IAC-FH-CK-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: AA/03609/2015
AA/03753/2015

THE IMMIGRATION ACTS

Heard at Field House
On 8 January 2016

Decision & Reasons Promulgated
On 21 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

R R
N A
(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr Mills, Counsel, instructed by Kanaga Solicitors
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal by the two Appellants against the decision of First-tier Tribunal Judge O'Garro (hereafter the judge), promulgated on 26 August 2015, in which she dismissed their appeals against the Respondent's decision of 13 February 2015, refusing to grant asylum, refusing to vary their leave to remain, and to remove them by way of directions under

© CROWN COPYRIGHT 2016

Section 47 of the Immigration, Asylum and Nationality Act 2006. In my decision I will refer only to the lead Appellant, the second Appellant's case being entirely dependent upon his.

2. The Appellant's claim for international protection was essentially as follows. His father had been actively involved in the LTTE. Subsequently the Appellant himself had assisted this organisation. This involvement resulted ultimately in both of them being arrested and court proceedings initiated. The father and the Appellant were released on conditions. The Appellant then left Sri Lanka in December of 2012. The Appellant asserted that he was a wanted person given that an arrest warrant had been issued for him and that his father had subsequently disappeared.

3. At paragraphs 64 and 65, the judge in her decision made findings in respect of the family's ethnicity, faith and linguistic preferences. She found the Appellant's evidence to be inconsistent with country information. At paragraph 66 she found that there was a lack of detail in the Appellant's evidence in relation to his father's role in the LTTE. At paragraphs 67 and 68 the judge found that the nature of the father's claimed release from detention was inconsistent with country information and ultimately she found that the father had not in fact been involved in the LTTE.

4. The judge made two other adverse findings in paragraphs 71 and 72 and then at paragraph 73 she stated: "As I do not accept the Appellant was involved in assisting the LTTE when he first left Sri Lanka [that being in 2008], I do not accept that he was of interest to the authorities when he returned leading to his arrest and detention." At paragraph 74 she made reference to a particular court document produced by the Appellant at C15 of the Respondent's bundle and she found that there was an inconsistency within this document in relation to the Appellant's own evidence. She held this point against the Appellant's credibility.

5. In paragraph 75 the judge went on to state as follows:

> "Well, as I do not accept that the authorities have any interest in the Appellant or that he was arrested and detained when he visited Sri Lanka in 2012, I do not accept that a warrant has been issued for his arrest."

6. The judge went on to cite country information on Sri Lanka and the well-known Tribunal decision of Tanveer Ahmed. At paragraph 79 she said the following:

> "I have not overlooked the verification report on the document prepared by Mr A.M.A.S Senanayake. In view of my findings about one of the court documents the Appellant relies on and bearing in mind what the objective evidence says about genuine documents being easy to obtain fraudulently, without there being a need to forge them, I will gave [sic] no weight to this verification report."

7. The judge then considered the country guidance case in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and went on to dismiss the appeals on all grounds.

8. The Appellant sought permission to appeal relying on two grounds, the first of these relating to what may be termed a "cart before the horse" error whereby it is said that the judge failed to consider relevant evidence in the round when assessing core elements of the Appellant's account. Ground 2 relates to allegedly flawed findings in respect of the father's involvement with the LTTE.

9. Permission to appeal was granted by First-tier Tribunal Judge Robertson on 8 October 2015. The terms of the grant of permission certainly appear to be limited in scope, ground 2 being described as nothing more than a disagreement with the findings of the judge. Subsequent to the grant of permission there had been no application by the Appellant to the Upper Tribunal for permission to appeal on ground 2 (see Rule 21 of the Upper Tribunal Procedure Rules).

The hearing before me

10. Mr Mills relied on his skeleton argument and the case law attached thereto. He confirmed that he was not pursuing ground 2 of the grounds of appeal. He submitted that that was not necessary in light of the main ground of appeal, which he said was of such importance that it rendered all other credibility findings unsustainable. Mr Mills submitted that the court documents relating to the Appellant's father went to the issue of whether he had been involved in the LTTE at all. Mr Mills submitted that what is said by the judge in paragraph 74 of her decision was not a 'knock-out point' against the Appellant, and in respect of paragraph 79 it was clear, he submitted, that the expert report from the Sri Lankan lawyer had been treated effectively as an add-on by the judge after she had already rejected the issuance of an arrest warrant.

11. For the Respondent Mr Avery submitted that the judge's decision had to be considered in the round; decisions had to be written in a structured way so it followed that one point would come after another and so on. The judge had stated at paragraph 55 that she was considering the evidence in the round and had adopted an appropriate chronological approach to her decision. The lawyer's letter had been considered and rejected for adequate reasons.

12. Mr Avery submitted that on a proper reading of paragraph 73 it followed that paragraph 74 related to that paragraph in terms of its reasoning. Paragraph 74 related to a key legal document that the judge found was unreliable. Therefore her conclusion that the other documentary evidence was also unreliable was sustainable.

13. In reply Mr Mills relied on the decision in MT [2004] UKIAT 307, particularly at paragraph 7. He submitted that paragraph 73 of the judge's decision

was in fact a summary of what had gone before, and not what followed, contrary to Mr Avery’s position. Paragraph 74 did not raise a clear inconsistency and was not fatal to the Appellant’s case. In respect of the lawyer’s report the judge’s consideration of it was too brief and in respect of its location in the decision it was apparent that it was indeed an afterthought in her consideration of the evidence as a whole.

14. In respect of disposal both representatives were agreed that if I found there to be material errors of law the appeals should be remitted to the First-tier Tribunal.

Decision on error of law

15. I announced at the hearing that I found that the judge had materially erred in law and I now give my reasons for that conclusion.

16. The principle that the cart should not be put before the horse is a trite one cited in a number of cases. Nonetheless it is an important point. Considering the evidence in the round it is a matter not simply of form but of substance, and particularly in protection cases judges must deal with relevant and important evidence carefully and clearly.

17. It is right that the judge stated that she was considering the evidence in the round, and I certainly appreciate Mr Avery’s point that any decision has got to be structured: this must mean that one point will follow after another. It is right also that there are a number of adverse credibility findings in the decision that have not been expressly challenged and these must be taken into account when looking at the decision as a whole. Having said that, I conclude, with particular reference to paragraphs 75 and 79 of her decision, that the judge did commit an error of law, which may be categorised in short terms as putting the cart before the horse.

18. Looking at the wording used by the judge, which must be an indicator of how she approached her decision making, she states in terms in paragraph 75 that she did not accept that a warrant had been issued for the Appellant’s arrest because she had not accepted that the authorities had any interest in the Appellant currently or in the past. On the face of it that reasoning pre-empts consideration on whether the warrant (a vital piece of evidence) was a reliable document or not. There is a significant danger that the judge has failed to assess a crucial element of the evidence as part and parcel of the claim, rather than as an addendum.

19. I appreciate what is said in paragraph 74 in respect of one element of a document at page C15 of the Respondent’s bundle. However, in my view that was not sufficient without more to have rendered the rest of the documentary evidence, including the warrant, as being unreliable and incapable of carrying any weight at all.

20. The second limb of the judge’s error relates to paragraph 79 and the verification report of the Sri Lankan lawyer (to be found at page 13 of the

Appellant's bundle). This evidence was clearly of importance, given its contents. The lawyer states in terms that he himself had attended the relevant Magistrates' Court in Sri Lanka and had actually inspected the court file. He confirmed that the case, the reference number of which is stated in the relevant court documents, was a genuine case against the Appellant. This is an example of important evidence that had to be considered as part and parcel of the assessment of:

(a) whether the Appellant had been of any interest to the authorities,

(b) whether there had been any court proceedings,

(c) whether a warrant had been issued for the Appellant's arrest.

21. Whilst taking on board Mr Avery's point about the structure and chronology of the decision, I conclude that what is said in paragraph 79 is in effect a very strong indicator of the judge treating this important expert evidence as being an add-on in terms of her consideration of the core issues of the court documents and in turn, of the adverse interest in the Appellant. The assessment of the lawyer's evidence comes a number of paragraphs after her conclusion in paragraph 75 that no warrant had in fact been issued. There is no express reasoning as to the standing of the lawyer and the particular contents of his report, and the point made by the judge in paragraph 79 about the apparent inconsistency in one of the other court documents at C15 in the Respondent's bundle could not have been, in and of itself, sufficient to disregard the entirety of the lawyer's report.

22. In addition, contrary to Mr Avery's position on the correct reading of paragraph 73, I see that passage as being a summary of what the judge had found already and not as a headline summary of what follows in paragraph 74. Therefore this provides another example in my view of the judge stating a finding of fact prior to consideration of other relevant evidence going to that particular issue.

23. Although this is certainly not a clear-cut case, in my view the errors of law exist and are material given the centrality of credibility in this appeal, the important nature of court documents, and the evidence from a lawyer purporting to have verified the reliability of those court documents.

24. In light of the above, I set aside the decision of the First-tier Tribunal.

Disposal

25. Both representatives were agreed that remittal would be the appropriate course of action in this case were I to find material errors of law. That must be the correct course of action having regard to the nature of the issues and paragraph 7 of the relevant Practice Statement. Therefore this appeal will be remitted to the First-tier Tribunal to be heard completely afresh with no findings of the judge being preserved. I set out relevant directions, below

<u>Notice of Decision</u>

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

<u>Directions to the parties</u>

1. **The remitted appeals are to be reheard completely afresh, with no findings from Judge O'Garro's decision to stand;**
2. **Either party will have the opportunity to adduce further evidence in accordance with standard directions to be issued by the First-tier Tribunal.**

<u>Directions to Administration</u>

1. **The remitted appeals will be heard at the Hatton Cross hearing centre;**
2. **The remitted appeals shall not be heard by First-tier Tribunal Judge O'Garro;**
3. **The date for the remitted appeals to be heard shall be fixed by the Hatton Cross hearing centre itself;**
4. **A Sinhalese interpreter is required for the remitted hearing;**
5. **There is a three-hour time estimate for the remitted hearing.**

<u>Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008</u>

Unless and until a Tribunal or court directs otherwise, the Appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the Appellants and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed Date: 19 January 2016

Deputy Upper Tribunal Judge Norton-Taylor