



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

Appeal Number: PA/01285/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 February 2018**

**Decision & Reasons  
Promulgated  
On 23 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**KEDBD  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P Lewis, of Counsel instructed by Messrs Dheva Solicitors

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Maxwell who in a determination promulgated on 27 July 2017 dismissed the appellant's appeal against a decision of the Secretary of State to refuse him asylum.
2. The appellant first entered Britain in March 2010 as a dependent spouse, his wife having a Tier 4 Student visa. On that basis his leave was extended until an application for further leave to remain as a dependent of

a Tier 4 student was refused because a false TOEIC English language certificate had been submitted with his wife's application. The subsequent appeal, on human rights grounds, was dismissed in a decision promulgated on 16 February 2015.

3. On 16 March 2015 the appellant claimed asylum. His application was refused on 4 September 2017.
4. The appellant's claim was that he was and never had been interested in politics and had never supported the LTTE. In April 2005 he started working for a company called Sierra Global Network Limited and there became friendly with a colleague, JS, an ethnic Tamil. They would meet from time to time outside work. Eventually JS asked him to help him by transporting medicines to Negombo for onward delivery to Mannar in the north. As the appellant was Sinhalese he would not draw attention to himself and could therefore move without his movements being hindered by the security forces. The appellant agreed to help and collected medicines from Wellawatte, a suburb of Colombo, and took them to Negombo. He made seven such deliveries until June 2008 when JS said that that route was now blocked and it was too dangerous to continue. He was not asked to help JS further until December 2009 when JS asked him to take a young boy to the passport office to get a passport as it was easier for him to assist because he was Sinhalese. The appellant did this. In January 2010 he learned from JS that JS was expecting money from friends in Switzerland by money transfer. The appellant was asked to collect it in his own name and he did so, passing the money on to JS.
5. In 2010 he had come to Britain.
6. In November 2015 he had received a phone call from his mother-in-law who told him that army officers had been to her house with a copy of the appellant's identity card (he had given a copy to JS) and had asked if he had returned from the United Kingdom. They showed a photograph which she recognised as being of JS and told her that he was an LTTE member, being in fact one of the important LTTE members in Colombo. The army officers said that the appellant had betrayed his country and that he was wanted for further investigation and that JS had been arrested and revealed information about the appellant.
7. On 21 November 2014 the appellant received another phone call from his mother-in-law who said that army officers had visited the previous day and given his father-in-law a letter requiring him to report at the local police station on a monthly basis until the appellant returned to Sri Lanka. The appellant said he did not know what the Sri Lankan authorities might have been told about him or the basis of any allegations which might have been levelled against him and he had been too afraid to tell his Sinhalese friends in the United Kingdom of what was going on.

8. After the appellant's wife's appeal was refused in February 2015 the appellant had started suffering mental health problems.
9. When interviewed the appellant produced a copy of the letter from the Sri Lankan police to his father-in-law instructing him to attend the police station monthly. The respondent attempted to verify the authenticity of the letter but the Sri Lankan authorities said they would not confirm that a letter had been sent without first knowing the name, address and reference number of the letter all of which had been redacted. However, since the first attempt to verify the authenticity of the letter by the respondent had been made the Sri Lankan police often questioned the appellant's father-in-law about the appellant and in July 2016 the appellant overdosed on paracetamol, mirtazapine and diazepam tablets and had made an attempt to jump in front of a train. He is being treated for depression by his general practitioner.
10. A considerable amount of medical evidence was submitted including a report from a Dr S Dhumad who said that the appellant was at moderate risk of suicide and that his condition rendered him unfit to fly.
11. The judge set out a relevant country guidance, and in paragraphs 35 onwards set out her findings and conclusions. The judge said that he had indicated that if he found the appellant credible then he would find that the appellant was entitled to asylum on the basis that he was an individual who, as set out in paragraph 7(a) of the headnote in **GJ** Sri Lanka CG [2013]UKUT 319 (IAC) was perceived to be a threat to the integrity of Sri Lanka as a single state because they were perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or renewal of hostilities within Sri Lanka. The judge found that Section 8 was engaged although that was not determinative of the appeal. He took into account the appellant's earlier claim for leave to remain on human rights grounds and did not accept his explanation for not having claimed asylum earlier which was that he had believed that as an ethnic Sinhalese he did not realise that he could claim asylum. He said that the appellant's failure to raise his fears in his earlier appeal was highly significant. He pointed out that at the earlier appeal the appellant and his wife had been represented by very experienced solicitors and Counsel. The reality was that the appellant had not suggested any potential difficulties he might face on return to Sri Lanka until he had exhausted his appeal rights under the Immigration Rules.
12. He stated that there were inconsistencies within the accounts given by the appellant as to the circumstances giving rise to his fear. In particular there was a discrepancy between what he had said to a community mental health nurse and in his application. He then referred to the information from the police station to whom the redacted copy of the police letter had been sent. He considered that it was a letter which would, if accepted, strengthen the appellant's claim. However, he noted the reasons given by

the officer in charge of the police station which indicated concerns about the genuineness of the letter.

13. Having correctly set out the ratio of the determination in **Tanveer Ahmed [2002] UKIAT 00439** the judge noted that the appellant's representative had argued that there had been increased activity in relation to the appellant's father-in-law since verification was sought although the appellant had not been aware of such verification until the morning of the hearing and that that supported his claim that the letter was both accurate and reliable evidence of the Sri Lankan authorities having an adverse interest in him. The judge said there was nothing in that submission to assist the appellant and noted that the appellant's father would have reported to the police on at least three occasions after the verification had been sought but there was no nexus between those events to support the assertion made by the appellant's representative. He found that the letter had little evidential value. He wrote in paragraph 47:-
 

“47. Given the other credibility issues I have already considered, the letter relied on appearing to be significantly dissimilar to other letters of this type by reason of it being handwritten, using terminology which is out of the ordinary and containing unexpected spelling mistakes, I find the appellant had failed to prove, even to the lower standard required, that the contents of this letter are either accurate or reliable and as such it has little evidential value.”
14. Having referred to paragraph 339L of the Rules he stated that it was incumbent upon the appellant to not only make his application in a timely fashion but to have made genuine efforts to substantiate his asylum claim. He stated that he had not sought to provide any evidence from his father-in-law in relation to the claimed reporting conditions he is said to be subject to despite having had every opportunity to have done so, referring to recount that themselves. He found he had not made a genuine effort to substantiate his claim. He stated that the appellant therefore could not be said to have established his general credibility.
15. He then dealt with the appellant's mental health concerns but placed little weight on those when considering whether or not his account might or might not be accurate. He therefore dismissed the appellant on both asylum grounds and humanitarian protection grounds. In paragraph 10 of the determination she considered the issue of the right of the appellant under Article 8 of the ECHR. He considered the psychiatric evidence in some detail and said that the appellant would have access to mental health facilities in Sri Lanka bearing in mind that his home was in Colombo where such facilities were most readily available. He did not find that he fell within the ambit of the guidance in **N (Kenya) [2004] UKIAT 00053**. He therefore dismissed the appeal.
16. The grounds of appeal asserted that the judge had erred by relying on purported inconsistencies which did not exist, particularly that between

what the appellant was reported as having said to a community mental health nurse and in his statement. It is also stated that the judge had erred in failing to have any regard to the evidence of interest in the appellant's family following disclosure of the Sri Lankan authority's evidence relied on by the appellant. It was argued that he had failed to provide reasons for dismissing the appeal.

17. Mr Lewis relied on the grounds of appeal and argued that the judge had had not placed weight on any discrepancies in the appellant's claim apart from the asserted differences between what the appellant had said to the community nurse and at interview. There were not the numerous discrepancies to which the judge had referred and that, in effect, there were no discrepancies as such that the appellant's claim should have been disbelieved. Moreover the judge should have placed weight on the appellant's evidence that since the respondent had attempted to verify the document on which he relied with the police station which had issued the document there had been increasing difficulties for the appellant's father-in-law. He stated there could be a number of reasons why the document did not entirely fit in with the usual format of such documents. There could easily be spelling mistakes or a decision not to type the document but to hand write the document. The judge should not have placed such weight on that when applying the provisions of **Tanveer Ahmed**. He put forward the argument that the evidence postdated either the appellant's first appeal and indeed the appellant had given a good reason why he had not claimed asylum earlier. In any event he emphasised that the document had not been rejected as a forgery.
18. I pointed out to him that there was nothing in the grounds to argue that the judge had erred when considering the issue of the appellant's mental health. Mr Lewis at that stage sought to amend the grounds of appeal but I told him that it was too late to attempt to do so. He did however state that I should take into account the mental health of the appellant when considering issues of the appellant's credibility.
19. Mr Bramble asked me to look at the appeal in the round. The judge had heard evidence from the appellant and had taken that into account when reaching her conclusions. He stated that he did not have a copy of the actual redacted document that had been sent to the police in Nogombo but in any event the judge had dealt properly with that when determining the appeal.
20. I note that the effect of the document being sent to the police had not been raised in the grounds of appeal but it had been raised in the grant of permission by Upper Tribunal Judge Rintoul who had granted appeal in brief terms saying:-

"Permission to appeal is granted. It is arguable that, as the renewed grounds averred at [11]-[14] the First-tier Tribunal erred in its conclusion that the appellant had been inconsistent. Further, and worryingly, the judge appears not to have appreciated the apparent

breach of Article 22 of the Procedures Directive - see VT (Article 22 Procedures Directive - confidentiality) Sri Lanka [2017] UKUT 368 (IAC)."

21. In reply Mr Lewis stated it was only on the date of appeal that the document verification report had been handed over and it was at that stage that the appellant could comment thereon. Moreover, the appellant's mental health would be affected if he were questioned on return.

## **Discussion**

22. I note the chronology in this case which was that between 2005 and 2008 the appellant took some medicines the short distance from Colombo to Nogombo for his friend JS. That created no difficulties for him nor indeed did taking a friend of JS to the passport office to get a new passport and indeed not even when he arranged to receive money for JS did he have any difficulties. He had no difficulty leaving Sri Lanka. He is, of course Sinhalese. It is therefore a potential matter of surprise that so many years afterwards the authorities should become interested in JS and therefore be interested in the appellant. The appellant quite clearly stated that he had not believed that JS was involved with the LTTE in any way.
23. I consider that the judge was absolutely correct to place weight on the fact that the appellant, in the appeal against the refusal of extension of stay as a student on human rights grounds did not mention that he feared returning to Sri Lanka. Indeed so many years have passed since he left Sri Lanka that the judge was entitled to take into account the delay in claiming asylum. I would add that the judge was not only entitled to place weight on the delay and the other Section 8 issues but was also entitled to consider the document submitted by the appellant within the context of the guidance in **Tanveer Ahmed**. He was assisted by the comments of the police officer when an attempt was made to verify the document. These inconsistencies were set out in the determination at paragraph 44. The judge was well-placed when considering the context on which the document had been produced, that is many years after the appellant had been in Britain, and the comments by the police officer to consider that little weight should be placed thereon. I would add the judge was also right to place weight on the lack of supporting evidence: not only is there no evidence relating to the claimed importance of JS but there is no evidence to indicate anything that has happened to him - he was after all a work colleague of the appellant and the appellant would surely have been able to find out from former work colleagues if anything had happened to a person who had been their line manager. Indeed, there was no witness statement from his father-in-law. I consider, in all, the judge was entitled to reach the conclusion that the appellant's claim was not credible and therefore to dismiss the appeal on asylum grounds.
24. It is unfortunate that the redacted document was not before me but I would comment that even if it had been there is no evidence before me to

suggest that either that document having been sent to the police station would lead to the appellant being persecuted on return - that had never been the basis of his claim - nor indeed that the appellant should be granted asylum because of the respondent's failure to observe any procedural directive. I would again emphasise that the issue of the appellant's mental health was not before me.

**Notice of Decision**

25. For the above reasons I find there is no material error of law in the determination of the Immigration Judge and his decision to dismiss this appeal on asylum grounds shall stand.

**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   
2018

Date: 19 February

Deputy Upper Tribunal Judge McGeachy