IAC-FH-NL-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05272/2015

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 March 2016	**On 5 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

J R M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms S Anzani, Counsel, instructed by Nag Law Solicitors
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Boylan-Kemp (the judge), promulgated on 8 December 2015, dismissing the Appellant's appeal on all grounds. The appeal to the First-tier Tribunal had been against the Respondent's decision of 13 March 2015 to remove the Appellant from the United Kingdom by way of directions under section 10 of the Immigration and Asylum Act 1999.

2. In essence, the Appellant's protection claim was based upon a suspicion by the Sri Lankan authorities that he had been involved in the well-documented murder of the Sri Lankan Foreign Minister on 12 August 2005. The Appellant claimed that he had been detained shortly after the incident, accused of being involved, mistreated and then released upon payment of a bribe. The Appellant stated that he then left the country illegally in October 2006 and returned to Sri Lanka to visit family in June 2007. Whilst there he was again detained, essentially on the same basis as before. Again he was interrogated and mistreated and again he was released upon payment of a bribe. He then left Sri Lanka legally on 15 July 2008. He claimed asylum in this country in January 2014.

3. A central plank of his case was that there is an extant arrest warrant against him in Sri Lanka and this of itself places him at risk in light of the current country guidance case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).

Hearing before the judge

4. The judge's findings start at paragraph 52 of his decision. In respect of the Appellant's initial detention it is said that his evidence was inconsistent with the country information relating to the murder of the foreign minister. The judge goes on to find that it was implausible that the Appellant, being suspected of the serious crime of murder, would have been released even on payment of a bribe and that it was implausible that he would have been allowed to leave the country through normal immigration channels if he was of interest to the authorities.

5. At paragraph 59 the judge turns to the issue of the arrest warrant. Having dealt with the submissions on this point made by both representatives the judge at paragraph 70 ultimately concludes that she preferred the evidence contained within the Respondent's document verification report to the effect that the arrest warrant was not a genuine document.

6. At paragraphs 71 to 72 the judge concludes that the Appellant's delay in claiming asylum in this country was adverse to his credibility.

7. The conclusions are summarised in paragraphs 76 and 77 wherein the judge states that he was rejecting the core of the Appellant's account relating to arrest and detention and it followed that the Appellant was not at risk in light of GJ and Others.

8. The claimed activities in the United Kingdom are dealt with briefly at paragraph 78 and it is concluded that no risks arose therefrom.

The grounds of appeal and grant of permission

9. The grounds of appeal are twofold. Ground 1 asserts that the judge failed to have regard to country information accepted by the Upper Tribunal in GJ and Others when assessing the credibility of the Appellant's claimed releases from detention and legal departure from Sri Lanka.

10. Ground 2 relates to the judge's assessment of the arrest warrant. It is said that the judge erred in failing to deal with the evidence of a Sri Lankan lawyer who had produced two letters relating to the authenticity of the warrant.

11. Permission to appeal was granted by Designated First-tier Tribunal Judge Zucker on 19 January 2016.

The hearing before me

12. Ms Anzani identified the two lawyer's letters, both of which were before the judge. The first is dated 5 June 2015 and the second 17 November 2015. A copy of each is on file. Ms Anzani submitted that the judge erred at paragraph 64 in finding that there were discrepancies in relation to the contact details of the lawyer. Having regard to pages 1 and 2 of the Appellant's supplementary bundle and page 8 of the Appellant's main bundle there were in fact no inconsistencies in respect of the lawyer's residential address and telephone number. The judge therefore had factually erred. In addition Ms Anzani submitted that these concerns had not been raised by the judge at the hearing and therefore the Appellant had not had an opportunity to address the points at that hearing. She submitted that the judge had failed to look at the lawyer's evidence correctly and failed to address the point raised in the second lawyer's letter that he (the lawyer) had in fact attended the relevant court and obtained a copy of the warrant himself: this was direct evidence and needed to be addressed by the judge. The issue of the arrest warrant was core to the assessment of risk on return in light of GJ and Others.

13. In respect of the second ground of appeal, Ms Anzani referred me to her skeleton argument and the grounds of appeal which cited particular paragraphs of GJ and Others relating to country information on release by payment of a bribe and departure through the airport.

14. Ms Isherwood accepted that the judge had erred in respect of the lawyer's evidence but she stated that it was not material because of what is contained at paragraphs 66 to 70 of the judge's decision. She relied in addition in particular on the last sentence of paragraph 68. She submitted that the judge had looked at the Appellant's claim in the round and had assessed the relevant evidence.

Decision on error of law

15. I find that the judge has materially erred in law. My reasons for this conclusion are as follows.

16. The judge failed to assess the lawyer's evidence adequately. It is clear that the judge factually erred in paragraph 64. I accept Ms Anzani's submissions in respect of the contact details and having carefully considered documents myself there were in fact no inconsistencies on the face of the evidence. Therefore the basis upon which the judge appears to have reduced the weight to be attached to the lawyer's evidence was wrong.

17. In addition, I also accept Ms Anzani's submission that the judge's concerns, albeit misconceived, were not raised at the hearing as they should have been, given that the Presenting Officer had not challenged the standing of the lawyer himself.

18. I appreciate what Ms Isherwood says about the findings and reasons contained in paragraphs 66 to 70 as they relate to the arrest warrant. However the judge has failed to properly examine or engage with the lawyer's second letter dated 17 November 2015 in which he states in terms that: "I confirm that I personally visited the record room of the Chief Magistrates' Court and obtained the copy of the warrant". That is direct evidence from a lawyer to the effect that he had obtained a copy of the core document in the Appellant's case. The judge makes no reference to this element of the lawyer's letter at all. If she was implicitly rejecting it because of what she said at paragraph 64, she was clearly wrong in so doing given what I have said previously. If she was rejecting this evidence for any other reason clear findings and reasons would have had to have been provided. I bear in mind the decision of the Court of Appeal in PJ (Sri Lanka) [2014] EWCA Civ 1011 in which a similar issue arose. Direct evidence from lawyers whose standing has not been challenged is significant and needs to be addressed with particular care. This has not occurred in the case before me.

19. In my view the judge's error in respect of the lawyer's letter infects the entirety of her consideration of the arrest warrant and therefore the error is material to this issue notwithstanding what else is said in paragraphs 66 to 70. In turn, and because of the centrality of the arrest warrant to the Appellant's claim as a whole, I find that the error made on this issue infects the entirety of the judge's decision. On this basis alone therefore the decision must be set aside.

20. In respect of the other ground of appeal I am also satisfied that the judge has materially erred. The issues of release by payment of a bribe and departure from the country were specifically addressed in expert and country evidence before the Upper Tribunal in GJ and Others and having regard to the various paragraphs to which I have been referred that evidence was accepted by the Upper Tribunal and applied to the individual cases before it (see for example, paragraphs 394 and 424). Although it is somewhat unclear as to whether the judge was specifically referred to the specific paragraphs of GJ and Others, I accept that the submission was made on behalf of the Appellant to the effect that it was plausible that people would be released on payment of a bribe and also be able to leave the country notwithstanding an ongoing interest in them. The judge failed to engage with the issue of corruption and bribery and its claimed application to the Appellant's case (see for example, his evidence at Q29 of the asylum interview). On this basis too the judge's decision must be set aside.

Disposal

21. Both representatives were agreed that if I were to find material errors of law in the judge's decision the appeal would have to be remitted to the First-tier Tribunal. Having regard to paragraph 7 of the Practice Statement I conclude that this must be the appropriate route. The adverse credibility findings made by the judge are

unsustainable in light of the errors of law. This appeal needs to be heard afresh with no preserved findings of fact. I therefore remit the appeal to the First-tier Tribunal and issue relevant directions below.

Notice of Decision

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.

Directions to the parties:

1. **The remitted hearing will be a complete re-hearing with no preserved findings of fact;**
2. **Any further evidence relied on by either party must be filed with the First-tier Tribunal and served upon the other party no later than fourteen working days prior to the next hearing;**
3. **Both parties must comply with any further directions issued by the First-tier Tribunal.**

Directions to Administration:

1. **This appeal shall be remitted to the First-tier Tribunal to be heard at Sheldon Court hearing centre on a date to be fixed by that centre;**
2. **First-tier Tribunal Judge Boylan-Kemp shall not rehear this appeal;**
3. **A Tamil interpreter is required;**
4. **There will be a three-hour time estimate for the remitted hearing.**

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

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

Signed Date: 22 March 2016

Deputy Upper Tribunal Judge Norton-Taylor