



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

Appeal Number: PA/11625/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 24 January 2018**

**Decision and
Promulgated
On 22 March 2018**

Reasons

Before

UPPER TRIBUNAL JUDGE CONWAY

Between

**MR SWS
(ANONYMITY ORDER MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss Seehra

For the Respondent: Ms Ahmad

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born in 1986. He appeals against a decision of the respondent made on 13 October 2016 to refuse his claim for asylum.
2. His claim in summary is that he is Sinhalese and witnessed the murder in 2009 of a Tamil friend. It was believed that the Sri Lankan authorities

were responsible for his murder. The appellant submitted a complaint to the police, the Human Rights Commission (HRC) and later to the Lessons Learnt Reconciliation Commission (LLRC). The authorities considered his friend to have Tamil terrorist links.

3. Threats were made by telephone telling him to withdraw the complaints. In 2015 the police called at his house with an arrest warrant. He fears return as he is suspected of involvement with the Liberation Tigers of Tamil Eelam (LTTE) because of his deceased friend.
4. The application was refused.
5. The respondent stated that the appellant had given an inconsistent account of why he was wanted by the authorities as in the Statement of Additional Grounds he referred to being accused of helping LTTE terrorists, whilst in the asylum interview he referred to being instructed to withdraw the complaint made to the HRC.
6. Reference was made to the appellant stating in the interview at first that the threatening phone calls were not reported to the police and to changing his account later in the interview when stating that they were reported to the police.
7. The respondent also noted the appellant's claim that people in a van came looking for him in early 2010 yet he was able to leave Sri Lanka six months later using his own passport.
8. He appealed.

First tier hearing

9. Following a hearing at Hatton Cross on 8 August 2017 Judge of the First-Tier Swinnerton dismissed the appeal. His findings are at paragraphs 21 to 29. In summary, at [21] the judge found there to be discrepancies between his interview and Statement of Additional Grounds as to the basis upon which the telephone threats were made to him. Also, at [22] that he gave contradictory answers at interview as to whether he reported the threatening calls to the police.
10. Further, he cast doubt on the reliability of correspondence from a Sri Lankan lawyer Mr Liyanage, who stated that the appellant fled Sri Lanka and that he was being sought, when the appellant's evidence was that when he left in 2010 he had no situation to fear only becoming fearful in 2015 [26]. He attached '*very little weight*' to the letters from Mr Liyanage.
11. Also, there was contradictory evidence as to the date of his friend's death [24].
12. At [23] the judge questioned why the authorities would wait almost five years from an arrest warrant being issued before they sought to use it. In

addition a Documentation Verification Report (DVR) stating that the court documents and arrest warrant had, enquiry having been made with the Director, Terrorist Investigation Department, Colombo, been found to be not genuine [25]. As the report was brief on detail and no detail or explanation had been provided in relation to the verifying department, Ralon Colombo, the judge attached *'only some weight.'*

13. The judge noted letters from two attorneys Mr Wickramarathna and Mr Herath who stated they had perused the court record and that an arrest warrant was issued [26]. He found *'no reason to approach their letters with the same reservations'* that he had for the letters of Mr Liyanage. He *'therefore attach[ed] weight to their letters although not decisive weight'* [27].
14. The judge's final point taken against the appellant's credibility was his delay in claiming asylum after he became fearful of the situation in November 2015. He only claimed in April 2016 after his student leave was curtailed. He did not believe the explanation of ignorance finding the timing *'highly convenient'*.

Error of law hearing

15. The appellant sought permission to appeal which was granted on 27 November 2017.
16. At the error of law hearing before me Ms Seehra essentially relied on her written grounds. There were three main matters. First, the judge failed to consider relevant evidence, namely, documents which supported his account of having made a complaint against the authorities. Second, he failed to give sufficient reasoning, in particular, at [22] where the discrepancies claimed to have been found and to be *'highly significant'* were not supported by a close reading of the interview record. Third, a failure to make clear findings of fact in respect of the court and lawyers' documents. His finding that having noted the evidence of Mr Wickramarathna and Mr Herath that they had seen the existence of an arrest warrant he attached weight but not *'decisive'* weight to that evidence, was unclear.
17. In addition, having noted reservations about the contents of the DVR it was unreasoned on what basis he attached *'some'* weight to the DVR.
18. Ms Ahmad's response was that the judge had made several adverse findings which had not been attacked. On the criticism that he had not referred to all the documents bearing to support his claim there was no need to do so. As for the claim of a lack of reasoning, Ms Ahmad submitted that findings of inconsistencies in the interview record were open to him. Ms Ahmad accepted that some of the findings in relation to the attorney's letters were not clear. Nonetheless, he had considered the

evidence in the round and concluded that the account was untruthful. Such was a conclusion open to him.

Consideration

19. In considering this matter it is clear that the judge has sought to give careful thought to his decision. Some of his individual findings on credibility are ones which were clearly open to him on the evidence. However, I consider that there are several significant errors which make the decision unsafe.
20. There is of course no requirement to make a finding on every piece of evidence presented but I agree with Ms Seehra that the judge failed to consider relevant evidence in respect of his claim to have been a witness to the murder. Such included an affidavit prepared before a Justice of the Peace, letters from his parents and, in particular, a letter from the LLRC referring to the appellant as an eyewitness to the murder.
21. I consider these to be relevant because they support his account of having made a complaint against the authorities and ex facie there is independent evidence to confirm the same from the LLRC. In failing to consider relevant evidence the judge erred.
22. A second issue is his findings at [22] where the judge referred to threatening phone calls to the appellant in 2009 and 2010 and found the account of the calls being reported to the police and whether he took them seriously to be '*completely contradictory*'. He found that to be a '*highly significant point*' given that he said he was not fearful when he left Sri Lanka in 2010.
23. However, from my reading of the interview it is not clear that there was inconsistency. At Q164 he was questioned that he had a call in 2009 and 2010 telling him to withdraw his complaint and another in 2015. Q165 questioned whether he reported this to the police to which he answered '*no*'. The question was ambiguous as to which call the interviewer was referring to, but at Q166 asked why he did not report it to the police he said '*Because I was here*' (i.e. in the UK). It is evident therefore that he was referring to the call in 2015. He states that he reported the 2010 call (Q203 and para [13] witness statement). At Q183 he said he became scared after the second call because people came looking for him. Despite this he was clear that these were not the reasons why he left Sri Lanka although he was a little worried (para 14 witness statement).
24. In failing to give sufficient reasoning on this matter, an issue which, as indicated, he found to be a '*highly significant point*' against credibility, the judge erred.
25. I find a further difficulty with the decision, namely, how he dealt with the evidence from two Sri Lankan attorneys, Mr Wickramarathna and Mr

Herath. At [27] the judge attached weight to their evidence. Such implies that he accepted that they were genuine attorneys and their evidence was truthful. Their evidence confirmed independently that they had perused the court records, spoken to the court registrar and confirmed the existence of a warrant [26]. However, although he attached weight to their evidence he decided not to attach '*decisive*' weight to it.

26. I consider that the judge erred in failing to make a clear finding of fact on material evidence. Either, their evidence was accepted, namely, they were genuine attorneys who confirmed the existence of a warrant, or it was not.
27. I consider that these errors must taint the adverse findings made by the judge, such that the case must be reheard.

Notice of Decision

28. The decision of the First tier Tribunal is set aside. The nature of the case is such that it is appropriate in terms of section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and of Practise Statement 7.2 to remit the case to the First tier Tribunal for an entirely fresh hearing before a judge other than Judge Swinnerton. No findings stand.

Direction Regarding Anonymity

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 their 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.

Signed

Dated 20 March 2018

Upper Tribunal Judge Conway

