepted a connection with the MP but concluded that this evidence was put forward to support his claim. The Judge rejected his claim he was suspected of murder after he had considered all of the evidence.
29. His rejection of the first-named appellant's claim clearly had to follow the rejection of her father's claim. To have allowed her claim

would have been perverse bearing in mind her claim was based on what could happen to her due to her father's alleged activities. No detailed separate findings were necessary.

30. The Judge's findings were open to him and there is no error in law.

### **DECISION**

31. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I have upheld the original decision and dismiss all appeals.

Signed:

Dated: **13 March y**




Deputy Upper Tribunal Judge Alis

### **FEE AWARD**

I make no fee award as I have dismissed the appeal.

Signed:

Dated:



Deputy Upper Tribunal Judge Alis