



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

Appeal Number: PA/04822/2017

THE IMMIGRATION ACTS

**Heard by Video Link at Field House
On 14 September 2020**

Decision & Reasons Promulgated

On 3 June 2021

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**DDM
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel instructed by Nag Law Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and so entitled to privacy.
2. This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the Appellant against a decision of the Respondent on 2 August 2016 refusing him asylum or other kind of international protection.

3. Regrettably the appeal has been determined unsatisfactorily on two previous occasions and the decision before me is the third Decision and Reasons dismissing the appeal.
4. For the purposes of introduction, it is the Appellant's case that he has been the bodyguard of a relative of a prominent Sri Lankan politician but that politician has fallen from favour and the former bodyguard is now implicated unjustly in allegations about behaviour which leave him at risk of serious ill-treatment in the event of his return. In outline, his application was refused and his appeal dismissed because he was disbelieved.
5. The First-tier Tribunal's decision is not particularly long. It includes appropriate self-directions on law.
6. I set out below the findings of fact and reasons that I consider to be important.
7. It is the Appellant's case that he is a Sri Lankan national of Sinhalese ethnicity who served in the Sri Lankan Army from July 1996 until June 2010. From October 2001 he worked as a Personal Security Officer to the son of a former high ranking official in the government of Sri Lanka. The Appellant retired from active service in June 2010 and then arrived in the United Kingdom in September 2010 with leave under Tier 5 to take up a job as a driver at the Sri Lankan High Commission. His employment had been arranged by the high ranking official.
8. Following a change of government in 2005 the Appellant claimed to have started to receive threats from Sri Lanka owing to his connections to the former regime. He said that individuals claiming to be from the new government visited his home. His employment with the Sri Lankan High Commission was terminated in December 2015 following his conviction for driving with excess alcohol.
9. The Appellant claimed that he feared return to Sri Lanka when he claimed asylum on 3 February 2016.
10. He said that in around May 2016 officers of the Sri Lankan CID had visited his home. On 2 June 2016 a warrant was issued for his arrest. Particulars of the offence included murder, manslaughter and aiding and abetting money laundering.
11. He understood the murder to be the murder of one Wasim Thajudeen whose murder was linked to the former president.
12. The Appellant said that his father had been detained and questioned about the Appellant's whereabouts and there had been several visits to the Appellant's matrimonial and family homes looking for him and he was frightened to go back.
13. The Judge found that the Appellant had served in the army as he claimed and that he had worked for the influential family as a Personal Security Officer. This claim had been made consistently and was supported by photographs and documentation issued by the army.
14. The Appellant produced a typewritten letter purporting to come from the person he protected dated February 2019. According to that letter the

- Appellant is related to the person being protected. The Appellant's grandfather's sister is the protected person's grandmother.
15. The Judge accepted too that the Appellant had been nominated for the job by the former President and that he was employed from his arrival in September 2010 until he was discharged in December 2015.
 16. The Judge noted at paragraph 22 that it was the Appellant's case initially that he:

“Was continuously receiving phone calls from the Foreign Ministry in Sri Lanka saying that his days were over. However when the Appellant was asked who called him from Sri Lanka, the Appellant stated that they were not personal/direct calls to him, but they were calls to the reception at the Sri Lankan High Commission, and it was the staff that told him”.
 17. At paragraph 23 the Judge noted that the Appellant did not identify by name the person who told him about the calls. The Appellant had produced a typed letter on A4 paper dated 28 March 2019 from a Ms M (the full name was given but the decision is anonymised). The person writing the letter identified herself as being in charge of the reception desk in the Sri Lankan High Commission and said that the Appellant received “life threats from the new foreign minister's supporters. There were some telephone calls I answered ...”. The sender's address at the top of the letter is in Sri Lanka.
 18. Ms M had provided documents to support her claim that she had worked as a receptionist at the Sri Lankan High Commission in London. The identity documents were issued on 27 August 2012 but her copy passport shows she entered the United Kingdom on 9 August 2012. The Judge said:

“Although I accept that she was working as a receptionist in 2012 I see no evidence that she was working as a receptionist in 2015. I note that no such evidence from her had been provided before until 2019. The Appellant claimed asylum in February 2016 but waited three years in order to obtain evidence of such calls”.
 19. The Judge also found an inconsistency in the evidence. Ms M's account was that the Appellant received “continuous threats” and there were some telephone calls that she answered. The Judge found this inconsistent with the Appellant's claim at his asylum interview that he received no direct calls but all the threats came through reception. The Judge found this an inconsistency that detracts from the Appellant's and Ms M's credibility that the Judge found damaged the claim and the weight that could be attached to the letter.
 20. The Judge then found it “implausible” that threats would be made from the Sri Lankan Foreign Ministry indirectly through reception at the High Commission rather than directly to the Appellant.
 21. The Judge noted that it was the Appellant's case that there was an arrest warrant outstanding against him and a copy of the warrant was produced with a translation. The arrest warrant was dated 2 June 2016.
 22. It was the Appellant's case, set out in a witness statement dated June 2017, that the Appellant stated in May 2016 that he heard from his wife that officers from CID had visited their house and were looking for the Appellant, they showed her a piece of paper that they said was a warrant for the Appellant's

arrest. The Judge said that he had seen a letter from the Appellant's wife saying:

"later in May 2016, some police officers from Madolsima Police Station came to my place with a Warrant of Arrest and enquired about [the Appellant]".

23. The Judge had also seen a letter dated 10 June 2017 (a year and a day later) from the Appellant's father stating:

"in May 2016, a few police officers appear again with a Warrant of Arrest against my son ...".

24. The Appellant's father said that the visitors searched his house and arrested him and questioned him about the Appellant.

25. The Judge noted the Appellant's wife had written another letter dated 21 March 2019 in which she stated that the date on her previous letter was wrong. It was dated June 2016 but it was written in 2017 not 2016. She also made a mistake about when the police visited with the arrest warrant. She had said that the visit was in May 2016 but that was wrong, the visit was in June 2016. She said that she gave the wrong date to the Appellant's father when he wrote his letter and he copied the mistake about when the police came with an arrest warrant to his house.

26. The Appellant's father had written another letter dated March 2019 stating that he had asked his daughter-in-law about the date the police came and he was confused. She had told him the visit was in May 2016, he had accepted that but now realised it was June 2016 not May.

27. The Judge began at paragraph 31 with the observation:

"I note that the Appellant's wife and father has been inconsistent as to the dates that they were visited by the police with an arrest warrant".

28. The Judge had to decide what weight to give to the document, being an arrest warrant said to be issued on 2 June 2016. The Judge noted that the letter from the Appellant's wife is dated 9 June 2016 but the Appellant's wife has now said that the date is wrong. The Judge noted that if in fact the letter had been written on 9 June 2016 as it stated, and if in fact the police arrived with an arrest warrant in June 2016 as claimed in a corrected version, the writer would be recalling an event very shortly before the letter was dated. The Judge found that the Appellant's wife had untruthfully claimed that the letter was written in 2017 not 2016 in order to make more credible her claim to have said mistakenly that the warrant was delivered in May 2016 when it was in fact delivered in June 2016. Clearly there would be difficulty in maintaining that it was delivered in May 2016 because it is dated June 2016.

29. The Judge also found that the Appellant had stated in a witness statement that his wife spoke to him on the day the police visited and that was in May 2016. The Judge noted this was independent of his wife's recollection and that the Appellant and his wife and his father had all said that the police visited in May 2016 which was problematic given the date on the warrant. The Judge evaluated the evidence as a whole and found he could attach little weight to the evidence of the Appellant's wife and father.

30. The Judge then moved on to consider another topic. The Appellant had not mentioned the arrest warrant at his substantive interview. The Appellant said he was not aware of the arrest warrant at the time of his interview. However, he told the Judge in evidence that he was first aware of the arrest warrant in the beginning of June 2016. His asylum interview was on 15 July 2016. He plainly did know at the second interview about the arrest warrant if in fact he was telling the truth. The Judge checked the record and confirmed that the Appellant had not mentioned the arrest warrant in the interview and the Judge found that the Appellant did have an opportunity to talk about the arrest warrant. The Judge found that this went to the core of the claim and the credibility was damaged.
31. I have checked the interview record relating to an interview on 15 July 2016. There is no mention of the arrest warrant. It concluded with the formal but important question "Would you like to add or clarify anything you have told me today?" and the Appellant did add something about his screening interview. However, the interview began at question 3 with the question "Do you have any documents you would like to submit in support of your asylum claim?" and the Appellant replied in the affirmative referring to some photographs and army discharge papers. He was also asked directly at question 4 "Are you expecting any other documents?"
32. Returning to the Decision and Reasons the Judge noted at paragraph 34 that it was the Appellant's case that in June 2016 he spoke to his wife and told him the police were interested in him concerning a murder of a rugby player as well as money laundering and asked why he did not mention the murder of the rugby player. The Appellant indicated that he had but the record indicated he had not.
33. The Judge concluded paragraph 34 with:

"I find that the fact that one of the charges in the arrest warrant is murder of the rugby player and that the Appellant who claims to have known about it in June 2016 but did not mention it in asylum interview. I find that the fact that the Appellant does not mention at interview that the Appellant is being investigated for the murder of a rugby player because of his links with [the person he guarded] detracts from the Appellant's credibility and his claim that goes to the core of his claim".
34. The Judge also noted the Appellant did not mention in interview that his father was arrested and held overnight. The Appellant said he had had no opportunity to raise it but the Judge noted, as I have above, the general question near the end of the interview. The Judge did not accept the explanation for not raising these things.
35. The Judge found the omissions "adversely affects the weight that can be attached to the court documents produced by the Appellant".
36. There was a court document date stamped 21 June 2017 but the Judge noted too what the Judge described as a substantial change in the Appellant's claim. Originally it was the Appellant's claim that he was harassed by phone calls and pushed out of work by the change of government and would face unknown difficulties because of his links with the important family. It was altered to being investigated for money laundering and the murder of a rugby player

after an arrest warrant and court documents had been produced but it was the Appellant's case that he knew about the arrest warrant soon after his wife and father had been shown the arrest warrant but he did not mention it in asylum interview. The Judge did not believe that these things happened.

37. The Judge looked again at the court documents and that the murder was in May 2012 at a time when the Appellant was in the United Kingdom and found that the contention that the Appellant was linked to the murder made no sense.

38. The Judge noted a newspaper article and said at paragraph 39:

"I note the newspaper article from the Colombo Telegraph dated 18 January 2016 reported 'six individuals, including 'Captain Tissa', the personal chauffeur of former President Mahinda Rajapaksa, had been traced by the CID as possible suspects in the case. The CID has already obtained travel bans on the six individuals, preventing them from leaving the country. According to the Asian Mirror, top sources from the police headquarters said the CID would arrest suspects before the end of this month'. I find that the six suspects are in Sri Lanka because there is a travel ban of not being allowed to leave Sri Lanka. I find that this newspaper article is inconsistent with the court documents submitted by the Appellant. I find that this inconsistency reduces the weight that can be attached to such documents".

39. The Judge then noted the letter from an attorney instructed by the Appellant's father. The Judge said that having looked at all the evidence in the round, including inconsistent dates about whether the Appellant's family was visited, the failure to mention the arrest warrant and the murder of the rugby player and money laundering in the asylum interview, the inconsistency of the Appellant's story and the newspaper article and the Appellant supposedly being involved in a murder in Sri Lanka when the Appellant was in the UK, that he would attach little weight to the arrest warrant or the other court documents.

40. The Judge noted the Appellant worked as a chauffeur. He also noted that the Appellant had been banned from driving for sixteen months for an excess alcohol offence. When he had to renew his leave to be in the United Kingdom the Sri Lankan High Commission supported his application for a new visa even though he was not able to work as a driver. However, the application was refused leave because of his conviction and the Judge found that the asylum claim was not because the Appellant needed protection but because he wanted to remain in the United Kingdom and invented a reason for not returning to Sri Lanka.

41. The Judge found that the Appellant did not claim asylum in January 2015 when he claimed he was receiving threats and that this was a delay that was relevant and discreditable because of Section 8(2) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

42. The Judge found that the Appellant had not told the truth and did not come within any of the categories identified in country guidance as being at risk and found no meritorious claim under Article 8 and dismissed the appeal.

43. The grounds of appeal are drawn by Ms Anzani and I consider them below.

44. The first substantial point criticises the Judge's approach to the evidence of Ms M, the former receptionist in the High Commission. The grounds describe the approach as "overtly critical" (I wonder if "overly critical" was intended). For example, it is right that Ms M provided evidence of her employment in 2012 but the Judge comments, apparently adversely, that there was no independent evidence of that employment continuing. The point in the grounds is that there was no reason to doubt that the employment was continuing and it was an example of the Judge being unfairly too hard to persuade.
45. The grounds go on to say that the Judge was wrong to describe Ms M evidence as inconsistent with the Appellant's account. The point is the Appellant had said he had no direct calls and all threats came through reception. The problematic passage is paragraph 24 where the Judge says:
- "I note that the letter from Ms Mallika states that the Appellant received continuous threats and that there were **some** telephone calls that she answered. I find that this letter is inconsistent with the Appellant's asylum interview in which he stated he received no direct calls himself but that all the threats came through reception. I find that this inconsistency detracts from the Appellant's and Ms Mallika's credibility and I find that this damages the Appellant's claim and the weight that I can attach to the letter".
46. As Ms Anzani states in the grounds:
- "This finding is based on Ms Mallika having stated that there were some telephone calls that she answered. It is unclear how this evidence can rightly be said to be inconsistent, particularly where the FTTJ failed to clarify with the Appellant or anybody else if Ms Mallika was the only receptionist working at the Sri Lankan High Commission in 2015".
47. At paragraph 9 the grounds complain that the Judge was wrong to find "implausible" the Appellant's claim that threats were made indirectly through the reception at the Sri Lankan High Commission. Nothing is identified in country guidance or background material that supports such a finding.
48. Paragraph 11 criticised the Judge for commenting adversely on the Appellant's failure to say that there was a warrant that he would be able to produce. It was the Appellant's contention that he was told at the start of the interview to only answer the questions asked and he is being criticised for doing as he was told where criticism ought to be aimed at the interviewing officer for not pressing further.
49. The second ground is the contention that the Judge has failed to make findings on material issues or not given proper reasons for the findings made.
50. The point is that the Judge referred to "the letter" from the attorney whereas in fact there were two letters. There are indeed two letters in the Appellant's bundle. The first is at B(i). It comes from Mr Indika Muhandiram and is dated 6 March 2019. There the writer says that the Appellant's father instructed him "for a verification" and that the writer visited the Magistrates' Court in Colombo in February 2019 and perused the case file under the supervision of the court clerk. A fee was paid and a receipt enclosed. The attorney said how the matter had been filed by the Criminal Investigation Department and the court had issued a warrant against the Appellant which was "pending and alive".

51. The second letter is at C on page 46. This is dated 22 June 2017 and encloses the certified copies of the court documents received from the Criminal Investigation Department and checked at the Magistrates' Court. The attorney noted that that had proceeded in the absence of the Appellant who could be arrested on return because there was an outstanding warrant.
52. The grounds complain that no reasons have been given for discounting this evidence.
53. The grounds also complain that the Judge did not refer to a letter sent by the CID to the Foreign Ministry dated 12 May 2015 requesting the Appellant's personal files in connection with an investigation into the former president's family. This appears at paragraph 32 of the appeal bundle and purports to say what the grounds imply that it says.
54. Ms Anzani's submissions were based closely on her grounds. There is every reason for them to be placed on the grounds which are fully particularised and careful. I do however note an observation in her oral submission that I considered to be particularly apposite. She said "these court letters are important and they are not assessed properly".
55. Ms Isherwood contended there was no material error. Particularly she said that at paragraph 43 of the Decision and Reasons the Judge said that the Rajapaksa family were now in power. They were returned to power on 16 December 2019. If the Appellant's problems started in 2015 when there was a change of government there was no reason to think that he would be at any risk to anybody now.
56. Further, she submitted that the disputed findings were open to the Judge. The Judge was entitled to say that there was a change from the Appellant saying initially that he was continuously receiving phone calls from the Foreign Ministry to him saying later that there were calls about him to the reception of the High Commission and the staff reported them.
57. This has to be set in context. The recorded answer to question 7 of the interview is:
- "And also I got harassed continuously receiving phone calls from the Foreign Ministry in LKA saying that my days are over. Also the staff I used to be friendly with them and they kind of stopped talking to me".
58. However, the next question 28 was:
- "Who called you from the Foreign Ministry in LKA?"
- The recorded reply is:
- "It wasn't person calls the calls came to the reception: official calls came from the reception staff they told me I have to start packing now".
59. Then in answer to the next question 29 the Appellant confirmed that he had not received any direct calls.
60. Ms Isherwood contended it was also open to the Judge to decide that the warrant could have been mentioned in the interview. It was the Appellant's case that he knew about it. The Judge was also entitled to find it undermining

credibility that the newspapers report about the murder of a rugby player did not chime with the Appellant's own account.

61. In reply Ms Anzani said that the return of the family to power does not nullify the potential danger. There is a stop list and an arrest warrant.
62. I remind myself that it is my task to determine if there is a material error of law in the decision.
63. There are aspects of the Judge's analysis of the evidence of Ms M that concern me. The Judge is right to say that there was no evidence of her working as a receptionist after 2012 other than her assertion and the Appellant's assertion but it is also right to say that there was no obvious reason to require such evidence. However it is hard to say that the Judge's correct observation was a significant feature in the Judge's reasoning.
64. Of more concern to the Judge was the fact that the evidence did not emerge until three years after the asylum claim had been made.
65. I cannot agree with the Judge at paragraph 24 that there is an inconsistency between Ms M's evidence that the Appellant received continuous threats and there were some telephone calls that she answered and the Appellant's own claim that all the threats came through reception. This is answered completely in Ms Anzani's grounds and submissions. There is no evidence that there was only one receptionist at the Sri Lankan High Commission and there is every reason to assume there are more than one. I do not accept that the inconsistency that bothered the Judge at paragraph 24 exists.
66. However, the Judge was perfectly entitled to find the whole concept of the Appellant being threatened by phone calls to the reception desk at the High Commission "implausible". This part of his claim really makes no sense. I do not understand why anybody interested in interviewing the Appellant as part of a criminal investigation would want to warn him not to return to Sri Lanka, if they did, why they did not tell him directly but sent messages through a third party. I can think of no good reason for the Appellant's alleged enemies wanting to warn him through a third party. However, it clearly suits the Appellant's case for another person to know about the threats so that person could give evidence.
67. I do not agree with Ms Anzani that the Judge was not entitled to draw adverse inferences from the failure to mention the arrest warrant. The interview is controlled to some extent but the Appellant was given an opportunity to raise other matters and did not take it. The arrest warrant is important and the Judge was entitled to draw adverse inferences from the failure to raise it.
68. The Judge was also entitled to draw adverse inferences from the muddle in the evidence about when the arrest warrant was delivered. At paragraph 31 the Judge gives perfectly proper reasons for being doubtful about the supporting evidence about the warrant. The Appellant's wife and father have got in a muddle in their chronology and it is hard to see why that would happen if they were truthful people.
69. At paragraph 32 the Judge noted the Appellant had said he did not mention his arrest warrant at his substantive interview because he was not aware of it at

the time. The Appellant had said in evidence that he was first aware of the arrest warrant in the first week of June 2016. His asylum interview was in July 2016 so some six weeks later or thereabouts. The Appellant accepted that at the second interview he knew about the arrest warrant and he said that it was “according to my knowledge I mentioned it in the interview”. He did not and the Judge was entitled to draw adverse inferences.

70. Ms Anzani makes good points when she complains that the Judge did not give clear findings, or rather an explanation for his findings, on the letters from Sri Lankan attorney but this has to be set against paragraph 33 where the Judge found the failure to mention the arrest warrant at interview damages the credibility of the claim that there was such a warrant and that was something the Judge did bear in mind when assessing the weight to the documents obtained from Sri Lanka. The point is that when assessing that evidence the Judge had acknowledged evidence making it doubtful that there was anything to produce and factored that into his evaluation. That was permissible in law.
71. At paragraph 37 there is a clear finding that the Appellant would have mentioned the warrants at interview if they had been genuine and available. This is a permissible finding.
72. I do not follow the Judge’s reasoning about the harmful effect of the newspaper report concerning “Captain Tissa”. I have no reason to assume that newspaper reports are particularly reliable. I can see how a newspaper report that agreed with the Appellant’s account could support his account but not how one that disagreed undermined it though it is to be noted the Judge said at paragraph 39 that he found the inconsistency “reduces the weight that can be attached to such documents”.
73. The Judge was entitled to make adverse findings as he did at paragraph 41 and 42 about the timing of the claim and to factor them into his overall evaluation.
74. I remind myself, as the Judge was perfectly aware, that credibility findings have to be made on an evaluation of the evidence as a whole and it is always troubling to say that a finding is sound when it includes elements that are not sound and I have reflected carefully on this. Nevertheless, it is my view having gone into the Decision and Reasons and the evidence with, I hope, considerable care that the Judge has given lawful reasons to support his adverse credibility finding and they are not undermined by other strands of reasoning that might be less satisfactory. In particular, the Judge was entitled to rely on the incongruity of the claim, the late arrival of supporting evidence from Sri Lanka, and the timing of the claim and the muddle over the date of the warrant being served or the attempted arrest being made.
75. Further, I can find no satisfactory answer to Ms Isherwood’s “trump card”, namely the unchallenged finding that the Appellant’s fear is of somebody who is out of power and been replaced by the person he was supposed to have helped. Ms Anzani may well be right to say that that change of government does not take the Appellant off a wanted list but if the Appellant is telling the truth it would surely be an easy matter not to stay on that list.
76. I am not satisfied that there is a material error of law and I dismiss this appeal.

Notice of Decision

This appeal is dismissed.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 27 May 2021