



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/10836/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Stoke
On 14 April 2016**

**Determination Promulgated
On 18 April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

[A I]

~~No Anonymity Direction Made~~

**Appellant
and**

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

**R
espondent**

Representation:

For the appellant: Mr A Jafar, instructed by JK Solicitors

For the respondent: Ms C Johnstone, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against a decision by the respondent dated 21 November 2014 to refuse his application for asylum. Judge of the First-tier Tribunal Mulvenna dismissed the appeal. The appellant now appeals with permission to this Tribunal.

2. The appellant claims that he fears persecution in Sri Lanka because of his activities as a journalist, in television and in print and internet media, and that he was targeted by government forces because of his perceived anti-government views. He claims to have been targeted in April and May 2008 and again when he returned to Sri Lanka in 2012. The appellant first came to the UK in September 2008 with a student visa valid from 15 September 2008 until 10 October 2011 and was subsequently granted leave to remain as a Tier 1 (Post-Study Work) Migrant from 14 February 2012 until 14 February 2014. He returned to Sri Lanka in February 2012 to visit his sick father and, whilst there, married his wife. He claims that he was subjected to threats during this visit and he re-entered the UK on 5 May 2012. Following the refusal of his application for leave to remain as a Tier 1 entrepreneur on 28 March 2014, he claimed asylum on 23 June 2014.

3. The First-tier Tribunal Judge found that the appellant had not established that he had a well-founded fear of persecution in Sri Lanka. The judge considered a number of factors including the appellant's delay in claiming asylum and his previous appeal against the refusal of his application for leave to remain as a Tier 1 (Post-Study Work) Migrant at which there was no reference to his fear of return to Sri Lanka. The judge also considered the documentary evidence submitted by the appellant.

Error of law

4. In his grounds of appeal the appellant contends that the judge erred in his treatment of the documentary evidence at paragraph 51 of the decision. It is further contended that at paragraph 50 of the decision the judge came to a clear conclusion on credibility before considering the documentary evidence.

5. The newspaper and internet articles were submitted to the respondent in the course of the application for asylum along with translations prepared by the appellant himself. At paragraph 20 of the reasons for refusal letter the respondent said that no weight was attached to these documents because the appellant's name did not appear on the articles and there was no evidence to suggest that the translations had been completed by an objective translation service.

6. The appellant submitted certified translations of the articles to the First-tier Tribunal. The judge found that the translations were unreliable in the absence of evidence as to the provenance as to the translators independent objectivity. The judge found that the translations are 'in many respects' identical to the appellant's own translations and that 'there are all the hallmarks of collusion' [51]. The judge concluded that the documents are unreliable and gave them no weight.

7. I deal firstly with the submission that the judge dealt with credibility before going on to consider the documentary evidence. At paragraph 50 the judge said that the shortcomings in the appellant's evidence led him to 'the inevitable conclusion that his account is unreliable'. This was before considering the documentary evidence at paragraph 51. Despite going on to state at paragraph 54 that he had considered all of the evidence in the round before reaching the

ultimate conclusion that the appellant had failed to discharge the burden of proof, paragraph 50 indicates that the judge may already have made up his mind as to credibility in advance of his consideration of the documentary evidence which was a central aspect of the appellant's claim.

8. The other ground of appeal is that the judge erred in objecting to the translation of the documents in circumstances where the respondent had not objected to the translation, and that the judge had breached the requirements of fairness in failing to indicate to the parties that he objected to the translations. It is contended that the translations are almost identical because they are of the same documents and that this finding is perverse. It is contended that the finding that the translation has the 'hallmarks of collusion' is unreasoned and irrational.

9. At the hearing before me Mr Jafar submitted that the translations were not challenged by the Secretary of State at the hearing in the First-tier Tribunal and that the judge's reasons for rejecting this evidence, which went to the central part of the appellant's claim, were inadequate. Mr Jafar submitted that there were further errors in the judge's other reasons for finding the appellant's account not to be credible; however these were not pleaded in the grounds of appeal.

10. Ms Johnstone submitted that it was clear from the reasons for refusal letter that the documents were in dispute and that the findings were open to the judge.

11. The assessment of the documentary evidence, as part of the overall assessment of the credibility of the appellant's claim and the assessment of risk on return, was a central issue in the determination of this appeal. The judge's findings on this material matter should therefore be clearly reasoned. In my view the judge has not given adequate reasons for finding that the translator was not independent or for his finding that there had been 'collusion' between the appellant and the translator. The bare assertion that the translations are in many respects identical to the translations prepared by the appellant is not, without more, sufficient to identify why the judge was unable to place any reliance on the translations.

12. Accordingly I find that the First-tier Tribunal Judge erred in failing to give adequate reasons for his findings on a material matter.

13. The failure to give adequate reasons along with the appearance that the judge reached a conclusion on credibility before considering the documentary evidence amount to material errors of law in this case.

14. Ms Johnstone submitted that I should preserve the unchallenged findings of the judge in relation to other aspects of credibility. However in my view it is not appropriate to separate credibility findings here where the judge is tasked with considering all of the evidence in the round to reach an assessment of the credibility of the appellant's claim. Accordingly, in light of the errors identified I set the decision of the First-tier Tribunal aside in its entirety.

15. I am satisfied that the appellant has not therefore had his case properly considered by the First-tier Tribunal. The parties were in agreement with my view

that the nature and extent of the judicial fact finding which is necessary in order for the decision to be remade is such that (having regard to the overriding objective in Rule 2 of the Upper Tribunal Procedure Rules 2008) it is appropriate to remit the case to the First-tier Tribunal.

Decision

The Judge made an error on a point of law and the determination of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be remade.

Signed

Date: 14 April 2016

A Grimes
Deputy Upper Tribunal Judge