Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Numbers:**
PA/00648/2016

PA/00649/2016

PA/00650/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 5 May 2017	**On 25 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE LATTER

Between

ROHITHA NILRUK MANDALAWALLI ACHIRIGE ACHARIGE
HETTI MUDALIGE INOKA SAMANMALI DHARMARATHNA DE SILVA
KUSHAN FLOWER MANDALAWALLI ACHARIGE
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Mr J Martin of Counsel
For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellants against a decision of the First-tier Tribunal (Judge Carroll) who dismissed their appeal against the

respondent's decision of 14 January 2016 refusing their application on asylum, humanitarian protection and human rights grounds.

Background

2. The appellants are citizens of Sri Lanka, the first appellant ("the appellant") born on 9 April 1974 is the husband of the second appellant born on 12 January 1977 and they are the parents of the third appellant, born in the UK on 4 February 2012.

3. The appellant arrived in the UK on 3 April 2010 with entry clearance as a Tier 4 dependant relative to accompany his wife. Their leave was extended in the same capacity until 21 September 2015 but on 5 May 2015 it was curtailed to expire on 7 July 2015 on the basis that the second appellant was not progressing in her studies. On 2 July 2015 the appellant applied for compassionate leave to remain outside the rules as a dependant of the second appellant. The application was rejected because no fee was paid. On 24 July 2015 he attended the Asylum Screening Unit and on 24 August 2015 formally claimed asylum.

4. The basis of the appellant's claim was briefly summarised in [8] of the judge's decision. He claimed that in January 2008 he was introduced to a Tamil man called Ganesh who asked him to do some work spraying boats. For four months the appellant did so carrying out work on about 22 boats. He had no indication that Ganesh was linked to the LTTE but in December 2008, he was told by a friend that Ganesh had been killed and was linked to the LTTE. He claimed that in January 2009 he was arrested by the Terrorist Investigation Unit and taken into detention where he was interrogated and beaten. At the end of February 2009 he was taken to a police station and then to prison, being released in June 2009 with the assistance of a lawyer on condition that he reported to the police every month. He then made arrangements to leave Sri Lanka as he feared being re-taken by the authorities and tortured again. Since being in the UK, the authorities had continued to look for him.

5. The respondent accepted that the appellant's identity and nationality were as claimed but not that he had been arrested by the authorities, tortured, imprisoned or bailed in June 2009. Further, it was not accepted that the Sri Lankan authorities were continuing to look for him or that they had any adverse interest in him.

The Hearing before the First-tier Tribunal

6. The appellants appealed against this decision They sought to rely on documents obtained from Sri Lanka at pages 7-30 of the respondent's bundle before the First-tier Tribunal. These include a "B Report" filed in court against the appellant, the court proceedings against him, the bond he signed, a warrant issued against him and the certification of the Magistrate Court Registrar. The appeal was listed for hearing before the

First-tier Tribunal on 8 July 2016 but that hearing was adjourned on the respondent's application on the basis that the documents and particularly the arrest warrant from Sri Lanka had only recently been provided by the appellant and the respondent sought time to verify them.

7. When the matter was relisted for hearing on 30 November 2016 there is no evidence that any attempt had been made at verification or, if it had, what the result was and the judge proceeded to hear the appeal on the basis of the available evidence. She did not find that the appellant was credible about his account of being detained and tortured in Sri Lanka or his claimed fear of return. She set out at [17(a)-(h)] the factors she took into account primarily arising from the oral evidence and then went on to consider the documentary evidence noting at [18] that the Presenting Officer had no evidence of and no knowledge of the outcome of the verification exercise. The judge then considered the documentary evidence at [19(a)-(d)] and was not satisfied that any weight could be attached to the documents in support of the appellants' claim. She summarised her findings at [21] by saying:

> "I have considered the appellant's case in the light of the objective evidence and the current country guidance. For the reasons given above and for the reasons given by the respondent, I do not find the appellant credible as to the basis of his claimed fear of return to Sri Lanka. I do not believe that he is subject to an outstanding arrest warrant or that he is of any interest to authorities. The appellant does not come within any of the categories of persons at real risk of persecution or serious harm on return to Sri Lanka."

Accordingly, the appeal was dismissed.

The Grounds and Submissions

8. The grounds argue firstly, in respect of the documentary evidence that the documents should have been easy to verify and could all be checked and in reliance on PJ v Secretary of State [2014] EWCA Civ 1011 and in particular paras 30-32 that the respondent should have been prevented from challenging them. The grounds then challenge the factors identified by the judge in [17] (a), (c), (d), (e) and (h), arguing either that they should not have been taken into account in the assessment of credibility or that there had been a failure to consider the explanation put forward. The grounds then challenge the judge's analysis and decision in relation to the documentary evidence as set out in [19].

9. Permission to appeal was granted by the First-tier Tribunal on the basis that:

> "It is arguable that the judge erred in considering the weight to be placed on documents produced by the appellants only after he found against them in terms of credibility and not as part of the general assessment of the evidence. All grounds may be argued."

Consideration of whether the First-tier Tribunal erred in law.

10. The grounds in substance raise three challenges: whether the judge erred in her approach to the assessment of the documentary evidence which the respondent had had the opportunity of verifying, secondly, in her assessment of the appellant's credibility in [17] and thirdly, in her assessment of the documentary evidence at [19]. The grounds raise a further issue, whether the judge considered the evidence as a whole. I will consider these grounds in order.

(i) The Consequence of the Respondent's Failure to Verify the Appellants' Documents

11. Mr Martin submitted that the respondent had been given the opportunity of verifying the appellant's documents and that, in accordance with the guidance in PJ v Secretary of State the respondent should have been prevented from challenging them or at least, in the alternative, the judge should have dealt with his submissions on this issue as set out in his skeleton argument. Ms Ahmad submitted that there had been no obligation on the respondent to verify the documents and in the absence of such verification, the judge was right to assess the documents for herself and was entitled to find that they were not reliable.

12. I am not satisfied that the paragraphs relied on in the judgment in PJ v Secretary of State support the argument that in the present case the respondent's failure to verify the documents should lead to the respondent being prevented from challenging them. Paras 30-32 of the judgment read as follows:

> "30. Therefore simply because a relevant document is potentially capable of being verified does not mean that the national authorities have an obligation to take this step. Instead it may be necessary to make an enquiry in order to verify the authenticity and reliability of a document – depending always on the particular facts of the case – when it is at the centre of the request for protection and when a simple process of enquiry will conclusively resolve its authenticity and reliability (see Singh v Belgium [101]-[105]). I do not consider that there is any material difference in approach between the decisions in Tanveer Ahmed and Singh v Belgium, in that in the latter case the Strasbourg court simply addressed one of the exceptional situations where national authorities should undertake a process of verification.
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> 31. In my view the consequence of a decision that the national authorities are in breach of their obligations to undertake a proper process verification is that the Secretary of State is unable thereafter to mount an argument challenging the authenticity of the relevant documents unless and until the breach is rectified by a proper enquiry. It follows that if a decision of the Secretary of State is overturned on appeal on

this basis, absent a suitable investigation, it will not be open to her to suggest that the documents are forged or otherwise are not authentic.

32. Finally, in this context it is to be emphasised that the courts are not required to order the Secretary of State to investigate further areas of evidence or otherwise to direct her enquiries. Instead on an appeal from a decision of the Secretary of State it is for the court to enquire whether there was an obligation on her to undertake particular enquiries, and if the court conclude that this requirement existed, it will resolve whether the Secretary of State sustainably discharged her obligation (see NA (UT Rule 45: Singh v Belgium) [2014] UKUT 00205 (IAC). If the court finds there was such an obligation and that it was not discharged it must assess the consequences for the case."

13. In the present case it is not arguable that the documents relied on by the appellants fell within one of the exceptional situations envisaged in Singh v Belgium ECtHR, 2 October 2012, 33210/11, where the documents were easily verifiable and came from an unimpeachable source, when national authorities are under an obligation to verify them. The respondent sought an adjournment to have the opportunity of verifying the documents and this was rightly granted in the light of the fact that she had not had a proper opportunity of considering them. The fact that she appears not to have taken that opportunity does not amount to a breach of an obligation to verify the documents. In the absence of any evidence that the documents had been subject to verification, it was for the judge to decide what weight to give to them in the light of the evidence as a whole. Mr Martin argued that the judge should have had regard to his submission about the impact of the judgment of the Court of Appeal in PJ v Secretary of State but I am satisfied that the judge dealt with the matter adequately in [18] noting that the hearing had been adjourned at the request of the respondent to undertake a document verification exercise and that there was no indication of the outcome of that exercise. There was no need for her to deal with the issue at any greater length.

(ii) The Challenge to the Judge's Assessment in [17]

14. Mr Martin relied on his grounds arguing in relation to [17(a)] that the fact the appellant was not of Tamil ethnicity and there were no LTTE members or sympathisers in his family should not be regarded as a factor to be taken against him. In [17(b)] the judge made the point that both the appellant and his father worked spraying boats for Ganesh but his father had not been arrested or detained. The grounds argue that the judge failed to consider the appellant's explanation that he had a relationship with Ganesh and his father did not and that while his father helped with some of the work he was much older. It is argued that this explanation should have been considered.

15. In respect of [17(c)] where the judge commented on the fact that the appellant had no scarring and referred to an inconsistency in the evidence where at Q42 the appellant had said he had been given no medication or

treatment but in his oral evidence referred to receiving ayurvedic treatment and at P34 of his bundle there was a letter from the appellant's father saying that the appellant had been taken to a number of doctors for continuous medical treatment. The grounds argue that on the appellant's account he suffered blunt trauma injuries causing bruising and that it is unclear why this would have caused any injuries still visible more than seven years later and there was no obvious inconsistency between what the appellant and his father said and that the appellant may have been saying that he had received no medical treatment as in fact he received ayurvedic treatment. In [17(d)] the judge identified an inconsistency between what the appellant and his father had said about what happened following the appellant's release. The grounds argue that the phraseology used by the appellant's father was not as precise as the appellant's and he was not cross-examined on this particular issue.

16. In [17(e)] the judge commented on the fact that the appellant's wife had not given evidence and in [17(f)] that there was no evidence from the Sri Lankan MP. The grounds argue that this has the feel of requiring corroboration and does not have the appearance of applying the correct lower standard of proof. Finally, in respect of para [17(h)] where the judge made the point that the appellant had been in the UK since April 2010 and had given no credible explanation for the delay in claiming asylum, it is argued that in his witness statement he had explained that his wife had a visa and he felt protected by that and it was only when that expired and his father was experiencing difficulties that he claimed asylum.

17. Ms Ahmad submitted that the factors taken into account were clearly relevant to the assessment of the appellant's credibility. There was no reason to believe that the judge had not considered all the relevant evidence and she had been entitled to rely on the absence of evidence which could reasonably be expected.

18. I am not satisfied that there is any substance in the challenge to the judge's reasoning in [17]. The fact the appellant was not of Tamil ethnicity and there were no LTTE members or sympathisers in his family was clearly a relevant matter to be taken into account. Similarly, the judge was entitled to comment on the fact the appellant's father had not been arrested and on the discrepancy in whether the appellant had been in receipt of medical treatment. It was for her to decide what weight should be attached to discrepancies in the evidence which are further set out in 17 (d) and (g). It was open to the judge to take into account the fact that evidence which was reasonably available such as evidence from the appellant's wife and the Sri Lankan MP was not adduced: TK (Burundi) v Secretary of State [2009] EWCA Civ 40. The judge's approach does not indicate that she was requiring corroboration: she was commenting on the failure to produce evidence the appellant could reasonably have been expected to produce.

19. It was argued that the judge had not referred to explanations given by the appellant, by way of example why he had delayed claiming asylum having been in the UK since April 2010 but that was a fact the judge was entitled (and indeed required) to take into account by virtue of s.8 of the Asylum and Immigration (Treatment of Claimant's etc) Act 2004 and there is no reason to believe that the judge did not take the appellant's explanation into account or that she did not consider this issue in the context of the evidence as a whole. In substance, the appellant is seeking to re-argue issues of fact which were for the judge to assess.

(iii) The Assessment of the Documentary Evidence at [19]

20. Mr Martin sought to argue that the factors identified by the judge in [19] had failed to take into account a number of relevant matters. In respect of [19(a)] the judge had pointed out that the appellant claimed at interview that he had been been arrested in January 2009 whereas the document at R29 indicated he was arrested in April 2009. Mr Martin argued that it was at least possible that the lawyer had said April 2009 as it was the case that legal advice was sought at that stage. In [19(b)] the judge commented on the appellant's lack of understanding of some of the documents. Mr Martin argued that this was unfair as the appellant was not a lawyer and could not be criticised for his lack of knowledge. In [19(c)] the judge highlighted the apparent errors in the dates in the document. Mr Martin submitted that the position appeared to be that there was a wrong date recorded which had affected other paperwork. He accepted that at first blush the position looked odd but it was possible that this arose through an administrative error.

21. On these issues Ms Ahmad submitted that these were essentially issues of fact for the judge to resolve. At [19(a)] the document clearly said April 2009 and in [19(b)] when the judge asked about the originals of the documents and the envelope they were sent in, the appellant had said that his father had posted the documents directly from Sri Lanka to the appellant's solicitors but this was inconsistent with what was said in the letter from the Sri Lankan lawyer that he had obtained and posted the documents to the solicitor. In [19(c)] there was not just one error highlighted but a number of errors.

22. I am not satisfied that the judge erred in law in her assessment of the documentary evidence. She identified issues of concern, as she was entitled to do, which were for her to resolve and then to make findings of fact in the light of the evidence as a whole. The arguments rehearsed before me as submissions of law were in substance arguments on fact. I am satisfied the judge's findings and conclusions were properly open to her for the reasons she gave.

(iv) Did the Judge consider the Evidence as a Whole.

23. The judge granting permission to appeal raised the issue of whether the judge considered the weight to be placed on the documents only after he had found against the appellants on credibility and not as part of the general assessment of the evidence. I am not satisfied that this is a case where the judge compartmentalised the evidence dealing with credibility in relation to the oral evidence and only after making an adverse credibility going on to consider the documentary evidence. The fact that the judge did not commit this error is clear from the fact that in [17] when starting her assessment of credibility, she said that she had regard particularly to the following, the factors identified at [17(a)]-[17(h)]. She then said at [18] that she went on to consider the documents submitted in support of the appeal noting at [19] that she sought clarification of aspects of the documentation going on to note in particular the points at [19(a)-(d)].

24. The judge said at [20] that in the light of all the evidence to which she had referred and following the principles set out in Tanveer Ahmed [2002] Imm AR 318, she was not satisfied that any weight could be attached to the documents and in [21] that she had considered the appellants' case in the light of the objective evidence and the current country guidance but for the reasons given she did not find the appellant credible as to the basis of his claimed fear. In the light of these comments and reading the decision as a whole, I am not satisfied there is any substance in the argument that the judge fell into the error identified by the Court of Appeal in Mibanga v Secretary of State [2005] EWCA Civ 367 of compartmentalising her approach to the evidence.

25. In summary, I am not satisfied that the judge erred in law and it follows that the appeal must be dismissed.

Decision

26. The First-tier Tribunal did not err in law and its decision stands. No anonymity direction was made by the First-tier Tribunal.

Signed H J E Latter Date: 22 May 2017

Deputy Upper Tribunal Judge Latter