



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

Appeal Number: PA/05613/2017
PA/05616/2017
PA/05618/2017
PA/05621/2017

THE IMMIGRATION ACT

**Heard at Field House
On 15th February 2018**

**Decision & Reasons
Promulgated
On 2nd March 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**GG
GJ
GJ
SZ**

(Anonymity Direction made)

Appellant

And

The Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Murphy Counsel instructed by Nag Law Solicitors

For the Respondent : Mr Walker Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of the Sri Lanka. These proceedings impact upon the status and rights of the appellant's children. In order to protect those

children and having considered all the circumstances, I consider it appropriate to make an anonymity direction.

2. This is an appeal by the appellant against the decision of First-tier Tribunal Judge Jerromes. By decision promulgated on 22 November 2017 Judge Jerromes dismissed the appellant's appeal against the decision of the respondent to refuse him asylum, humanitarian protection or relief otherwise on human rights grounds either under Articles 2 and 3 or under Article 8.
3. By decision dated 10 January 2018 First-tier Tribunal Judge Landes granted permission to appeal to the Upper Tribunal. Thus the matter appeared before me to determine in the first instance whether or not there was a material error of law in the decision.
4. There are 3 files connected to the present file. The files relate to the appellant's wife and 2 children. They are to be treated as dependants upon the appellant's case. They do not have appeals in their own rights.

Factual background

5. The appellant is a citizen of Sri Lanka. He lived and worked in Colombo. The appellant claims that he was living in the house of a teacher Mrs [K] and the teacher's partner, Mr [V K], in Colombo.
6. On the evening of 10 March 2009 at around 5:30 PM the appellant was going home when he saw a white van parked in front of the teacher's house blocking the driveway. The appellant noticed that there were 2 police hats on the dashboard of the van. The appellant then saw the teacher being bundled into the van by 2 men. Whilst the appellant sought to intervene to stop the teacher being taken, he was threatened with a gun. As a result the appellant rode off on his bike. He then saw the van being driven away.
7. In an affidavit the appellant asserts that the government, the Secretary of the Ministry of Defence, the defence authorities including army commanders, Sri Lanka police including the Inspector General and the local police station at Dehiwala are responsible for the abduction of Mrs [K]. The appellant never sought to explain how he knew that all the parties referred to were complicit in the abduction.
8. The appellant then claimed that he had reported the abduction to the police, the Human Rights Commission and the Lesson Learnt Reconciliation Committee. Shortly after reporting the matter the appellant claims that he began to fear for his own safety. In interview at question 50 he says he began to fear for his safety in July 2009 but then at question 99 says it was at the end of March 2009.
9. The appellant makes allegations that he was the victim of a staged motor accident on 4 April 2009, although as set out in paragraph 6.4 (ii) the evidence to support that it was a staged accident was limited to the

appellant's assertion and was therefore challenged. He also claimed that his room was set on fire at the end of February 2010, that also was challenged.

10. In February 2010 the appellant claims that he went into hiding. He did however manage to continue going to work without problems. The appellant's evidence was that he rarely went out other than to work but that he was able to continue working through out.
11. On the 12th April 2010 the appellant was granted a visa to enter the United Kingdom as a Tier 4 Dependant. The visa was valid from 27 April 2010 to 29 August 2011. The appellant entered the United Kingdom travelling on his own passport. He was granted further leave in the same capacity until 10 April 2014. Further applications for leave to remain based on family and private life dated 6 June 2013 were refused, as were applications dated 5 June 2014 to remain as a dependent partner of a PBS migrant.
12. On 2nd December 2016 the appellant made a claim to asylum. The appellant's application was refused on 2 June 2017. The appellant appealed and the appeal was heard by Judge Jerromes on the 8th November 2017.
13. As part of the evidence before Judge Jerromes the appellant produced an arrest warrant and evidence from a lawyer in Sri Lanka that he had obtained the warrant after contacting the Criminal investigation Department and receiving information, then going to the Magistrates Court at Colombo and checking case No B2487/11. A copy of the warrant was produced. A certified copy of the document had been obtained.

Grounds of Appeal

14. Within the grounds of appeal it is submitted that there were a number of matters that were not put to the appellant. It is suggested that the judge has taken issues with regard to inconsistencies and contradictions in the appellant's evidence but the appellant was not given the opportunity of dealing with those inconsistencies or contradictions. It is alleged that neither the judge nor the respondent's representative put the issues to the appellant nor asked the appellant to explain or expand on the evidence. It is submitted that as a matter of fairness the presenting officer or the judge should have put the matters to the appellant.
15. In that respect reliance is placed upon the case of R v SSHD ex parte Mashwaran [2002] EWCA Civ 173 specifically paragraph 4 thereof which provides:-

"4 Undoubtedly a failure to put to a party to litigation a point which is decided against him can be grossly unfair and lead to injustice. He must have a proper opportunity to deal with the point. Adjudicators must bear this in mind. Where a point is expressly conceded by one party it will usually be unfair to decide the case against the other party on the basis that the concession was wrongly made, unless the tribunal indicates that it is minded to take that course. Cases can occur when

fairness will require the reopening of an appeal because of some point of significance - perhaps arising out of a post hearing decision of the higher courts - requires it. However such cases will be rare."

16. In the first instance the problem with regard to paragraph cited is that it is dealing in the main with matters that have been conceded by one party. It is not asserted that the respondent in any way made any concession in respect of the issue raised. The judge has in paragraph 48 recorded the matters that were accepted by the respondent. It is clear that the other aspects of the appellant's case have not been conceded or accepted.

17. The first issue taken is with regard to when the appellant reported the abduction of Mrs [K] to the police. The judge has specifically made reference to the fact that the appellant in his statement claimed that he had reported the abduction within an hour and a half of the incident, where as in interview the appellant had said that he had reported the matter at the end of March [see answer to question 99]. The appellant's representative was submitting that one had to read the answer in the context of what was said before in answers 97 and 98. The questions and answers :

97 Q: How soon after you first reported the incident did you start receiving the threats?

A: Around 3 weeks, at the end of March 2009

98 Q: When did you first going to hiding?

A: 02/02/2010

99 Q: When did you first report the incident?

A: I first reported the incident to the police at the end of March 2009.

18. The appellant's representative was seeking to suggest that one needs to consider the whole of the answers made. However it is clear that there is a potential degree of inconsistency between what was said in the appellant's statement and what was said in interview. It is clear in the refusal letter that the appellant's account of his reports of the matter to the police were limited and vague and not accepted (see paragraph 38 of the refusal letter). Clearly at that stage the respondent would not have had the statement.

19. Whilst the appellant's representative has relied upon paragraph 4 of SSHD V Maheshwaran, paragraph 1-3 and 5 are also relevant:

"1 This is the Judgment of the court. This is an appeal from a Judgment of Turner J. who quashed determinations of an adjudicator and of the Immigration Appeal Tribunal. The case is concerned with fairness in proceedings before an adjudicator in an immigration appeal. We understand that there has been an increasing reliance by those acting for claimants in immigration appeals on some words uttered by that judge in the course of granting an application for permission to

apply for judicial review in *R v Immigration Appeal Tribunal ex parte Gunn* (unreported 22.1.1998) :

“It is an elementary aspect of fairness that if a Court or Tribunal is to reject on the basis of lack of truth an allegation, then there should be a specific challenge in the first place and secondly, on a reasons basis, adequate reasons should be given in the face of that forensic challenge why it has or has not succeeded.”

2 Relying in part on those words, it was and is submitted on behalf of the claimant in the present case that if the Home Secretary does not challenge an assertion of fact made by a claimant before an adjudicator and the adjudicator does not raise with the claimant doubts about the veracity of his assertion, the adjudicator is bound to accept that assertion as proved if not to do so may be material to his determination. In our Judgment that submission is far too broadly framed. Miss Julie Anderson, who appears on behalf of the Home Secretary asks this court to reject it as one to be rigidly applied to all situations. She is right to do so.

3 Those who make a claim for asylum must show that they are refugees. The burden of proof is on them. Whether or not a claimant is to be believed is frequently very important. He will assert very many facts in relation to events far away most of which no one before the adjudicator is in a position to corroborate or refute. Material is often adduced at the last minute without warning. From time to time the claimant or the Home Secretary are neither there nor represented and yet the adjudicator carries on with his task. He frequently has several cases listed in front of him on the same day. For one reason or another not every hearing will be effective. Adjudicators can not be expected to be alive to every possible nuance of a case before the oral hearing, if there is one, starts. Adjudicators in general will reserve their determinations for later delivery. They will ponder what has been said and what has not been said, both before the hearing and at the hearing. They will look carefully at the documents which have been produced. Points will sometimes assume a greater importance than they appeared to have before the hearing began or in its earlier stages. Adjudicators will in general rightly be cautious about intervening lest it be said that they have leaped into the forensic arena and lest an appearance of bias is given.

... [for paragraph 4 see above]

5 Where much depends on the credibility of a party and when that party makes several inconsistent statements which are before the decision maker, that party manifestly has a forensic problem. Some will choose to confront the inconsistencies straight on and make evidential or forensic submissions on them. Others will hope that ‘least said, soonest mended’ and consider that forensic concentration on the point will only make matters worse and that it would be better to try and switch the tribunal’s attention to some other aspect of the case. Undoubtedly it is open to the tribunal expressly to put a particular inconsistency to a witness because it considers that the witness may not be alerted to the point or because it fears that it may have perceived something as inconsistent with an earlier answer which in truth is not inconsistent. Fairness may in some circumstances require this to be done but this will not be the usual case. Usually the tribunal,

particularly if the party is represented, will remain silent and see how the case unfolds.”

20. As set out there may be reasons why a representative chose not to deal with an inconsistency. It does not result in the judge having to ignore the evidence. As stated in paragraph 5, fairness may require the Tribunal put matters to an appellant in certain circumstances such as where there is a concession and the judge intends to go behind the concession but this will not be the usual case.
21. Here there was a potential inconsistency on the face of the record of interview and statement. The judge was entitled to expect an appellant who has experienced legal representation to deal with the matter. In the absence of the appellant’s representative dealing with the matter the judge was entitled to act on the evidence before him and make the findings that he did. The appellant’s representative sought to argue that there was no inconsistency. The judge was entitled to look at the evidence and to treat the evidence in the manner that he did. The judge was not obliged to put the matter to the appellant.
22. The next point taken is that the judge has raised the issue within paragraph 53.1 (ii) that the appellant’s wife did not give evidence. It is asserted that at no point did the judge indicate that he was going to take this point against the appellant. Again the appellant’s wife was noted as being at the hearing and in the hearing room. In submissions before me the representative indicated that he taken the view that the appellant’s evidence was such that he did not need to call the wife. That was his decision. However consistent with the cases of Gedow, Abdulkadir and Mohammed v SSHD [2006] EWCA 1342 and TK (Burundi) v SSHD [2009] EWCA Civ 40 whilst the judge is correct to say that there is no requirement for corroboration where corroboration is easily available the lack of such is a factor that can be taken into account. As set out in paragraph 21 of TK:-

“21 The circumstances of this case in my view demonstrate that independent supporting evidence which is available from persons subject to this jurisdiction be provided wherever possible and the need for an Immigration Judge to adopt a cautious approach to the evidence of an appellant where independent supporting evidence, as it was in this case, is readily available within this jurisdiction, but not provided. It follows that where a Judge in assessing credibility relies on the fact that there is no independent supporting evidence where there should be supporting evidence and there is no credible account for its absence commits no error of law when he relies on that fact for rejecting the account of an appellant.”
23. Whilst in TK it emerged subsequently that the evidence would not have supported the appellant’s case, the principle is clear where corroboration is readily available a judge is entitled to take into account the fact that the corroborative evidence readily available has not been called.
24. The next point taken is that the judge has made comment that the appellant’s account is vague. The judge because of the reasons set out

has made findings that there was insufficient detail and that she did not find the account credible. It is suggested that the judge should have invited counsel to ask further questions to clarify matters.

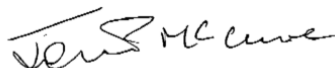
25. Throughout it appears that counsel is suggesting that the judge should direct the legal representative as to what questions they should be asking and what evidence they should be producing. It is not for the judge to conduct the trial on behalf of counsel or the legal representative. The appellant had competent legal representatives to present the case. The judge was entitled to expect them to deal with any issues that they wished to deal with. If the evidence was vague and failed to deal with matters in sufficient details the judge was entitled to make conclusions on the evidence presented.
26. It suggested that the judge's approach to the document at page 33 of the appellant's bundle is flawed and that again the judge looking at the document has taken a point that was never taken by the Home Office and a point not put to the appellant. The judge merely notes that the document is dated 20 September 2010 and that if that date is correct the account by the appellant cannot be correct. Whilst the appellant's representative was seeking to refer to the left-hand side of page 33 seeking to rely upon the details set out at the top there, which appear to be "My NoUM/026/2011", the document is dated on the right-hand side 20 September 2010. That date as noted by the judge is inconsistent with the account given by the appellant that [VK] had reported the matter to the LLRC in 2011. Whilst the representative sought to argue that the details on the left-hand side added some support to his appellant's account, no explanation for that numbering or detail is contained anywhere. It may be a reference to a date but that is not clear nor in what context the reference is to be taken. The document otherwise is clearly dated. The judge has merely drawn conclusions from what is a clear date and concluded that that date was inconsistent with the evidence. The judge was entitled to examine the documentation and to make conclusions that she did on the basis of the evidence presented.
27. In the circumstances the majority of the issues taken in the grounds are disagreements with the findings of fact made by the judge. The judge has carefully examined the evidence and has given valid reasons why on specific pieces of evidence she has made the findings she has. The judge has given ample reasons for her conclusions on the facts.
28. The final issue taken by the appellant's representative relies upon the case of P (Sri Lanka) v SSHD [2014] EWCA Civ 1011. The appellant had produced an arrest warrant. The warrant allegedly emanated from a lawyer. The lawyer had allegedly retrieved the warrant after contacting the Criminal Investigation Department. He claims that it is a certified copy of the case bearing number B2487/11. The lawyers position as a member of the bar had been supported by documentary evidence.

29. It is suggested that the judge has within paragraph 55 of the decision got the facts wrong because it was not the appellant that made the report to the LLRC but [VK]. It is apparent from paragraph 55.1 that is exactly what the judge was considering. The judge took account of the fact that the letter from the LLRC referred to above was clearly inconsistent with the appellant's account.
30. Further to that whilst the judge does not examine the bona fide is of the lawyer involved in the present proceedings the judge does consider the document and the fact that the appellant does not appear on any stop list. If as asserted the warrant was a document upon which reliance could be placed, the judge was entitled to conclude that the appellant would be on a stop list.
31. The judge otherwise considers the inconsistencies and the implausibility of the circumstances in which that arrest warrant was issued. The judge has given valid reasons for concluding that the evidence otherwise indicates that the warrant is not a reliable document.
32. Further to that the judge considered otherwise whether given the change in circumstances within Sri Lanka the appellant would be of continuing interest to the authorities in any event. The judge noted at paragraph 58 (i) that the appellant was not an individual who could be perceived to be a threat to the integrity of Sri Lanka, he is not a journalist, and was not on the facts as found by the judge an individual that had given evidence to the LLRC. The appellant's name has not and does not appear upon any stop list. The judge was entitled to conclude that the appellant was of no interest to the authorities. The judge considered in all the circumstances that the appellant was not an individual who would be at risk in any event on return to Sri Lanka. That certainly was an issue that was raised in the refusal letter as is evident from paragraph 48 onwards of such. The judge assessing the evidence that has been presented concluded that in any event the appellant on return to Sri Lanka would be of no interest to the authorities and therefore not at risk. The appellant was not in the circumstances in any of the categories identified as at risk in the country guidance case law.
33. In that event the judge was entitled to determine the appeal on the basis of the evidence before her. The judge has made findings of fact based on the evidence was entitled to come to the conclusion that she did. There is no material error of law in the decision of the judge.

Notice of Decision

34. The appeal of the appellant is dismissed.

Signed



Deputy Upper Tribunal Judge McClure

Dated 25th February 2018