



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

Appeal Number: PA/03634/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 12 September 2019**

**Decision & Reasons Promulgated
On 10 October 2019**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**S K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani instructed by Nag Law Solicitors

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka. She appealed to a Judge of the First-tier Tribunal against the Secretary of State's decision of 1 April 2016 refusing her claim for international protection.
2. The appellant originally arrived in the United Kingdom on 3 March 2011, having been granted leave to enter as a student. Her visa was renewed until 10 October 2015 but curtailed on 30 April of that year following expulsion as a student for failing to register. In the meantime the appellant had returned to Sri Lanka in June 2014 and came back to the United Kingdom on 16 July 2014. She claimed asylum on 6 October 2015.

3. She claimed to have been arrested on 25 November 2008 and had been held for three days on the basis that it was thought that she had given support to the LTTE. This was not the case. She had given a document to a Tamil lady, this being a court order that had been given to the lady in order to take her to hospital because her husband's arrest had caused her to become mentally upset. The lady's husband had been arrested for supporting the LTTE.
4. The appellant said that she was taken on that occasion to the police station and forced to admit to supporting the LTTE and detained for two days. She was released on condition that she might be recalled and placed her signature in a book.
5. On her return to Sri Lanka on 18 June 2014 she was arrested on arrival at the airport and told she was being investigated for leaving the country whilst under suspicion for supporting the LTTE. She was held at a CID office and beaten on one occasion. She was subsequently released when her parents gave 3 lakh rupees as bail. She was required to report weekly but instead returned to the United Kingdom. The authorities had since been to her home to look for her. In answer to questions she said that she was not on a stop list and that there was no court order or warrant out for her arrest.
6. In evidence the appellant adopted her witness statement and referred to the police attending her home in Sri Lanka, most recently in November 2018. She had not had any difficulties in leaving Sri Lanka in 2011 on her own passport, nor any problem when she left in 2014. After her release in 2008 she had continued to work for the Government as a court clerk until 2011 when she came to the United Kingdom. She had encountered no further problems from the authorities at that time.
7. The appellant had produced an arrest warrant which she said had been sent to her solicitor and must have been obtained through the courts. She said that the warrant she produced was not a forgery.
8. The judge noted that the parties were at odds with regard to the validity of the warrant. The respondent relied on a document verification report dated 21 March 2017 which concluded that the warrant was not genuine. Confirmation in this respect came from the Criminal Investigations Department, having been submitted, redacted, to the Deputy Inspector-General of the CID in Colombo. The respondent also relied on a Country of Origin Information Report of 4 July 2011 reporting that forgery of official documents was commonplace.
9. The judge noted what had been said by the Upper Tribunal in VT [2017] UKUT 00368, but placed particular emphasis on PA [2018] UKUT 337 (IAC). There was no indication that the personal details of the appellant in that case had been given to the police in Sylhet, and in the instant case the appellant's name and address had been redacted and therefore her identity was not revealed to her alleged persecutors. The judge

recognised that the authority the appellant signed permitted examination of records at the Magistrates' Court rather than the police, but nevertheless the result of the enquiry did carry some weight.

10. The judge considered also the medical evidence produced on behalf of the appellant in the form of letters from two attorneys, Mr Jayawardena and Ms Nirosha. The judge noted that Mr Jayawardena's name was spelt in various ways at various times and considered that since the request for the documents came from the appellant the result of the enquiry was no more independent than the result of the respondent's enquiry leading to the DVR. The judge also considered there were elements of the appellant's evidence which lacked credibility. In particular the judge attached weight to the fact that, as he put it, the appellant would most certainly not have continued to be employed by the Government of Sri Lanka in the very role she was suspected of abusing if it were the case that she was believed to have used her professional influence to fulfil the missions of an LTTE member. He also noted that at interview on 29 March 2016 she said no warrant for her arrest had been issued, but the warrant produced subsequently was issued on 2 September 2014. He also noted that there was no evidence of any proceedings against the appellant's parents in respect of the 3 lakh rupees they had deposited as bail security. There was no documentary evidence to verify her father's claim in a letter of 18 February 2019 that his 3 lakh were forfeited or confiscated.
11. In light of his findings the judge did not accept that the appellant was of adverse interest to the authorities in Sri Lanka, did not accept that she was suspected of terrorism or believed to have assisted terrorists and did not believe there was any warrant for her arrest in existence. He applied the Tanveer Ahmed test to his consideration of the documents. He did not find that evidence or the documents credible.
12. The appellant sought and was granted permission to appeal on three grounds. The first was that the judge had failed to engage adequately with the challenge to the method of verification. Secondly, it was said that his reasoning in regard to the arrest warrant and other documents was insufficient in that he had made no findings in relation to Ms Nirosha's evidence, and thirdly, he indulged in speculation in concluding that it was impossible to believe that the appellant had been permitted to return to work as an administrator at the High Court.
13. At the hearing Ms Anzani, who had appeared below and drafted the grounds, adopted and expanded the points made in the grounds of appeal.
14. With regard to the first ground, it was clear from VT that a simple redaction would not protect a person if a genuine warrant had been issued. Also there was background evidence, referred to for example in the country guidance in GJ, as to CID practices. The CID could not be relied on, as an interested party in proceedings against the appellant. They were not unbiased and they were looking for her to be returned to Sri

Lanka. There had been harassment of her family, including her father, so their assurances were not reliable evidence.

15. As regards PA, a different method of identification had been employed there. The British High Commission representative had looked at the records rather than it being done by the CID, as in this case. Also, the judge had failed to consider what was said in VT about redaction and protection of individuals. This was a material error of law.
16. The second ground concerned the failure to make findings on Ms Nirosha's evidence. The judge had only considered that the evidence of Mr Jayawardena. Though it was the case that the judge did not have to provide reasons for every bit of evidence considered, it was necessary with regard to the more significant evidence and this went to a core issue, being rebuttal evidence of the document verification report and the genuineness of the warrant.
17. The third ground concerned the findings at paragraph 44 where the judge did not accept that if the appellant's account was true she would have continued to be employed by the Government after the arrest in 2008. In light of her evidence about return to work it was speculation to say that her evidence was incapable of belief.
18. In his submissions Mr Walker relied on the Rule 24 response. It was maintained that the judge had made findings open to him with regard to the evidence submitted. Credibility had been considered in depth. The findings were open to the judge with regard to the documents. He had recorded various inaccuracies at paragraph 43 of his decision. This was the second time the appeal had been heard and there was no merit to the challenge.
19. By way of reply Ms Anzani made the point that the fact there had been a previous remittal was irrelevant to whether or not there was an error of law in this decision. She considered that if the Tribunal were with her then it would probably be necessary to remit to the First-tier in that credibility would have to be reassessed.
20. I reserved my decision.
21. I start with ground 3. I do not consider there is any merit in the point made here. It does seem to me inherently implausible, as the judge concluded, that a person who had been arrested on suspicion of assisting an LTTE member would be allowed to return to her employment with the Government for several years.
22. That might superficially be seen to be dispositive of the appeal, but it has to be seen in the context of the more weighty grounds 1 and 2. Inherent apparent implausibility of allowing the appellant to continue working for a period of time after the earlier detention would, if the appellant is credible

with regard to the arrest warrant, have to be seen in the light of that, and the evidence would have to be assessed in the round in that regard.

23. In this respect I consider that the challenge in the grounds is made out. It does seem to me, with regard to ground 1, that the judge did not pay sufficient attention to the concerns expressed in VT about the risks of even a redacted warrant when the document is considered by the potential author of persecution. It might perhaps not be seen at least as objective a process as that where a BHC official was examining the records as was done in PA. A more careful evaluation of the guidance in those two cases to the facts of this case is necessary, but it does seem to me that the points made in the grounds and as amplified by Ms Anzani, particularly at paragraph 9 of the grounds, are made out.
24. This also has to be seen in light of ground 2 which again I consider has merit. Though the judge had concerns with regard to the evidence of Mr Jayawardena, he did not come to any conclusions on Ms Nirosha's evidence, and that is, as Ms Anzani argued, pivotal potentially in that she verified the existence of the court file and the genuineness of the arrest warrant. The credibility of the claim overall has to be seen in the light of proper findings on the evidence and a proper consideration of the two guidance cases. It is unfortunate that the matter has to be considered fully again, but I consider in the circumstances that there will have to be a full re-evaluation of the appellant's credibility, and that will most properly be done in the First-tier Tribunal, so on that basis the appeal is allowed to the extent that it is remitted for a full rehearing at Hatton Cross.

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.



Signed

Date: 8th October 2019

Upper Tribunal Judge Allen