Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/10572/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 11 May 2017	**On 18 May 2017**

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

MR MOHAMED NAZRIN SHAHUL HAMEED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Reid, Counsel
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka and was born on 29 September 1982. He appeals against the determination of First-tier Tribunal Judge K Swinnerton promulgated on 29 November 2016 following a hearing at Hatton Cross on 1 November 2016. In the course of the determination the First-tier Tribunal Judge rejected his appeal against the decision of the

Secretary of State made on 15 September 2016 to refuse to grant him asylum or any other form of relief.

2. The immigration history of the appellant is as follows. He stated that he left Sri Lanka on 10 January 2010 using his own passport and supported by a student visa he arrived in the United Kingdom later that day and his student visa remained valid until 17 May 2012. He was served with the papers indicating that he had no legal basis to remain after his visa had expired. The form IS151A was served on him on 30 July 2013. He was asked to report and failed to comply with the reporting conditions and was thereafter recorded as being an absconder. He went to ground and it was not until 25 June 2015 when he was stopped by a police officer and arrested that further steps were taken to remove him. He was served with the form known as an IS96 once again informing him of his rights and of the respondent's ability to detain him but it was not until some nine months later on 22 March 2016 that he claimed asylum at Croydon.

3. On any view this was an appalling immigration history and one where it was clear that the claim for asylum could well be classified as a last-ditch attempt to remain in the United Kingdom after the appellant himself had spent many years avoiding detection.

4. The nature of the claim itself was based upon the fact that the appellant worked in his father's jewellery wholesale business. This was not a small-scale organisation, it was a substantial one, and indeed in the course of the evidence that he provided he said that there were assets in the shop of some 2 million Sri Lankan rupees. He claimed that the shop was robbed on 3 August 2009, that is of course nearly some seven years before he claimed asylum and all the jewellery and everything in the safe had been taken by the thieves and the theft had been conducted by persons coming into a ventilation shaft and clearing the place. This was a claim of a somewhat speculator raid on his father's business premises. Notwithstanding the fact that this was a substantial business, wholesale jewellery, the appellant's father carried no insurance and his father's two business partners who had not taken any active role, but had provided an investment, blamed his father for the fact that the place had been burgled, notwithstanding the fact that they themselves may have overlooked to have insured the premises against theft. As a result it is said they were able to elicit the help of five CID officers who came to the house and abducted the appellant. The two business partners had apparently been able to suborn the CID officers using their influence and the appellant was detained by these CID officers and during the course of his three day detention was beaten and tortured. Notwithstanding this, after three days the appellant was permitted to leave the building and managed to obtain a mobile telephone from someone passing in the street and from that his father managed to remove him at which point he went into hiding.

5. This was a colourful account provided by the appellant and it was one which ultimately the judge did not accept. The judge recorded in

paragraph 7 of the determination the claim that the appellant had helped run the father's business, that it had been robbed, that 2 million Sri Lankan rupees had been removed from it, and that as a result of this he was kidnapped and that it was said that the CID officers would have been prepared to put forward a claim, (which was of course completely false and not supported by any evidence), that the appellant and his father had been supporting the LTTE. It was as a result of this he claimed that he was forced to travel to the United Kingdom.

6. The grounds of appeal relate solely to the issue of whether the judge improperly imposed a requirement for there to be corroboration in relation to key elements of the claim. The grounds of appeal which were drafted by JK Solicitors on 12 December 2016 point out paragraph 21 of the determination where the judge says:

> "Regardless of the involvement of the police in any attempt to extort money from the Appellant and his father, no reasonable explanation has been provided as to why no documentation at all has been provided to confirm the theft. I find it implausible that the break-in would have occurred as claimed and yet there would be no record at all of such a break-in."

Secondly paragraph 22 and its contents are relied upon in which the judge said:

> "The Appellant has not provided any documentary evidence in support of his claimed physical injuries whilst in detention. I do not find it credible that the Appellant would have been detained as claimed and then simply allowed to walk away."

On the basis of those two passages it was submitted in the grounds that the judge was requiring the appellant to provide corroborative documentary evidence and as a result of that was imposing an unlawful condition rendering the judge's assessment of credibility unfair and disproportionate.

7. First of all there is no requirement imposed by the judge in either of those two passages. What is said in paragraph 21 is that no reasonable explanation had been provided as to why no documentation at all had been provided to confirm the theft and secondly in paragraph 22 the judge was merely noting as a fact that the appellant had not provided any documentary evidence in support of his claimed physical injuries whilst in detention. So the basis upon which the appeal is advanced is factually inaccurate. There is no requirement. The judge imposed no requirement, but was entitled to comment upon the absence of documentary evidence. When it came to the granting of permission by Upper Tribunal Judge Plimmer the requirement to provide corroborative material is featured in her grant of permission in which she says it is arguable that the First-tier Tribunal Judge had required the appellant to corroborate his claim and failed to direct himself to the possible difficulties faced by asylum seekers generally and this asylum seeker in particular in providing corroborative evidence. For reasons I have already given I do not think the

determination can properly be construed as a requirement to provide corroboration rather than a legitimate point made that no documentary evidence had been provided in circumstances where it was reasonable to expect such documentary evidence to be in existence.

8. Ms Reid on behalf of the appellant relies quite properly in her skeleton argument on two central pieces of material. The first is the sensible and well-established guidelines of the *UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention* in which in paragraph 196 it makes the perfectly good the point that an applicant cannot be expected to provide documentary evidence where that person is fleeing from persecution and will have arrived with the barest necessities and very frequently even without personal documents. Consequently care must be taken that an impossible burden is not placed upon an applicant to produce documentation when it is not reasonable for that person to do so. Further, the Court of Appeal in *HK (Sierra Leone)* [2006] EWCA Civ 1037 speaks in paragraphs 28 and 29 of the difficulties in making assessments of claims of this type and that because a claim is inherently unlikely that does not mean that it is not true and one should therefore exercise care in dealing with such cases to suspend disbelief in a way that is entirely appropriate in the context of an asylum claim. I bear in mind all of those factors when considering this appeal.

9. The relevant passages of the determination which are the subject of challenge are found in paragraphs 21 and 22. The judge said in relation to this account that:

> "The Appellant confirmed that the theft was reported to the police yet no police report has been provided and neither has any report of the incident in any local newspaper been provided. Regardless of the involvement of the police in any attempt to extort money from the Appellant and his father, no reasonable explanation has been provided as to why no documentation at all has been provided to confirm the theft."

This, as I have said, was a claim that there was a relatively spectacular heist on a jewellery shop which carried a great deal of gold and precious metals which resulted in the daring entry into the premises by thieves and the removal of the contents. In my judgment it was entirely open to the judge to say that such an event was likely to be recorded by a newspaper. There is no suggestion that it was not placed in the public domain. There is no reason why the police should have kept it secret and accordingly this theft of a substantial amount of property, in the way that it is said to have been conducted, might reasonably have resulted in a newspaper report. It may be that the newspaper report could not now by obtained. It may be that the newspapers involved have gone out of business. It may be that they did not keep a library of such things. Had any such explanation been provided by the appellant, he might have offered a reasonable explanation as to why documentation of this type had not been provided. But the simple fact was that no reasonable explanation has been provided. That

was a simple matter of fact and the judge was entirely entitled to say that in paragraph 21 of his determination. He is not required to hold back in telling the truth.

10. Consequently as far as the absence of any report is concerned, then it was open to the appellant in the many years that he has been in the United Kingdom, to make some enquiries as to the local newspapers as to what had occurred on a date which he was able to identify and in relation to an event which specifically related to premises which the appellant himself was able to identify. There is nothing therefore in the guidance provided by UNHCR to suggest that an individual is not required to make reasonable enquiries to provide documentary material to support his claim. I am sure had this matter occurred as the appellant claimed, it would have been the subject of at least a newspaper report. It is also surprising that, since 29 November 2016, when the appellant himself has had sight of the First-tier Tribunal determination, that he himself did not consider that it might have been useful for him to have written to the local press and obtained the very information which he had omitted to provide in the earlier appeal. It might at least have prompted him, one would have thought, to take further action, having been so criticised by the judge.

11. That therefore deals with the absence of any press report. Similarly regardless as the judge said about whether there were rogue CID officers, the fact is that this was an incident which was reported to the police. We know that the police in Sri Lanka keep records of crimes which are committed and it would not therefore have been impossible at all for the appellant to have written to the local police force to ask them if they were able to provide a record of the crime having been reported to them. It needed to have been no more than that, and there may or may not have been further documents. It is of course entirely irrelevant that the culprits were not found, that is not what the judge was looking for. What the judge was looking for was some material that a report had been provided to the police and that they had taken action. It may be that they may have responded by saying, *"Well it was all so long ago. We do not have any record of this incident. The records have been destroyed."* I am agnostic as to whether the police would in fact have destroyed such reports after such a period. It is unimportant whether they would or would not have destroyed such reports but the fact is that the appellant has made no attempts at all to obtain the police report notwithstanding the claim that he made in early 2016. He had ample opportunity until November 2016 to write to the police even if their response had simply been, "*We are unable to locate any records*." I am therefore fully satisfied that the judge was making no requirement for there to be corroboration and was simply pointing out the inevitable and entirely reasonable point that incidents of this do not exist in a documentary desert.

12. Similar considerations apply in relation to the judge's handling of paragraph 22. The appellant had claimed that he had been terribly beaten and injured by his treatment by the rogue CID officers and he had been subjected to being punched and kicked, his left arm and right leg were cut

with a blade, heated metals were put on him to make him scream. In this lurid account of his events it cannot be said that there were no physical injuries. Those physical injuries however may have, probably would have, produced very little to see when he made his asylum claim in 2016. We know not because we still have not got that material. However it was not simply that he suffered a past incident in which he was subjected to harm. He said that there were consequences of this. There was his related depression. He was still subject to stress. The consequential psychological problems due to his ill-treatment were still something about which he complained. Yet there was no medical evidence that there was any such effects. The appellant himself says *"Well I wasn't taking any medication. I wasn't treating myself for these injuries".* Nevertheless if the appellant is to state that he is suffering psychological injuries as a result of his past treatment, or indeed if he is to establish that there is physical scarring, then it is not at all unreasonable for him to produce medical evidence or for the judge to comment on its absence.

13. Accordingly I find that there is no valid criticism of the judge, no requirement was made by him that there should be corroboration. The judge pointed out, as many other judges have done, that there was no material that supported this claim.

14. There is a further two difficulties in the way of the appellant. Both of them are substantial. The fact is that he made no claim for asylum until 2016 at which point as I have already indicated this was a last-ditch attempt to avoid removal. Before that there had been a number of opportunities whereby he could have made a claim. He had been served as an overstayer with the IS151A as long ago as 30 July 2013 at which point it would have been clearly open to him to have made his claim for asylum. Instead he acted in a way which was quite contrary to being a genuine asylum seeker by failing to report and absconding.

15. There was a second opportunity for him to have made out this claim. He was arrested on 25 June 2015 when he was stopped by police. Once again that was an obvious opportunity for him to have made out his claim for asylum. He was served with a formal notice that things were to happen in his case when he was served with an IS96. Notwithstanding this he did not claim asylum until nine months later and there is simply no credible explanation why he should have waited so long. His explanation that he did not know anything about the asylum system is given the lie by the fact that his sister had successfully claimed asylum as a result of the status of her husband and they were plainly people with whom he was in contact in the United Kingdom who would have offered him advice had he suffered the horrendous experience that he later claimed to have suffered. The judge properly found that was damaging to his claim. I entirely agree with that and indeed would be minded to find that that alone was sufficient to discredit his claim.

16. Furthermore there is an unchallenged finding in paragraph 25 of the determination that his mother and younger brother are still in Sri Lanka.

This of course is now many years after the alleged robbery that took place in August 2009. They are living in Bandarawala and they have experienced no difficulties over the past seven years. It was therefore entirely open to the judge to conclude that there was an internal relocation option available. There was no viable claim that these five CID rogue officers had been able to engage the support of the entire police force or indeed the entire judiciary or the entire prosecution service in Sri Lanka in order to put him at risk were he to return. Accordingly the fact that there is a place in which he could settle without the interference of non-state actors was a matter which the judge was properly required to take into account and did so. As I have said there is no challenge to that conclusion.

17. For these reasons I am entirely satisfied that the judge reached a sustainable conclusion and accordingly I dismiss the appellant's appeal to the Upper Tribunal. I find that there is no material error of law and permit the determination of the First-tier Tribunal Judge to stand.

DECISION

The First-tier Tribunal Judge made no material error on a point of law in his decision and his determination of the appeal shall stand.

No anonymity direction is made.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL
11 May 2017