



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

Appeal Number: PA/11098/2019

THE IMMIGRATION ACTS

**Heard remotely by *Skype for Business* Decision & Reasons Promulgated
On 15 February 2021 On 2 March 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**N K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**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.

Representation:

For the Appellant: Appeared in person, but represented by Liyon Legal Ltd.
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellant appeals with permission against the decision of First-tier Tribunal Judge Cohen (“the judge”), promulgated on 7 January 2020, by which he dismissed the Appellant’s appeal against the Respondent’s refusal of his protection and human rights claims.

The core of the Appellant’s protection claim was that he was the subject of court proceedings in Sri Lanka as a result of a suspicion on the part of the authorities that he had materially assisted the LTTE some years ago following the end of the civil war in May 2009. In support of his claim the Appellant relied on what was said to be reliable court documents and a letter from a Sri Lankan attorney purporting to verify the existence of the relevant legal proceedings. In addition, the Appellant had provided a medical report said to be supportive of his claimed detention and ill-treatment by the Sri Lankan authorities.

The judge disbelieved the Appellant in all material respects. In summary, he concluded as follows. First, he did not accept that the Appellant would have remained in Sri Lanka for over a year after his claimed release from detention on payment of a bribe. Second, on the basis that the judge believed the Appellant to have been detained at a police station, it was implausible that fingerprints would not have been taken. Third, he disbelieved the Appellant’s evidence relating to his father’s death. Fourth, he rejected the court documents on the basis that they apparently contained a police logo. Fifth, he found it implausible that in the particular circumstances of this case the Appellant would have been released from detention even on payment of a bribe. Sixth, the judge found it implausible that the Appellant would have been able to leave Sri Lanka on his own passport notwithstanding his claim to have been wanted by the authorities at the time. Seventh, that the Appellant’s delay in claiming asylum in the United Kingdom for a significant period of time damaged his overall credibility. Eighth, that the documentary evidence (including the court documents and the attorney’s letter) were unreliable in light of other adverse credibility findings. Ninth, that the medical report attracted little weight, given that the author had stated injuries only to be “consistent” with the Appellant’s claims as to how they were caused. Tenth, the judge found it implausible that the Appellant had been able to move around within Sri Lanka after being released without apparently experiencing problems.

The grounds of appeal essentially challenged each elements of the judge’s findings. In granting permission to appeal First-tier Tribunal Judge Landes deemed a number of the grounds to lack any real merit. However, the recorded decision (as opposed to the reasons in support thereof) simply stated that permission had been “granted”. By a Note and Directions notice dated 15 October 2020, I concluded that the grant of permission by Judge Landes had in fact been unqualified and that all grounds fell to be considered by the Upper Tribunal.

An issue arose on the day of the remote hearing. Mr Paramjorthy, of Counsel, was due to appear on behalf of the Appellant. However, the Upper Tribunal received a message conveyed via Mr Paramjorthy's clerks that a family emergency had arisen. Mr Paramjorthy had expressed his desire to try if at all possible to attend the hearing, but was unable to say when he might be available. I conveyed this information to Ms Cunha and to the Appellant, who attended the hearing himself. For reasons set out below I concluded that it was appropriate to proceed with the hearing in the absence of Mr Paramjorthy. I explained this to the Appellant and he confirmed that he understood the position.

Having reflected on the nature of the grounds of appeal as a whole and the judge's decision, Ms Cunha conceded that material errors of law had been committed. Specifically, she accepted that the judge had erred in three respects: first, in his consideration of the court documents and the supporting attorney's letter second, in relation to the findings on the ability of the Appellant to be released by payment of a bribe and to leave Sri Lanka on his own passport third, in relation to the consideration of the medical report.

She accepted that the judge's decision should be set aside and the appeal remitted to the First-tier Tribunal for a fresh hearing with no preserved findings of fact.

Ms Cunha's position was in my view correct, at least in respect of the first and second errors highlighted.

With reference to paragraphs 32 and 37 of his decision, the judge failed to have any regard to the undisputed fact that the translator was approved by the Sri Lankan government.

Further, the translation shows that the Court document itself contains a report by the police. Therefore the presence of a police logo within the document was not inconsistent with legal proceedings having been initiated in the Magistrates' Court. On this basis the judge also appears to have misapprehended the nature of the document.

Whilst the attorney's letter is referred to in passing in paragraph 37, the judge has failed to deal with it adequately. The letter states in clear terms that the author had obtained the documents and actually checked the court file personally, confirming that a case had been brought against the Appellant. The attorney's letter was supported by a copy of his practising certificate and his Bar Association membership card. This supporting evidence was potentially of real significance to the Appellant's case in that it purported to verify the existence of a case and therefore the reliability of the court documents. The evidence required careful consideration, but did not receive it. This error is, in and of itself, sufficient to undermine the decision as a whole, given the centrality alleged court proceedings to the appellant's claim.

I also take the view that the judge erred in respect of his consideration of the bribery issues, both as they related to release from detention and the

Appellant's ability to leave the country on his own passport. The country information on Sri Lanka has for many years now indicated that corruption is endemic within the country and that individuals who claimed to have been released on payment of a bribe and/or to have left the country through payment of money should not have these aspects of their cases rejected simply on the basis of a general implausibility argument. This much was recognised in GJ (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC). The judge did not take relevant matters into account.

Whilst Ms Cunha has conceded that the judge erred in respect of the medical report, I am much less sure about this. The author did at one stage describe certain marks as being "typical" of the claimed ill-treatment, but he then went on to state that they were simply "consistent" with the account. Thus on the face of the report there seems to have been a degree of uncertainty. Other aspects of the judge's adverse findings were, if seen in isolation, open to him (particularly relating to the delay in claimed asylum in the United Kingdom and his apparent ability to have moved within Sri Lanka prior to his departure). However, for the reasons given above there are material errors of law and the judge's decision must be set aside.

In terms of disposal I agree with Ms Cunha that remittal is the appropriate course of action. This is a case in which the truthfulness of the Appellant's account and the reliability of documentary evidence play a crucial part in the assessment of whether he would be at risk on return to Sri Lanka.

The remitted appeal shall be reheard without any preserved findings of fact. It would also be appropriate for the next hearing to be listed after the new country guidance decision on Sri Lanka has been published by the Upper Tribunal.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

- 1) This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) for a rehearing with no preserved findings of fact;
- 2) The remitted hearing shall not be conducted by First-tier Tribunal Judge M Cohen.

Signed H Norton-Taylor

Date: 16 February 2021

Upper Tribunal Judge Norton-Taylor