



IAC-AH-CO-V1

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

Appeal Number: AA/04008/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 17th December 2015**

**Decision & Reasons Promulgated
On 5th January 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MA

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs S Sreeraman, Senior Home Office Presenting Officer

For the Respondent: Mr N Paramjorthy of Counsel instructed by Vasuki Solicitors

DECISION AND REASONS

Introduction and Background

1. The Secretary of State appeals against the decision of Judge Anstis of the First-tier Tribunal (the FTT) promulgated on 11th August 2015.
2. The Respondent before the Upper Tribunal was the Appellant before the FTT and I will refer to him as the claimant.

3. The claimant arrived in the UK as a student on 13th September 2010 and claimed asylum on 24th March 2014. In brief the claimant feared the authorities in Sri Lanka as he is a Tamil and had supported the LTTE. He claimed that he had been arrested, detained and tortured. Following his release he had received two summonses to attend court but he had failed to attend and therefore a warrant for his arrest had been issued.
4. The application was refused on 23rd February 2015.
5. The claimant appealed, and his appeal was heard by the FTT on 24th July 2015. The claimant gave evidence. The FTT did not accept that the claimant had been involved with Tamil politics while in the United Kingdom, but did accept his account of events prior to his departure from Sri Lanka. In particular the FTT placed weight upon documentary evidence submitted by the claimant and accepted the claimant was the subject of an arrest warrant, and on that basis found that, applying GJ Sri Lanka CG [2013] UKUT 319 (IAC) the Appellant would be at risk if returned to Sri Lanka and therefore his appeal was allowed on asylum grounds.
6. The Secretary of State applied for permission to appeal to the Upper Tribunal relying upon three grounds which may be summarised as follows.
7. Firstly it was contended that the FTT had failed to adequately engage with the points raised in the Respondent's refusal letter at paragraphs 30-36, which relate to credibility. It was submitted that the FTT had failed to reconcile conflicts in the evidence when making findings, which amounted to a material error of law.
8. Secondly it was contended that the FTT had failed to follow the approach in Tanveer Ahmed [2002] UKIAT 00439. The claimant had submitted additional documentary evidence after his application for asylum had been refused. At paragraph 32 the FTT had stated that the authenticity of the documents had not been challenged, but the Secretary of State contended it was clear that the Presenting Officer before the FTT had made submissions challenging the credibility of the claim. The FTT decision did not demonstrate that the FTT had looked at the documentary evidence in the round as required by Tanveer Ahmed, and it was argued that the FTT had presumed the documentary evidence to be authentic.
9. Thirdly the FTT had failed to properly apply section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The FTT had considered the delay in claiming asylum, but had not considered the failure to submit a number of documents when requested by the Secretary of State, and therefore paragraph 339L(ii) was not satisfied as this required a person claiming asylum to submit in connection with his claim "all material factors at the person's disposal", and to supply "a satisfactory explanation regarding any lack of other relevant material".
10. Permission to appeal was given by Judge Foudy of the FTT who stated;
"The judge found that documents filed by the Appellant were not challenged however these were documents filed after the Respondent had refused asylum. The Respondent was under no duty to review the late evidence

filed by the Appellant and in any event the reliability of the new evidence was challenged by the Presenting Officer. Failure to address this issue is an arguable error of law.”

11. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FTT had erred in law such that the decision must be set aside.

The Secretary of State’s Submissions

12. Mrs Sreeraman relied upon the grounds contained within the application for permission to appeal. The central challenge to the FTT decision, is the failure to engage with the principles in Tanveer Ahmed regarding documentation produced by the claimant for the first time before the FTT.
13. This documentation included two court summonses. It was accepted by Mr Paramjorthy on behalf of the claimant that these documents were submitted for the first time to the FTT.
14. Mrs Sreeraman submitted that the FTT had not considered the documents in the round and the FTT had not explained why authenticity and credibility of the documents was accepted, particularly given that it was clear that the FTT had concerns about other aspects of the claimant’s account. I was asked to find that the FTT had failed to appreciate that the burden of proof was on the claimant, to show that the documents could be relied upon. It was not for the Secretary of State to explain why the documents were unreliable.

The Claimant’s Submissions

15. Mr Paramjorthy argued that the FTT decision disclosed no material error of law. I was referred to paragraphs 36-37 of the decision in which the FTT considered the court summonses and the documentary evidence and found that the documentary evidence was consistent with the claimant’s account. Although there was no reference to Tanveer Ahmed, Mr Paramjorthy submitted that the FTT had considered the evidence in the round, and having done that, concluded that the claimant had proved that the documents could be relied upon.
16. It was also argued that the FTT had engaged with all credibility challenges in the reasons for refusal letter and that the FTT had accepted some, although not all of the claimant’s account. The medical evidence submitted in relation to scarring, supported the claimant’s account, and the FTT was entitled to accept that evidence.
17. Mr Paramjorthy submitted that the FTT had dealt properly with section 8 of the 2004 Act, and had properly applied the country guidance case law, and the decision of the FTT should stand.
18. As the conclusion of submissions I reserved my decision.

My Conclusions and Reasons

19. I find that the FTT materially erred in law in relation to the documentary evidence submitted on behalf of the claimant, which evidence was submitted in a bundle of documents the day before the hearing.
20. The FTT was wrong in law in paragraph 32 in describing the authenticity of the documents as not being challenged. The documents in question, which are set out in paragraph 24 of the FTT decision, were not produced to the Secretary of State when the claimant made his asylum claim. The Secretary of State did not, prior to the hearing, have the opportunity to question the authenticity of the documents, although I accept that there was no application for an adjournment on behalf of the Secretary of State in order to verify the validity of the documentation supplied.
21. The FTT was incorrect to state that there was no challenge to the documentation, as the Record of Proceedings indicates that in making submissions, the Presenting Officer did refer to inconsistencies as regard to the arrest and court summons.
22. The principles in Tanveer Ahmed are well-known and they are that in asylum and human rights cases it is for an individual claimant to show that a document on which he seeks to rely can be relied on. A decision maker should consider whether a document is one on which reliance should properly be placed after looking at all the evidence in the round.
23. The FTT was wrong in law in paragraph 36 to state that “the Respondent has no real answer to them” when referring to the two court summonses. The FTT did not apply the Tanveer Ahmed principles, and that is an error of law. The burden was on the claimant to show that the documents could be relied upon, and the FTT should have taken that into account and considered the evidence in the round.
24. The Secretary of State in paragraph 29 of the refusal, observed that the claimant had stated that he had asked his sister to send the first summons to him in the UK. He had asked this the day before his asylum interview which took place on 31st October 2014. The claimant indicated that he thought his sister must have sent the second summons as well. He was given five working days to submit the documents but failed to do so. The summonses were therefore produced for the first time at the FTT hearing.
25. It is clear that the FTT placed very significant weight upon the recently produced documentary evidence, including the court summonses, commenting in paragraph 37 that the documentary evidence outweighed concerns that the FTT had about the medical position. The court summonses persuaded the FTT that the Appellant had been arrested and tortured and bailed to attend court, and then had failed to answer bail, which meant that there was a warrant out for his arrest. It was for that reason that the FTT allowed the appeal.
26. I find that the error in considering the documentation, in failing to comply with the Tanveer Ahmed principles, is a material error and infected other findings, and means that the decision of the FTT is unsafe. Therefore the decision of the FTT is set aside with no findings preserved.

27. Both representatives agreed at the hearing, when I reserved my decision, that if a material error of law was found, as contended by the Secretary of State, then it would be appropriate to remit the appeal back to the FTT to be heard again.
28. I have considered paragraph 7 of the Senior President's Practice Statements dated 25th September 2012, and find that it is appropriate to remit the appeal back to the First-tier Tribunal because of the nature and extent of judicial fact-finding that will be necessary in order for this decision to be remade.
29. The appeal will be heard at the Hatton Cross Hearing Centre and the parties will be advised of the time and date in due course. The appeal is to be heard by a FTT judge other than Judge Anstis.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal with no findings of fact preserved.

Anonymity

The FTT made an anonymity direction and I continue that anonymity order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) rules 2008.

Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) rules 2008

Unless and until a Tribunal or court directs otherwise, the claimant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 18th December 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The issue of any fee award will need to be considered by the First-tier Tribunal.

Signed

Date 18th December 2015

Deputy Upper Tribunal Judge M A Hall