



IAC-FH-CK-V1

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

Appeal Number: AA/00201/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision and Reasons
Promulgated**

On 11th August 2015

On 21st August 2015

Before

**UPPER TRIBUNAL JUDGE GLEESON
DEPUTY UPPER TRIBUNAL JUDGE MURRAY**

Between

**MR MOHAMED WAFI MOHAMED NIZAM
(NO ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jafar, Counsel instructed by Liyon Legal Ltd

For the Respondent: Miss E Savage, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Richards-Clarke on 12th May 2015 dismissing his appeal against the respondent's refusal of asylum on 15th December 2014.
2. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Cheales on the basis that the First-tier Tribunal arguably had not given anxious scrutiny to the appellant's claim, nor to the

explanation provided by him for the delay in claiming asylum and further that the findings of the First-tier Tribunal in relation to an alleged arrest warrant which was not produced were arguably contrary to the background information and the country guidance and that inadequate findings had been made regarding the appellant's father.

3. There is a Rule 24 reply from the respondent dated 19th July 2015. The basis of the respondent's reply, subject to an amendment which was made at the hearing, is that the appellant delayed in claiming asylum until he was arrested for credit card cloning at his employer's petrol station. It appears that no charge arose out of that arrest and that:

"As to paragraph 4 of the grounds the judge was entitled to raise the issue of no copy of the arrest warrant being before him despite the appellant's claim that he had a lawyer check for him that one existed in Sri Lanka. As to paragraph 5 of the grounds - the claim at the highest (discounting the patently invented claim of an existence of an arrest warrant) the appellant did not work for the LTTE, he was not a member, had no associations with them and has no particular sur place profile in the UK to bring him to the attention of the authorities on return."

First-tier Tribunal decision

4. The First-tier Tribunal's decision sets out briefly the core of the appellant's account, without expressly evaluating it, as well as the respondent's submissions. The judge correctly directed himself by reference to *Gj and others* (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). At paragraphs 16-17, the First-tier Tribunal identified that credibility was in issue in this appeal.
5. However, nowhere in the decision does the First-tier Tribunal set out the parts of the appellant's account which were accepted, rejected, or on which limited reliance is placed, nor is there a clear finding on credibility. After setting out the submissions, the Judge moved directly to the determination of risk on return, at paragraph 20:

"20. On the evidence before me the Appellant's claim is that he will be targeted by the Sri Lankan authorities on suspicion of having helped the LTTE in their activities when he lived in Sri Lanka. It is also the Appellant's claim that in the UK he is currently actively involved in political activities against the Sri Lankan government's human rights violations. The Appellant has not satisfied me that there is a real risk or a reasonable degree of likelihood of him suffering persecution in Sri Lanka for one of the reasons cited in the Refugee Convention. I say this because:

(a) The Appellant came to the UK with a student visa and did not claim asylum almost 4 years later. This was 9 months after his application for further leave to remain in the United Kingdom had been refused in December 2010 and after his arrest. It was also the Appellant's own evidence that his claim for asylum was not made until some months after his father had informed him that he has been questioned by the Sri Lankan army. I do not consider that the Appellant has given an acceptable

explanation for this delay or why did not claim asylum at the earliest opportunity.

(b) On the evidence before me the Appellant is not a Tamil activist working for Tamil separatism and to destabilise the unitary Sri Lankan state. The Appellant's oral evidence was that he has never been a member of LTTE in Sri Lanka, has no family associations with LTTE. The evidence before me was that the Appellant has undertaken local community work with Tamils [letter 8 April 215 from Transnational Government of Tamil Eelam] and is a member of the National Liberal Party in the United Kingdom. This does not support a finding that the Appellant has a significant role in relation to post conflict Tamil separatism.

(c) I am not persuaded that the Sri Lankan authorities have issued a warrant for the Appellant's arrest. This document was not produced at the hearing, there was no evidence before me that the Appellant had made any attempts to obtain this and I did not find plausible the Appellant's account as to how he became aware of this warrant. I attach also little weight to the Sri Lanka Police Message Form dated 9 October 2014. This is because I did not find plausible the account of how this came to be in the Appellant's possession, there was no explanation as to why it did not refer to the issue of an arrest warrant and the Appellant has failed to address the Respondent's stated concerns as to its authenticity."

6. We do not consider that to be sufficient as an explanation of the First-tier Tribunal's reasoning on credibility and fact.

Conclusions

7. We consider that the allegation of a lack of anxious scrutiny is made out and that the appropriate course is to set this determination aside and order that it be remade in the First-tier Tribunal on a date to be fixed.
8. It will be necessary in the First-tier Tribunal for the Tribunal to have the opportunity of considering any evidence which the applicant may be able to produce in relation to the alleged arrest warrant.

Directions

We direct that, not later than **2 months** from the sending to the parties of this decision:

- (1) The appellant may produce evidence in relation to the alleged arrest warrant, which shall consist of a letter from a lawyer in Sri Lanka, producing and verifying an original arrest warrant. In default, the appellant must explain in a witness statement why such a document is not available and what efforts have been made to obtain it.
- (2) The appellant shall give full particulars of any additional circumstances or matters relied upon in human rights, to include an explanation as to why (if appropriate) they were not disclosed at the hearing on 16 April 2015. The appellant is reminded of his duty of full disclosure of all material factors at the person's disposal and a satisfactory explanation regarding

the lack of any relevant material as set out in to paragraph 339L of the Immigration Rules.

- (3) All other directions as to the remaking of this decision will be given in the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. We continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Upper Tribunal Judge Gleeson

Date: 12 August 2015