



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

Appeal Numbers: PA/10649/2016
PA/10653/2016
PA/10654/2016
PA/10655/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 15 May 2017**

**Decision & Reasons Promulgated
On 24 May 2017**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**AF
MR
IF
EF**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms M Gherman, Counsel, instructed by Nag Law Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellants are citizens of Sri Lanka. AF was born on [] 1978 and his wife, MR, on [] 1983. Their children, IF and EF, was born on [] 2008 and [] 2014 respectively. The Appellants claimed asylum and their applications were refused on 21 September 2016. They made an

application to appeal against that decision and their appeals were dismissed by Judge of the First-tier Tribunal Housego, following a hearing at Hatton Cross on 8 November 2016, in a decision that was promulgated on 12 December 2016. Permission was granted by Judge of the First-tier Tribunal Baker on 21 March 2017.

2. The adult Appellants gave evidence at the hearing before Judge Housego and AF's evidence in a nutshell was that prior to coming to the UK he lived in Negombo with his mother, his wife and their eldest child. He and his friend TG on 30 April 2010 travelled to a church which was a place of pilgrimage in a place called Chettikulum, Mannar, four and a half hours drive away.
3. They travelled on the Appellant's motorcycle. About a kilometre beyond the checkpoint at Chettikulum they were approached by a white van which caused them to lose balance on the motorcycle. Three people got out wearing camouflage trousers and T-shirts carrying rifles. There was a fourth person armed with a pistol. The Appellant was kicked in the groin and hit with the butt of a rifle. The men took TG away leaving the Appellant on the ground. The Appellant was taken to a hospital in Vavuniya where he was shown the badly beaten body of TG, which had been found at the bottom of an abandoned well.
4. The judge found that TG and the Appellant knew one another and that TG was killed, but he did not find the rest of the Appellant's account to be credible. He noted gaps in the evidence including the lack of medical evidence observing that the Appellant had been treated in a private hospital after the incident and that he could have been obtained by his mother, who still lives in Sri Lanka.
5. The Appellant's evidence was that he had reported the incident to the Human Rights Commission on 31 May 2010. His evidence was that his complaint was passed from them to the Lessons Learned and Reconciliation Commission (LLRC), and that he had received a letter from them which he produced. His evidence was that he had telephoned the LLRC and was told that if they came across anything they would let him know; however, their normal period of investigation was 2002-2009.
6. The judge considered the lack of evidence from the LLRC in respect of the claim and that the evidence was historic was damaging to the claim. The judge went on to make findings in respect of inconsistencies in the account given by the AF and MR and considered the delay in making an application for asylum damaging to the Appellants' credibility. The judge attached weight to the fact that that AF was able to leave Sri Lanka using his own passport without difficulty and that on his own evidence he was untroubled from September 2010 to March 2011 and had obtained an exit visa.

7. The grounds of appeal before me consist of five separate grounds, and for the purposes of this decision I will focus on ground 3. It is argued that there was a failure by the judge to consider relevant evidence and make clear findings of fact, and reference is made to AF's evidence contained in an affidavit (page 13 of the Appellants' bundle) which was put before the LLRC. This was sworn before a Justice of the Peace. This document was sworn on 28 May 2010. It contains an account of what happened to him and TG, which is, broadly speaking, on the face of it capable of supporting his evidence that he gave before the First-tier Tribunal. It is asserted in the grounds that the judge did not take into consideration and make relevant findings in relation to a letter from Reverend Nethasingher of 28 March 2010. The letter is to the parish priest in Mannar requesting accommodation for the AF and TG and for obvious reasons the Appellant relied on this to support his account.
8. I have taken on board Mr Melvin's submissions and the Rule 24 response that was originally served and a more detailed Rule 24 response upon which Mr Melvin relied. However, I cannot be sure that the judge took the two documents mentioned above into account when dismissing the Appellants' claim. Of course, it would be open to the judge to find that neither document is reliable (and the judge properly noted that there was no up to date evidence from the LLRC), but there are no findings about the reliability of the documents and what if any weight he attached to them. I am not persuaded that had the judge taken them into account, this would not be material to the outcome. The failure to take the documents into account amounts to a material error of law. I set aside the decision of the judge to dismiss the appeal on asylum grounds.
9. None of the findings are sustainable. There will need to be a complete rehearing and an extensive fact-finding exercise conducted by the Tribunal. I remit the matter to the First-tier Tribunal.

Notice of Decision

10. The decision to dismiss the Appellants' asylum appeal is set aside. There will be a full rehearing which will take place in the First-tier Tribunal.

Signed Joanna McWilliam
Upper Tribunal Judge McWilliam

Date 23 May 2017

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

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.