



IAC-AH-SC-V2

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

Appeal Number: AA/09578/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7<sup>th</sup> April 2015**

**Decision & Reasons Promulgated  
On 9<sup>th</sup> July 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MR M R  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: In person

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Sri Lanka born on 15<sup>th</sup> March 1986. The Appellant's immigration history is set out in considerable detail within the Secretary of State's decision at paragraph 2. In short he applied for a Tier 4 (General) multivisit visa to the United Kingdom on 19<sup>th</sup> November 2010 and that visa was granted until 16<sup>th</sup> February 2012. The Appellant left Sri Lanka and arrived in the UK on 25<sup>th</sup> December 2010. He overstayed the terms of his visa having made subsequent applications for extensions in the interim and on 2<sup>nd</sup> February he was encountered working at B&M in Hemel Hempstead on an enforcement led visit. He was working in breach

of his employment restrictions and on that date he was served with a form IS151A on the basis that he had overstayed his leave to enter the UK. On 8<sup>th</sup> May 2013 some six days after he was served with the form IS151A the Appellant claimed asylum.

2. That application was refused by the Secretary of State by way of a Notice of Refusal dated 28<sup>th</sup> October 2014. The Appellant had claimed asylum on the basis that if returned he would face mistreatment due to his imputed political opinion because his partner with whom he resided was suspected of being involved with the LTTE.
3. The Appellant appealed and the appeal came before First-tier Tribunal Judge Birk sitting at Birmingham on 23<sup>rd</sup> December 2014. In a determination promulgated on 9<sup>th</sup> January 2015 the Appellant's appeal was dismissed on asylum grounds and human rights grounds and the Appellant was found not to be in need of humanitarian protection. On 20<sup>th</sup> January 2015 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 30<sup>th</sup> January 2015 Judge of the First-tier Tribunal levins granted permission to appeal. Judge levins noted that the grounds seeking permission to appeal focused on the judge's findings about the authenticity or otherwise of a court summons from Sri Lanka. Judge levins considered that it might be thought from a reading of the determination that the judge's concerns about the state of the court summons and where and how it had been kept were one of the sounder parts of the determination but that the grounds seeking permission to appeal made no mention of concerns about interpretation which are raised in a letter from the Appellant's solicitor sent the day following the hearing. I noted that the judge had found that the Appellant had provided a consistent account of his detention and ill-treatment and that what he claimed had happened "could have happened" but was nonetheless not truthful.
4. Judge levins noted that the grounds seeking permission to appeal were drafted by Counsel who represented the Appellant at the hearing so that if there was anything in the concerns about interpretation Counsel should have raised these in the grounds seeking permission to appeal. However, he noted that whilst asylum appeals are to be considered with the most anxious scrutiny and despite the length of the hearing it was arguable from reading the determination that that had not been given and that it was arguable that it was not always possible to follow the judge's reasoning. He therefore considered there was an arguable error of law and he granted permission to appeal.
5. On 10<sup>th</sup> February 2015 the Secretary of State responded to the Grounds of Appeal under Rule 24. The Rule 24 response states clearly that the First-tier Tribunal Judge properly considered the summons and that the judge set out reasons at paragraph 35 of the decision as to why he found that the documents could not be relied upon. They state that it was not merely the condition of the documents that caused the judge to reject the documents but also the Appellant's oral testimony. The Rule 24 response goes on to note that the judge considered the Appellant's participation at

political events in the UK and found that there was no evidence that he had succeeded in raising a profile that the Sri Lankans would be adversely interested in him upon his return and that the judge was entitled to make that finding on the basis of the evidence before him.

6. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant is not legally represented at this appeal. He appears in person. I explained in some detail to the Appellant the process that would be followed and indicated to him that I would listen without interruption to his submissions and give due consideration to everything that he had to say. The Secretary of State appears by her Home Office Presenting Officer Mr Jarvis.

### **Submission/Discussion**

7. Albeit that it is the Appellant's appeal Mr Jarvis made the initial submissions. He starts by addressing paragraph 2 of Judge levins' permission pointing out that that is a rather unusual analysis bearing in mind that there is nothing in the representative's grounds expressing concern about the summons and that Judge levins has rightly expressed doubts about the merits of the grounds and he is correct that asylum appeals are to be considered with the most anxious scrutiny. As for guidance as to how a judge should consider anxious scrutiny he refers me to the Court of Appeal decision in *The Queen on the Application of YH [2010] EWCA Civ 116* and states that this has been carried out properly by the judge.
8. Mr Jarvis submits that there has been no material problem in considering the evidence and that there is nothing within the determination, Grounds of Appeal or permission that raises any specific concerns. He points out that Judge levins was not the judge at the hearing, but the Appellant was represented and if there were concerns they would have been raised. None were made and there was no reference to them and he submits there are no material issues. He points out that the legal representatives at the First-tier Tribunal including the judge were the best-placed parties to decide the issue and that it has not been shown that the Immigration Judge has not carried out his judicial process properly.
9. He points out the other issues raised in the Grounds of Appeal are effectively the same point and that the judge has at paragraph 34 a limited position with regard to the first summons and that he has at paragraph 35 gone on to consider the guidance given in *Tanveer Ahmed* and as long as the judge has considered the documentary evidence in the round and given reasons then that is within his purview and no material error of law is shown.
10. So far as the grounds setting out paragraph 5 and 6 allege that the judge has not properly considered the country guidance of *GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (AIC)* Mr Jarvis points

out that the authority makes it plain that to be at risk it is necessary to have a perceived and actual profile and that attending demonstrations is not sufficient and that the judge has given due consideration to this point. He submits that there is no material error of law disclosed and asked me to dismiss the appeal.

11. The Appellant states that everything is true and that the documents are from the court and medical centres and demonstrations. He states he took everything from the website and that everything he has stated is truthful. He contends that he will still have a problem if he goes back home to Sri Lanka. He points out to me that his mother passed away three days before the first hearing and that this did affect his concentration. He also contends he had a dialect problem with the interpreter but acknowledges that this has not been previously raised. When asked if there was anything else the Appellant wished to state he indicated that there was not.

## **The Law**

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.
13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

## **Findings**

14. I am referred to the decision in *The Queen on the Application of YH* and as to how expression anxious scrutiny should be construed within a legal analysis. I acknowledge that this is brought to me by legal representatives and I fully understand it is not a concept which the Appellant in person would wish to address. I have given within this determination due and

proper consideration to the reference to the expression anxious scrutiny found in particular at paragraphs 22 to 24 of *YH*. Perhaps the most important analysis from those paragraphs is the conclusion therein of the need for decisions to show by their reasoning that every factor which might tell in favour of an applicant has properly been taken into account. Such comments are made herein on the Appellant's behalf particularly with regard to the documents. Bearing in mind the manner in which the judge has considered this matter and the detailed findings that she has given I am satisfied that full and proper anxious scrutiny has been applied in this matter.

15. The principal ground of appeal in this matter relates to the judge's analysis with regard to documents albeit that that is somewhat tempered by the manner in which Judge levins granted permission to appeal. However, the judge has, at paragraph 35 of her determination, given due consideration to the summonses under the principles set out in *Tanveer Ahmed* and has made findings that the documents are not reliable. The judge has gone on to give full and proper reasons as to how she reached that decision and it is important to read paragraphs 35 to 38 in their entirety and in context.
16. The judge has made adverse credibility findings. A proper approach to credibility requires an assessment of the evidence and of the general claim. In asylum claims, relevant factors are firstly the internal consistency of the claim, secondly the inherent plausibility of the claim and thirdly the consistency of the claim with external factors of the sort typically found in country guidance. Whilst I would acknowledge that it is theoretically correct that a Claimant need do no more than state his claim that claim still needs to be examined for consistency and inherent plausibility. In this case the judge has made such an analysis and this is set out in considerable detail at paragraphs 40 to 45. Thereafter the judge has gone on to give due and proper consideration to the country guidance authority.
17. As the Secretary of State has pointed out it is not merely the condition of the documents that caused the judge to reject them but also the Appellant's oral evidence. The judge has given due and proper consideration to the Appellant's participation at political events in the UK and found that there was no evidence that the Appellant had succeeded in raising a profile that the Sri Lankans would be adversely interested in him upon his return. Such findings are ones that the judge was entitled to make on the evidence before him.
18. Overall the decision is well-reasoned and well-set out. The arguments put forward amount to little more than disagreement. For all the above reasons I am quite satisfied that this determination discloses no material error of law. In reaching that decision I have given full and due proper consideration to the submissions made in person by the Appellant at this appeal. In such circumstances the Appellant's appeal is dismissed and the decision of the First-tier Tribunal is maintained.

**Notice of Decision**

The decision of the First-tier Tribunal contains no material of law and the Appellant’s appeal is dismissed and the decision of the First-tier Tribunal is maintained.

The First-tier Tribunal Judge made an anonymity order. No application is made to vary that order and none is made.

**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 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 \_\_\_\_\_ Date \_\_\_\_\_

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Deputy Upper Tribunal Judge D N Harris