



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/08199/2016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 23 May 2017**

**Decision Promulgated
On 31 May 2017**

Before

Deputy Upper Tribunal Judge Pickup

Between

Jerome Francis

[No anonymity direction made]

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the appellant: Ms C Proudman, instructed by Biruntha Solicitors
For the respondent: Mr P Nath, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Povey promulgated 9.3.17, dismissing on all grounds his appeal against the decision of the Secretary of State, dated 22.7.16, to refuse his protection claim.
2. The Judge heard the appeal on 22.2.17.
3. First-tier Tribunal Judge Pedro granted permission to appeal on 4.4.17.
4. Thus the matter came before me on 23.5.17 as an appeal in the Upper Tribunal.

Error of Law

5. In the first instance I have to determine whether or not there was an error of law in the making of the decision of the First-tier Tribunal such that the decision of Judge Povey should be set aside.
6. Inter alia, the grounds assert that the First-tier Tribunal Judge made a material error of law in consideration of the appellant's documentary evidence and in particular as to the date the documentation was received by the appellant in the UK, sent from Sri Lanka, so that the judge's credibility findings are tainted.
7. The documents in question were a declaration from the appellant's father and a letter from the lawyer in Sri Lanka, dated 1.7.16. However, Judge Povey noted that the DHL envelope has a date stamp which the judge interpreted as being 7.4.16. Given the discrepancy in dates, the judge concluded that the dates on the documents contained in the envelope cannot be correct. This is addressed at [33] of the decision, where the judge noted that the appellant confirmed in oral evidence that he received the documents in April 2016. The only explanation offered at the hearing was that the documents were misdated.
8. The first difficulty with Ms Proudman's submissions is that whilst it is asserted that the correct date on the DHL envelope is 4.7.16, and not 7.4.16, no evidence has been adduced either in the First-tier Tribunal or before me that the date on the envelope should be read in the USA format of setting the month before the day of the month. It would have been an easy matter to resolve by evidence from DHL, but that was not done. In effect, I was left with simply the assertion by Ms Proudman on the appellant's behalf.
9. The second difficulty, is that no such explanation was proffered when this issue was canvassed at the First-tier Tribunal appeal hearing, as the judge noted in the decision. I have looked at Judge Povey's handwritten record of proceedings. The appellant was asked in cross-examination whether he received the DHL envelope on 7.4.16. In reply to the question, he said 'I think so.' When the apparent discrepancy between the dates of the documents inside the envelope and the envelope itself were put to him, he said, "I received them sometime in April 2016." Asked how he explained the difference in dates, he said, "I don't know. Didn't take much notice." There was no re-examination. On the basis that the appellant clearly stated that he received the documents in April 2016, there can be no error in the way in which the judge dealt with this issue. As stated above, if the date should be read as 4.7.16, which would make the dates on the documents consistent, then it was incumbent on the appellant to demonstrate that. This he has failed to do. I reject the submission that the judge committed a "grave error."
10. A further ground of appeal is that at [37] the First-tier Tribunal Judge made a credibility finding against the appellant on the basis that he stated in interview on 24.6.16 that he had no evidence or documents to submit in

support of his claim, but on his oral evidence he had those documents in April 2016. In effect, this ground is an extension of the first ground, as it turns on when the appellant had the documents. However, once again, the judge had the appellant's clear evidence that he had received the documents in April 2016, before the interview. As a result, the judge decided at [38] that no weight could be placed on the two documents from Sri Lanka. At [39] the judge considered the appellant's credibility "fatally undermined" by these factors.

11. I note the grounds contend that the appellant faxed the documents to the Home Office on 5.7.16 and posted them before his claim was decided on 22.7.16 and thus the observation at [37] that they were not disclosed until the service of the appellant's appeal bundle filed on 17.2.17 is inaccurate. However, the appellant did not provide the evidence referred to at [22] of the grounds to the First-tier Tribunal. In the circumstances, there is no merit in this ground of appeal.
12. There is no merit in the final ground that the judge misapplied the standard of proof in consideration of the documents. On the findings as to the dates the documents were received in the DHL envelope there can be no criticism of the judge for the conclusion reached that no weight can be placed on the documents.
13. It may be that in fact the DHL envelope was dated 4.7.16, as now alleged, but that was not the appellant's case at the First-tier Tribunal appeal hearing. No such explanation was offered at the appeal hearing and with the appellant's assertion that he received the documents in April 2016, the judge's conclusions are unassailable. As pointed out, even now the appellant has adduced no evidence to support the belated claim that the DHL envelope has been misread.
14. In the circumstances, there is no merit in this appeal and it must be dismissed.

Conclusions:

15. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law such that the decision should be set aside.

I do not set aside the decision.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on all grounds.

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Signed

Deputy Upper Tribunal Judge Pickup

Anonymity

I have considered whether any parties require the protection of any anonymity direction. No submissions were made on the issue. The First-tier Tribunal did not make an order. Given the circumstances, I make no anonymity order.

Fee Award

Note: this is not part of the determination.

I make no fee award.

Reasons: The appeal has been dismissed.

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Signed

Deputy Upper Tribunal Judge Pickup