



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/11329/2015

AA/11331/2015

AA/11332/2015

THE IMMIGRATION ACTS

**Heard at Field House
On August 24, 2017**

**Decision & Reasons Promulgated
On September 4, 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

**MR KCH
MASTER NSHA
MRS VDPSG
(ANONYMITY DIRECTION MADE)**

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellants: Ms Anzani, Counsel, instructed by Nag Law Solicitors
For the Respondent: Mr Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I make an anonymity direction under Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
2. The appellants are Sri Lankan nationals. The first-named appellant left Sri Lanka on his passport and entered the United Kingdom as a student on May 8, 2010. His leave expired on March 14, 2011 so he applied on February 18, 2011 to extend his leave as a Tier 4 (General) Student and although his application was refused he succeeded on appeal and this extended his leave initially until September 2, 2013 and then until February 24, 2015. On February 23, 2015 he applied for asylum on behalf of himself, his wife and son. The respondent refused their asylum claim on August 9, 2015.
3. The appellant lodged grounds of appeal on August 19, 2015 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002. His appeal came before Judge of the First-tier Tribunal Judge Black on December 20, 2016 and in a decision promulgated on January 16, 2017 the Judge refused their appeals on all grounds.
4. The appellant appealed this decision on January 30, 2017. Permission to appeal was initially refused by Judge of the First-tier Tribunal Ford on May 4, 2017 but when those grounds were renewed to the Upper Tribunal permission to appeal was granted by Upper Tribunal Judge Plimmer on June 29, 2017.
5. The respondent lodged a Rule 24 response dated July 19, 2017 in which she opposed all grounds of appeal.
6. The matter came before me on the above date.

Submissions

7. Ms Anzani adopted her grounds of appeal and submitted that the Judge had erred.
8. She firstly submitted the Judge had failed to give adequate reasons to explain why she rejected the appellant's claim he had been arrested or that there had been an arrest warrant issued following his failure to attend court. The appellant had provided evidence from two attorneys who examined the court file and commented on the verification report relied on by the respondent. The Judge provided no reasons why he rejected their evidence. Clearly the existence of such documents was relevant to the Judge's consideration of Gj and others (post civil war: returnees) [2013] UKUT 319.
9. She secondly argued the Judge gave no explanation or reason why it was not plausible the appellants were able to leave as claimed. The Upper Tribunal noted in Gj that there was evidence it was possible to leave the country even when that person was being actively pursued. Reference was also made to MM (Sri Lanka) v SSHD [2014] EWCA Civ 36 in which the

Court of Appeal found the Immigration Judge had erred by finding a person cannot leave Sri Lanka despite being on a reporting condition.

10. The final ground concerned the Judge's assessment of the respondent's document verification report. The report had been sent for verification to the very people the first-named appellant claimed had issued the document in the first place. This was unfair as it should have been sent to someone independent such as the court. The report failed to show a line of custody for the document.
11. She invited the Tribunal to find an error in law and to remit the matter back to the First-tier Tribunal.
12. Mr Whitwell adopted the Rule 24 and submitted the Judge made a number of adverse credibility about the appellant's claim including the fact the first-named appellant had returned to Sri Lanka on three occasions, he had a limited profile with the LTTE, the historic nature of the allegations and the delay in bringing the claim. These alone were good reasons for rejecting his claim but additionally the respondent had produced a verification report which challenged the first-named appellant's documents. The challenge brought today was a mere disagreement with the Judge's findings.
13. Mr Whitwell accepted that the Judge had erred in finding that the appellant would have been unable to leave the country but he submitted this error was not material because the circumstances of the case were different to those in GJ and because of the adverse findings made. Mr Whitwell submitted that as the core claim was rejected it mattered little that he could leave Sri Lanka because he did not form part of a risk group in GJ.
14. With regard to the verification report Mr Whitwell submitted the Judge's findings in paragraph [26] were open to him. There was nothing unusual about names being left out of the report as this protected the people providing the report.
15. I reserved my decision after hearing these submissions.

FINDINGS

16. Permission to appeal was granted by Upper Tribunal Judge Plimmer. She found the grounds arguable and today I heard submissions from both representatives.
17. Three grounds of appeal were brought. The first ground centred on material and credibility findings about the first-named appellant's account. This third ground centres around the document verification report and whilst both are different matters they clearly are connected as it is the findings on these issues that ultimately would decide whether the appellant had persuaded the Judge to the lower standard of proof about his case.

18. The Judge summarised the appellant's claim concisely in paragraph [12] of his decision. The respondent's position was set out in paragraph [13] of his decision. The Judge was aware of the relevant case law as he reminded himself of the law in paragraph [16] of his decision.
19. Between paragraphs [17] and [27] the Judge considered the evidence and set out his reasons for his decision.
20. Upper Tribunal Judge Plimmer gave permission to appeal on the basis the Judge may have erred firstly with regard to whether it was possible to leave the country when wanted by the authorities and secondly on the basis the Judge's findings may not have given sufficient weight to the evidence from the two attorneys.
21. On the first point the respondent accepts that the Judge did err but Mr Whitwell argued that the error is not material. The Judge considered the appellant's method of departure and whilst I accept the Judge was wrong to find in paragraph [20] that he would not be able to leave the country I am satisfied that if this was the only error then this would not amount to an error of law because if the Judge's other findings on credibility are sustainable then the appellant would not be wanted or at risk.
22. It is therefore the Judge's approach to the attorney's evidence and the document verification report that will determine whether an error was made in the decision.
23. The Judge accepted he may have worked in some capacity for a media company but he found no evidence to support the appellant's claim he was interviewed in 2007 or that his employer presented the offending news broadcast in 2006 that mentioned the appellant by name. In reaching that finding the Judge took into account the background material and the appellant's own immigration history that included the fact he left the country on a student visa in 2007 and he remained in the United Kingdom until his visa expired in 2015.
24. He considered the material about the television company and coverage of the civil war and was not persuaded there was anything that linked him to any report. Having considered the evidence he concluded that his failure to claim asylum in either 2007 or 2010 undermined his claim. If what he claimed had truly happened then the Judge found his failure to claim after arriving in 2007 and then when he returned to the United Kingdom in 2010 undermined his credibility. He waited a further five years after returning in 2010 before claiming asylum. Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 was applied by the Judge. The findings made would therefore be open to the Judge unless there was something else that supported his claim.
25. The first-named appellant relies on evidence from two attorneys. The content of the letters were considered by the Judge and he gave reasons for rejecting both documents. Ms Anzani in her grounds of appeal argued

that the Judge's approach to this evidence fell below the standard necessary. The Judge examined the court register and noted one of the representative's name was not recorded in the register. In fact there was a representative with a similar surname but that person was a female. The Judge criticised the content of that statement as the person merely confirmed the documents were genuine and challenged the reliability of his authenticity. That finding was clearly open to the Judge as he was tasked with considering all of the evidence and making findings. The second witness produced extracts of the court file and like his colleague gave his opinion on the documents. The Judge had the verification report - a document challenged by the appellant.

26. The Judge had to consider all that evidence. The fact names are redacted does not mean the document cannot be relied on. The report like other documentary evidence is evidence that should be considered in the round and this is what the Judge did. The Judge gave his reasons for placing reliance on the said document and he made it clear that he placed reliance on it not simply because it was a court document but because of his other findings.
27. In circumstances where there is conflicting evidence the Judge has to make a finding. In this case he found against the appellant and I agree with Mr Whitwell that grounds 1 and 3 are mere disagreements with the Judge's decision. The Judge considered the evidence and gave a decision that was open to him on the facts. There was no error in law on any of the grounds.

DECISION

28. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. I uphold the original decision.

Signed

Date 31.08.2017

Deputy Upper Tribunal Judge Alis

FEE AWARD TO THE RESPONDENT

No fee award is made because I have dismissed the appeal.

Signed

Date 31.08.2017

Deputy Upper Tribunal Judge Alis