



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

Appeal Number: AA/06271/2015
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THE IMMIGRATION ACTS

**Heard at Field House
On 26 February 2016**

**Decision & Reasons Promulgated
On 3 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**NP
VN
YN**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Martin, counsel instructed by Solidum Solicitors
For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision of FTTJ Mozolowski, promulgated on 12 November 2015. Permission to appeal was granted by Upper Tribunal Judge Allen on 8 January 2016.

Background

2. The principal appellant, NP (hereinafter referred to as the appellant) was granted entry clearance as a Tier 4 migrant from 17 August 2012 until 5 January 2014. An earlier application, made on 13 January 2012, had been refused. The second and third appellants joined the appellant in the United Kingdom on 23 April 2013. He claimed asylum on 6 September 2013.
3. The basis of the appellant's asylum claim is that he went to Russia in 1993 for studies, where he remained until 2001. Thereafter the appellant worked as an electrical engineer in Sri Lanka from 2002 until 2009. His brother SP left Sri Lanka during 2009 in order to travel to India with his wife who was studying there. The appellant and his wife were arrested on 24 August 2009 by the Sri Lankan authorities in connection with SP's alleged links to the LTTE. SP's mother-in-law was also arrested. The Sri Lankan authorities told the appellant that SP's friend was arrested for transporting bombs and he had implicated SP; stating that he had given SP a motorbike and a jacket with explosives. SP was not involved with the LTTE and nor were any other members of the appellant's family. The appellant's wife and SP's mother-in-law were released, however the appellant remained at the police station and was later transferred to Welikade Prison, in December 2009. After being taken to court three times, the appellant was officially released from detention in January 2010. A bribe was also paid for his release. The appellant travelled between Abu Dhabi and Sri Lanka twice or more between 2010 and 2011. He experienced no further problems with the Sri Lankan authorities since his release from detention. However, in August or September 2013, the appellant heard that unknown people went to his wife's family home, making enquiries about his whereabouts.
4. The Secretary of State refused the appellant's asylum claim owing to what were considered to be significant inconsistencies between the accounts provided by the appellant and his wife (the third appellant) at their screening interviews when compared with their asylum interviews. Inconsistencies in the supporting evidence provided by the appellant were also subject to adverse comment.
5. During the course of the hearing before the First-tier Tribunal, the appellant and his wife gave evidence. The FTTJ concluded that the appellants had not provided a credible account and that they would not be at risk of persecution or serious harm if returned to Sri Lanka.

Error of law

6. Permission to appeal was sought on the basis that the FTTJ had not considered the evidence before her in the round and the grounds proceed to criticise individual credibility findings as well as her treatment of the medical evidence.
7. FTTJ Ford refused permission to appeal on 7 December 2015, commenting that the grounds amounted to no more than a disagreement with the

outcome of the appeal. The UTJ granting permission said as follows; *“The grounds identify arguable flaws in the Judge’s adverse credibility findings. As a consequence all the matters raised in the grounds may be argued.”*

8. The Secretary of State’s response argued that the respondent opposed the appeal as it was considered that the FTTJ appropriately directed herself. In addition it was noted that the appellant had never been involved in the LTTE and his claim was based on his fear of persecution owing to his brother’s links to the LTTE, however the FTTJ concluded that the appellant had no links to the person who was the subject of an Interpol Warrant.

The hearing

9. Mr Martin relied on the two sets of grounds of appeal. He further argued that the Secretary of State had failed to verify the appellant’s documents, namely those he described as the court documents, applying PJ (Sri Lanka) v SSHD [2014] EWCA Civ. Accordingly, the FTTJ’s reasons for failing to place weight on these documents were not sustainable.
10. Mr Martin submitted that the medical report on the appellant was not considered in the round and warranted a more substantial assessment. It was said that the FTTJ erred in dismissing the third appellant’s written and oral evidence as self-serving, without more. Lastly, the FTTJ had erred in concluding that the appellant would not have been released, a finding which was not based on objective evidence.
11. Mr Avery argued that there was nothing to warrant the Secretary of State verifying the court documents given that the relationship between the appellant and his alleged brother was not accepted. He submitted that the instant case could be distinguished from PJ, which concerned lawyers’ letters and a chain of evidence. That case did not disturb the judgment in Tanveer Ahmed. He further argued that the FTTJ had looked at all the evidence in the round before reaching overall conclusions as to credibility.
12. With regard to the third appellant’s evidence, Mr Avery agreed that the FTTJ had not said much, but argued that the same reasons for rejecting the appellant’s evidence applied to her, in that the FTTJ did not believe it. On the plausibility of the appellant being released by payment of a bribe following a major incident with international aspects to it, he argued that the FTTJ’s reasoning was sound and that the grounds amounted to no more than mere disagreement.
13. In response, Mr Martin restated his reliance on PJ, arguing that there were occasions when the authorities should undertake verification, that is, when the documents were at the centre of the protection claim, as in this case. Even if the relationship between the appellant and SP was doubted, there were the court documents which related to the appellant. The third appellant was also arrested and it was not enough to say her evidence could be rejected for the same reasons as the husband. As to the plausibility of the appellant’s release, there were no concrete allegations

against the appellants, who were removed from the real subject of the Sri Lankan authorities interest.

Decision on error of law

14. I upheld the decision of the FTTJ but reserved my reasons, which I give below.
15. I will firstly address the issue of the alleged failure of the Secretary of State to verify what Mr Martin referred to as the court documents, some of which he said were submitted with the application and others for the hearing. The grounds state that the FTTJ erred in that she did not prevent the respondent from challenging those documents. It is the case that none of the court documents submitted with the application contained the name of the appellant, but that of some other person. In addition, the dates therein did not correspond with those provided by the appellant. In relation to those documents, given the lack of any link to the appellant's case, I do not accept that the respondent had any obligation to verify them. It follows the FTTJ did not err in failing to prevent the respondent from challenging them.
16. It appears from [39] of the decision that the appellant also relied on an arrest warrant at the hearing. In relation to this document, the FTTJ did not err in placing reliance on the COI report as to the difficulty for an accused to be issued with a copy of his own arrest warrant.
17. It is argued on the appellant's behalf that the FTTJ failed to consider the medical and other evidence in the round before reaching her conclusions. This is manifestly not the case. The FTTJ considered the evidence and set out her detailed findings, from [6] to [60] of the decision and reasons. It is only at [60] that she reaches a conclusion as to the credibility of the appellant's claim. Furthermore, she records that some scars are described variously as consistent or highly consistent, but provides adequate reasons for finding that the medical report did not assist "*very much*" in supporting the appellant's claim of ill-treatment.
18. I accept that the FTTJ's treatment of the evidence of the third appellant was particularly brief, nonetheless, it was adequate. Contrary to Mr Martin's submissions that the FTTJ merely rejected the third appellant's evidence as self-serving, the FTTJ took also into account a highly significant discrepancy between the accounts given by the first and second appellants as to the basis for their claim.
19. The FTTJ records that when the appellant was screened, he stated that his claim was based on his younger brother's actual involvement with the LTTE whereas at his substantive interview he stated that his brother was not involved with the LTTE.
20. By contrast, the third appellant, during her screening interview, based her claim on the first appellant's actual involvement with the LTTE rather than

his brother. Yet, it was never the first appellant's claim that he had ever had any involvement with the LTTE. When the unreliable documentation is also taken into account which includes birth certificates (said to show the relationship between the appellant and SP) which were riddled with discrepancies, court documents in the name of another and an arrest warrant in the appellant's possession, I consider that the FTTJ did not need to say anything more regarding the third appellant's evidence.

21. The FTTJ notes at [32] that the incident, which led to the adverse interest of the Sri Lankan authorities in SP, was a "*bomb attempt against the Pakistani Ambassador.*" She found at [34] that it was implausible that the appellant would have been released from custody, even with a substantial bribe given the gravity of the diplomatic incident. I consider this to be a finding she was entitled to make. Furthermore, this finding does not stand in isolation and has minimal importance given the serious concerns as to the credibility of the appellant's overall case.
22. In conclusion, this was a careful and detailed decision and the FTTJ's overall conclusions were open to her on the evidence.
23. I dismiss the appeal.
24. An anonymity direction was made by the FTTJ and I consider it appropriate that this be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings."

Conclusions

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 decision of the FTTJ.

Signed

Date: 28 February 2016

Deputy Upper Tribunal Judge Kamara