



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

Appeal Number: AA/02889/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 29 February 2016**

**Decision & Reasons
Promulgated
On 8 April 2016**

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL ARCHER

Between

**WI
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Sarah Anzani, Counsel, instructed by Nag Law Solicitors

For the Respondent: Ms N Willcocks-Briscoe, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/2698) I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the appellant.

Breach of this order can be punished as a contempt of court. I make the order because the appellant is an asylum seeker who might be at risk just by reason of being identified.

2. The appellant appeals against the decision of the First-tier Tribunal dismissing the appellant's appeal on asylum and human rights grounds against a decision taken on 17 February 2014 refusing to grant him further leave to remain and to remove him to Sri Lanka.

Introduction

3. The appellant is a citizen of Sri Lanka born on 30 June 1970.
4. The appellant claims that he opened a pharmacy business in Puttalam in 2006 but some medicine from the pharmacy was bought on behalf of the LTTE in January 2009. The appellant was detained by the Sri Lankan army, beaten and handed over to police. He was kept in custody for 11 months. He was eventually released on 20 November 2009 by a judge who accepted that he had not deliberately supplied medicine to the LTTE. He was not required to sign at Puttalam police station after 30 May 2010. However, in March 2012 he received a letter from the Sri Lankan authorities asking him to sign on at the police station. He believed that he would be kidnapped in a white van and killed. He fled Sri Lanka and arrived in the UK on 1 October 2012. His wife and children are in the UK but they left him on 25 November 2012.
5. The respondent did not accept the appellant's account to be credible. He had taken over two years to claim asylum and his account was internally inconsistent.

The Appeal

6. The appellant appealed to the First-tier Tribunal and attended an oral hearing at Hatton Cross on 25 June 2015. The judge found that the long delay in claiming asylum damaged his credibility but accepted that he was a pharmacist in Sri Lanka with his own business. His explanation for sending his wife to the UK as a domestic worker for her own safety was not credible given that his children remained in Sri Lanka. He remained in Sri Lanka for six months after receiving the March 2012 letter from police. The purported arrest warrant produced by the appellant was dated 16 October 2012; the delay was inconsistent with the alleged breach of bond conditions and the issue of the warrant was inconsistent with the claimed previous acceptance of innocence by the courts. The judge made other adverse credibility findings at paragraphs 51-62 of the decision. The appeal was dismissed.

The Appeal to the Upper Tribunal

7. The appellant sought permission to appeal on 2 September 2015. The grounds assert that the judge erred in the assessment of the arrest warrant, failed to make distinct or identifiable findings in respect of the

court and police documents produced by the appellant and the adverse credibility findings were unreasonable.

8. Permission to appeal was granted by Upper Tribunal Judge Grubb on 5 January 2016 on the basis that it was arguable that the judge erred in law by failing to take into account and/or give adequate reasons for rejecting the documentary evidence relied upon, in particular the evidence from the appellant's attorney in Sri Lanka. The judge did not appear to have considered that evidence at all. All grounds were arguable.
9. In a rule 24 response dated 2015, the respondent sought to uphold the judge's decision on the basis that the judge was not obliged to accept the purported arrest warrant as genuine nor to place weight upon the letter apparently emanating from a Sri Lankan lawyer. The judge had given clear reasons for rejecting the appellant's account and had considered all of the evidence in the round.
10. Thus, the appeal came before me.

Discussion

11. Miss Anzani focused her submissions on ground 2. The court documents appear at page 14 of the appellant's bundle and the attorney's letter at page 56. The appellant's account is that he was processed through the court system and that appears from pages 14-61. A 90 day detention order was requested in January 2009. There is a bond certificate with attached conditions of bail. Each subsequent court hearing is covered in the papers. The most recent attendance was March 2012. There was a 6 month adjournment on each occasion and the last adjournment appears at page 58. Page 60 shows the failure to attend and then an arrest warrant was issued. At page 66, there is a letter from the attorney who attended the magistrates' court and that confirms the appellant's release on bail. The reliability of the court documents is enhanced by the evidence from the attorney who is a genuine attorney in Sri Lanka as attested by his identity card.
12. Miss Anzani further submitted that the judge did not assess the documents. The judge took adverse credibility points but failed to consider the arrest warrant and the risk of further detention upon return. There is an absence of clear reasons for accepting or rejecting the documents. The court file shows a detailed chronology that is consistent with the appellant's account. The judge failed to assess the evidence of the attorney. The documents were rejected wholesale after the adverse credibility points were taken. There are no reasons given for rejection of individual documents. The respondent had an opportunity to verify but chose not to do so. Under PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011, where the respondent chooses not to verify, it is inappropriate to advance a case that relies upon documents not being genuine. The judge failed to engage with that argument despite it being made in the skeleton argument before the First-tier Tribunal.

13. Ms Willcocks-Briscoe submitted that the judge was clearly aware of the documents which are referred to in paragraph 39 of the decision. The original documents were referred to for the first time in examination in chief. This was not a case where the respondent has sat on the originals. The judge did have in mind the summary of the documents, referred to from paragraph 47 of the decision onwards. Paragraph 50 refers to the arrest warrant and at paragraph 54 there are no documents to support the claimed referral to the International Health Organisation. The credibility of the account had to be assessed in the round. The judge's reasons for finding the appellant not to be credible were similarly applied to the documents that were submitted. The judge took direct quotes from the asylum interview record. There were proper reasons for finding against the appellant on the issue of delay and the judge was entitled to take that into account.
14. I find that paragraphs 61-62 of the decision are critical. The judge stated at paragraph 61 that it was difficult to assess whether the court documents were genuine. The judge then stated that past detention could lead to future risk of detention and ill treatment. At paragraph 62, following an "orbital assessment", the judge did not accept that there was an outstanding warrant. The judge did not explicitly consider the evidence from the attorney. I am satisfied that constitutes a material error of law because the evidence from the attorney was highly material to the central issue of whether the court documents, including the arrest warrant were genuine. The judge failed to consider material evidence and make findings.
15. The documentary evidence was extensive, running to over 40 pages. Fabrication of that evidence would have been a significant task. I am satisfied that the judge has not given adequate reasons for rejecting the court evidence and the existence of the warrant. There was no attempt to consider the documents individually or the weight of the documents when considered as a whole. I find that is a breach of the duty to give reasons, as set out in MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC). There is a duty to explain the tribunal's assessment of the most important pieces of evidence and to provide reasons for choosing to give (as the case may be) no, little, moderate or substantial weight thereto. I find that no such explanation can be gleaned from the decision of the First-tier tribunal. The "orbital assessment" was not sufficient. That is a further material error of law.
16. Thus, the First-tier Tribunal's decision to dismiss the appellant's appeal involved the making of errors of law and its decision cannot stand. I have not found it necessary to consider the remaining grounds of appeal. In light of the fact that the original documents appeared for the first time at the oral hearing, the respondent should be given a reasonable opportunity to verify the original documents. Ms Willcocks-Briscoe indicated that 90 days would be a reasonable period for the verification process.

Decision

17. Both representatives invited me to order a rehearing in the First-tier Tribunal if we set aside the judge's decision. Bearing in mind paragraph 7.2 of the *Senior President's Practice Statements* I consider that an appropriate course of action. I find that the errors of law infect the decision as a whole and therefore the re-hearing will be de novo with all issues to be considered again by the First-tier Tribunal.
18. Consequently, I set aside the decision of the First-tier Tribunal. I order the appeal to be heard again in the First-Tier Tribunal to be determined *de novo* by a judge other than the previous First-tier judge. I further order that the rehearing should not be listed less than 120 days from the date of this decision.

Signed 

Date 24 March 2016

Judge Archer

Deputy Judge of the Upper Tribunal