



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00597/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 23 May 2018

Decision & Reasons Promulgated  
On 14 June 2018

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MR

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Ms Z Ahmad, Home Office Presenting Officer  
For the Respondent: Mr D Kumudusena, Solicitor

DECISION AND REASONS

1. Although the appellant in these proceedings is the Secretary of State, I continue to refer to the parties as they were before the First-tier Tribunal.
2. The appellant is a citizen of Sri Lanka, born in 1981. He arrived in the UK as a student on 31 March 2009. He returned to Sri Lanka on 5 July 2012. He claimed asylum on 21 July 2017.
3. In a decision dated 2 December 2017 the respondent refused his application for asylum. The appellant appealed against that decision and his appeal came before First-tier Tribunal Judge V J Wright ("the FtJ") at a hearing on 8 February 2018,

following which she allowed the appeal on asylum and, presumably, Article 3 grounds.

4. The respondent's complaints about the FtJ's decision as set out in the grounds upon which permission was granted can be simply stated. It is asserted that the FtJ failed to give any, or any adequate, reasoning in relation to the respondent's challenges to the appellant's credibility. Those credibility challenges were set out in the respondent's decision refusing the asylum claim, as well as in submissions on behalf of the respondent at the hearing before the FtJ.
5. It is next asserted that the FtJ was wrong to have taken into account information provided to her at the hearing from the Tribunal-appointed interpreter in relation to a letter said to be from the appellant's father. Lastly, it is said that the FtJ had failed properly to engage with relevant country guidance in relation to risk on return.
6. The appellant's claim for asylum, in summary, was on the basis that he was accused of being a supporter of the LTTE by providing them with electrical goods. The appellant was a sales executive in a business and he delivered parcels to a particular individual between 12 September 2006 and the middle of 2007. On 5 August 2012 he was taken from his home by the authorities, detained and tortured.
7. With the assistance of his father a bribe was paid and he was released. He claims to fear return on the basis that he would be arrested and detained by the authorities and ill-treated on account of his perceived support for the LTTE.

*The FtJ's decision*

8. The FtJ summarised the basis of the appellant's claim and between [15] and [44] she summarised the submissions made on behalf of the parties. She noted in detail the submissions made on behalf of the respondent in terms of the appellant's credibility. Likewise, she made detailed reference to the submissions made on behalf of the appellant. Her findings and conclusions are to be found at [46]-[51].
9. At [46] she started her findings by stating that the appellant's evidence was accepted and that he was a credible witness. She noted that he had injuries and scarring and that those were consistent with the events that he described. She then said that there were "some minor inconsistencies, but they assist the appellant in establishing his case, rather than undermine it".
10. In the same paragraph she stated that the explanation given by the appellant for his family joining him in Colombo (after his release from detention) rang true. She then stated that he had been taken from his family's home, detained and tortured, and that his father became aware of this and paid a bribe to have him released.
11. She concluded that it was understandable that his father would not give him too much detail as to how the information had come into his possession or how the bribe and release had been facilitated. She then said that it was credible that his father would decide that it was too dangerous to return to the family home and his mother and sibling would have wanted to see him before he left Sri Lanka.

12. At [47] she stated that the appellant did seek medical attention when he arrived in Colombo but he did not have any evidence in respect of it. She went on to state that the other evidence that he had provided supported his version of events. She also concluded that there was nothing particularly mysterious about the date of the arrest warrant.
13. At [48] she said as follows:

“Equally, there was an error in the translation of his father’s letter (according to the interpreter assisting the Tribunal) and his father had said the appellant was sought every few months or so. This accorded with the appellant’s version of events. It also demonstrated that there was still an interest in the appellant and that he risked being arrested if he were to return”.
14. In the next paragraph she stated that the appellant’s explanation as to why he did not claim asylum as soon as he reached the UK was not challenged “and is accepted”. At [50] she said that taking all of the oral, written and documentary evidence in the round, the appellant’s version of events is credible and is accepted. She then went on at [51] to state why in the light of her findings the appellant would be at risk on return. She concluded that he had established that he was wanted by the authorities, that he had already been arrested and tortured and that there was a warrant for his arrest as a terrorist. He was branded as an escapee from custody and she accepted that the Sri Lankan authorities continued to have an interest in him.

#### *Submissions*

15. Ms Ahmad relied on the grounds of appeal in relation to the FtJ’s decision and referred to the submissions made on behalf of the respondent at the hearing before her. Reference was also made to the credibility points identified in the respondent’s decision letter. I was referred to *Budhathoki (reasons for decisions)* [2014] UKUT 00341 (IAC) in terms of the guidance to be found there in relation to judges’ reasons. The decision in *AA (Language diagnosis: use of interpreters) Somalia* [2008] UKAIT 00029 was relied on in relation to the point about the information received by the judge by the Tribunal’s interpreter. *R (Iran) & Ors v Secretary of State for the Home Department* [2005] EWCA Civ 982 was also referred to in passing.
16. Mr Kumudusena relied on the appellant’s ‘rule 24’ response. It was submitted that the FtJ had considered matters in the round and that there was no error of law in her reasoning. In support of the submissions I was referred to various paragraphs of the FtJ’s decision to support the contention that she had addressed the issues relied on by the respondent.
17. It was pointed out on behalf of the appellant that the FtJ had referred to the fact that the respondent’s submission that there was inconsistency over who had instructed the lawyer in Sri Lanka was not a matter that was put to the appellant, as can be seen from [23] of the FtJ’s decision. It was submitted that the FtJ had had the opportunity to look at the documentary evidence put before her and she was entitled to make the findings that she did in respect of it. In relation to who instructed the lawyer, whether it was the appellant or his father, Mr Kumudusena’s submission, as I

understood it, was that the appellant was in fact the ultimate client of the lawyer which would explain why he was referred to as such in the letter from the lawyer.

18. In relation to the point made by the respondent about why the arrest warrant was issued in September 2012 when the appellant is said to have escaped on 19 August 2012, it was submitted that it may be the case that the appellant was recorded as an escapee after two weeks. The FtJ had taken into account the appellant's evidence, and the fact that he had some injuries. In the asylum interview he had explained how he had been ill-treated in detention.
19. In relation to what the FtJ had said at [48] about the interpreter assisting the Tribunal, it could not be said that the interpreter had provided information on an evidential point. At the hearing the appellant had said that there was an error and the interpreter had simply assisted the Tribunal and the information provided accorded with the appellant's version of events. This is not a matter that the FtJ had relied on in terms of what the interpreter had said.
20. It was accepted on behalf of the appellant that there was no note from the advocate that appeared before the FtJ in terms of what transpired in this respect. I was invited to have regard to the FtJ's record of proceedings.
21. In terms of risk on return, although the FtJ did not refer to the country guidance decision of *GJ and others (post-civil war: returnees) Sri Lanka* CG [2013] UKUT 00319 (IAC) she had applied the guidance in it.
22. In reply, Ms Ahmad submitted that the submissions made on behalf of the appellant amounted to speculation as to what the FtJ's reasons for her conclusions were. The respondent was entitled to know why she had lost.

#### *Assessment and Conclusions*

23. In the respondent's decision letter the following credibility issues are raised between [28] and [34]. It is said at [28] that the appellant had been inconsistent in terms of whether or not he ever worked for the LTTE, with reference being made to this issue having been raised in the asylum interview at question 70. It is said that the appellant had met the leader of the LTTE in the local area and had agreed to move parcels for him, yet had also said that he never worked for the LTTE.
24. In his interview he had said that his photograph and fingerprints were taken, but in the screening interview he only referred to having been fingerprinted in relation to his visa for travel to the UK in 2012.
25. The refusal letter at [13] suggests that the appellant would not have been able to leave Sri Lanka on his own passport given that he claimed to have been considered to have escaped from custody. Further, it was noted that he had encountered no problems leaving Sri Lanka and had his passport stamped on exit. This, it is said, is inconsistent with country background information in relation to people of interest to the authorities in Sri Lanka being on a watch list and not allowed to leave the country.

26. At [34] it is asserted in the decision letter that the Sri Lankan authorities would not consider the appellant a person of interest three years after the war had ended and now 11 years after he claimed to have sold the items on behalf of someone who is said to have had links to the LTTE. Although the appellant had explained that he had not been released from detention but had escaped, the respondent's decision suggests that the appellant had approached the Sri Lankan authorities with his passport for it to be stamped on 1 May 2013 for a passport renewal. That, it is said, is inconsistent with his claimed fear of the authorities.
27. At the hearing before the FtJ the following adverse credibility issues were raised on behalf of the respondent, in addition to those matters set out in the decision letter, although there was inevitably some overlap. In the asylum interview he only referred to a scar on his leg but had failed to mention other injuries. The medical report did not rule out self-infliction of the injuries evident from the scarring. The report only confirmed the injuries described by the appellant but could not confirm that they were inflicted by the authorities in the manner described by the appellant.
28. The appellant had been unable to give any details of the surrounding circumstances in relation to the bribe and could not say what the extent of his father's friend's influence was. Nor was he able to say who approached him in respect of the bribe. The respondent's submission was that it was not credible that the appellant was not aware of this information. Although the appellant had claimed that after his release he went to Colombo and his family joined him the next day, he could not explain why his family also joined him in Colombo, for that particular purpose. Although the appellant claimed to have visited a doctor in Colombo, there was no documentary evidence reflecting any treatment at that time.
29. In relation to the lawyer's letter from Sri Lanka, although it was said that he had obtained the arrest warrant in Sri Lanka, the letter said that he was instructed by the appellant, whereas it was the appellant's case that his father had instructed the lawyer. Again, in relation to the arrest warrant, the appellant had claimed that he was aware of the arrest warrant when his father informed him of it in May 2013, whereas in his witness statement he said the date was January 2013. Given that the appellant had said he was in contact with his family, it was not clear why his father waited two months to inform him of the arrest warrant. The arrest warrant referred to a report raised on 3 September 2012 yet the appellant said he escaped detention on 19 August 2012. If the authorities were going to record the appellant as an escapee, it was unclear as to why the complaint was raised two weeks after he left detention. Further, if the arrest warrant was issued in early September 2012 it was not clear why the appellant's father did not become aware of it until much later, in 2013. Likewise, the appellant had failed to mention the arrest warrant at his screening interview in mid-2017, several years after he claims to have become aware of it.
30. It was also submitted on behalf of the respondent at [13] that there appeared to be an issue with the translation of the letter from the appellant's father. The FtJ was invited to consider how much weight to put on the letter.

31. At [9] of *R (Iran)*, reference was made to the most commonly identified errors of law, as follows:

“When the court gave this guidance in *Subesh*, it was aware that it would not be of any relevance to an appellate regime in which appeals were restricted to points of law. It may be convenient to give a brief summary of the points of law that will most frequently be encountered in practice:

- i) Making perverse or irrational findings on a matter or matters that were material to the outcome (‘material matters’);
- ii) Failing to give reasons or any adequate reasons for findings on material matters;
- iii) Failing to take into account and/or resolve conflicts of fact or opinion on material matters;
- iv) Giving weight to immaterial matters;
- v) Making a material misdirection of law on any material matter;
- vi) Committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings;
- vii) Making a mistake as to a material fact which could be established by objective and uncontentious evidence, where the appellant and/or his advisers were not responsible for the mistake, and where unfairness resulted from the fact that a mistake was made.”

32. The respondent contends that in terms of her reasons, the FtJ had failed to give reasons or any adequate reasons for findings on material matters and had failed to resolve conflicts of fact or opinion on material matters.

33. I am satisfied that the FtJ’s decision is flawed for want of adequate reasons. As a general observation, I note that her reasons are particularly succinct. That does not necessarily matter in circumstances where the major issues in dispute are considered, with reasons for conclusions. That is not the case here. In terms of the appellant’s injuries the FtJ said that there was some minor inconsistencies but they assist the appellant in establishing his case rather than undermine it. In that respect she has not identified what the inconsistencies are and does not explain how they assist the appellant in establishing his case rather than undermining it.

34. The FtJ did give reasons for concluding that the appellant had given a credible account of his family joining him in Colombo, and in terms of why the appellant was not able to give too much detail about the circumstances of the bribe and release. However, in relation to injuries, a point made on behalf of the respondent in submissions was that there was no documentary evidence reflecting any treatment in Colombo although he claimed to have visited a doctor there. All that the FtJ said about that was that the appellant did seek medical attention when he arrived in Colombo but did not have any evidence of it. That is merely a restatement of the appellant’s case. The broad statement that other evidence provided by the appellant supports his version of events does not explain what evidence the FtJ was referring

to and why it supported his version of events. Such a conclusion is, or would be permissible, in a paragraph that distilled the FtJ's findings but is legally inadequate as a primary reason for accepting the appellant's account.

35. In relation to the arrest warrant, the FtJ failed to deal with the points made on behalf of the respondent in relation to the warrant in terms of why it was dated two weeks after the appellant is said to have escaped and why the appellant's father did not become aware of it until 2013 despite it having been issued apparently in early September 2012. Further, a point made on behalf of the respondent was that the appellant had failed to mention the arrest warrant in his screening interview.
36. All that the FtJ said about the arrest warrant was that there was nothing particularly mysterious about the date of it. That may be so but apart from that statement being rather uninformative as to the FtJ's reasoning, it does not deal with the other points made on behalf of the respondent in relation to the arrest warrant. In terms of who had instructed the lawyer in Sri Lanka, and the inconsistency that is said to have arisen in relation to the lawyer stating that it was the appellant who instructed him, rather than it being his father, the FtJ noted that that was not a matter that was put to the appellant. However, if the FtJ thought that that was a matter that ought not to be reflected in an adverse credibility finding, she should have said so rather than simply pointing out in her summary of the submissions that that was not a matter that was put to the appellant. Likewise in relation to the apparent delay in the appellant's father informing him of the arrest warrant.
37. In terms of the issue concerning the translation of the letter said to be from the appellant's father, there is no information from the FtJ's decision from which one can discern what this issue was. The matter is not explained in the FtJ's decision in terms of what the evidence was and the recording of the submissions on this point at [30] does not explain the matter either. It would appear from the FtJ's decision that the fact (if it be a fact) that there was an error was information provided by the interpreter. It is not clear from the FtJ's reasons what the error was and why she did not regard it as significant. That is quite apart from what on the face of it appears to be a procedural irregularity in receiving evidence from a Tribunal-appointed interpreter, given that the role of the interpreter is not to provide information in relation to documents. It might have been possible to say more about this issue with reference to the FtJ's record of proceedings, but no such record of proceedings is on the Tribunal's file, as it should be.
38. The FtJ's decision does not deal with points made in the decision letter which I have set out. The decision letter was expressly relied on, on behalf of the respondent. The appellant's rule 24 response refers to the appellant's evidence in his witness statement and background material in support of the contention that the FtJ's reasons were adequate. However, it was for the FtJ to give her reasons with reference to the evidence before her. Such limited reasoning as can be found in the FtJ's decision is, with respect to the FtJ, legally inadequate.
39. In those circumstances, I am satisfied that the FtJ's decision does contain an error of law such as to require her decision to be set aside. Given that there will have to be a

fresh hearing *de novo* for a comprehensive assessment of the appellant's credibility, the appropriate course is for the appeal to be remitted to the First-tier Tribunal for a fresh hearing. That course is in accordance with paragraph 7.2 of the Senior President's Practice Statement.

*Decision*

40. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision is set aside and the appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier Tribunal Judge V J Wright with no findings of fact preserved.

**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 his 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.

Upper Tribunal Judge Kopieczek

11/06/18