



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/01497/2017

THE IMMIGRATION ACTS

Heard at Field House
On 19th February 2018

Decision & Reasons Promulgated
On 1st June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

MR C S S PA
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Anzain, Counsel, instructed by Nag Law
For the respondent: Mr. L.Tarlow, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a Sinhala national of Sri Lanka. He came to the United Kingdom as a student in May 2011 with leave until 7 June 2014. He applied for further leave which was refused in June 2015. His appeal was withdrawn and on 3 August 2016 he made a claim for protection. His wife and their two children, born in April 2014 and April 2016, are dependent upon his claim. Credibility was a central issue and his delay in claiming was highlighted. The claim was refused on 31 January 2017. His appeal against the decision was dismissed by First-tier Judge Eban.
2. Permission to appeal the decision of First-tier Judge Eban has been granted on the basis there was an arguable issue as to whether there was

any duty on the respondent to verify documents submitted by the appellant.

3. He claimed that in May 2009 he agreed to drive a Mr R, a Tamil, to the airport. This was as a favour to a Mr N. They passed through a checkpoint when a white van signalled them to stop. The occupants got out and questioned the appellant. Meantime they took his passenger away. They then put a pistol to his head and told him not to tell anyone of the incident. The appellant subsequently learned from Mr N that Mr R never boarded his flight. He believes the authorities suspected Mr R of some involvement with the LTTE. He also had given money for Mr N in 2008 which he believed was for a charitable cause. He now believes this was for the LTTE. Consequently, the appellant is now under suspicion of involvement.
4. At the behest of the family of Mr R he eventually reported the incident to the Lessons Learnt Reconciliation Commission (LLRC). He believes the authorities hold this against him. He also claimed he feared the family of the man who had been abducted on the basis they were holding him responsible. He said that in October 2010 he was attacked by them. Out of fear he decided to leave Sri Lanka by applying for a student Visa.
5. He claimed to have encountered problems getting a passport with his paperwork being returned marked 'blacklisted'. However his father-in-law, who had connections, was able to obtain a passport for him and secured his passage through the airport for the United Kingdom.
6. The respondent did not find the appellant credible. Various reasons were advanced. On his account it was pure speculation that the person he said he drove to the airport was involved with the LTTE.
7. The appellant said he was asked to go to the LLRC in April 2010 which was before it had been formed. Furthermore he said he went testified in September 2010 but the organisation was not taking testimony at that stage according to the country information. He had produced no evidence from the LLRC to indicate he was involved.
8. The account of an arrest warrant and a prohibition on travel was at odds with what happened. He said this was through the influence of his father-in-law. However the respondent questioned why his father-in-law had not warned him earlier. The claimed incident was in May 2009 yet he did not leave until November 2011 and encountered no problems from the authorities. He did not come in any of the risk categories identified in the decision of GJ and others (post-Civil War: returnees) Sri Lanka CG [2013] UK UT 00319. He lived in Colombo and was Sinhalese. He not claimed any activity in United Kingdom that would place him at risk.

9. His significant delay in claiming protection was highlighted. The respondent queried why at this stage the authorities would be taking any interest in him.

The First tier Tribunal

10. His appeal bundle contained an affidavit from his father-in-law. It states that uniformed police officers came to his home on 25 August 2017 enquiring about the appellant and that they said they had a warrant for his arrest.
11. For the appeal his father-in-law had instructed a lawyer in Sri Lanka to obtain documentation in support. This was forwarded to his lawyers here. There is a letter dated 6 March 2017 from the Sri Lankan lawyer to the appellant's lawyers here confirming their instructions from the appellant's father-in-law and stating they had obtained the documentation requested. The Sri Lankan lawyer confirmed her position with her Bar card. One of the documents purports to be issued by a Magistrate and is dated 31 August 2009 barring the appellant from travelling abroad. There are then complaints to the Magistrate in 2017.
12. First-tier Judge Eban found that the appellant is not wanted by the authorities in Sri Lanka and no arrest warrant was issued. At paragraph 21 the judge acknowledged the respondent could have verification and refers to a letter from the High Commission dated 5 June 2017. This points out that the High Commission have been asked to verify 406 documents involving 315 appellants. Of 277 documents purported to be from the police or court enquiries revealed 91% were not genuine. It goes on to say resources are limited. The judge commented this indicated that whilst documents can be verified this is labour-intensive. The judge referred to the British High Commission writing that over 86% of letters provided by Sri Lankan attorneys were not credible. The judge concluded very limited weight could be placed upon the documents.

The Upper Tribunal

13. In seeking permission the grounds referred to the documents submitted by the appellant to show he is wanted, including the documentation from the lawyer in Sri Lanka. It was contended the judge failed to conduct an assessment of the documents beyond referring to the generic letter from the High Commission. The grounds state that the respondent had not sought an adjournment in order to verify the documents further.
14. The appellant's representative had prepared a skeleton argument for use in the First-tier Tribunal. Reference is made to the documentation obtained

from Sri Lanka which postdates the refusal and is an attempt to address the negative credibility findings made.

15. Para 32 onwards of the skeleton argument refers to caselaw, including Singh and others v Belgium 33210/11 where the European Court of Human Rights found that where an authority could easily confirm documentation which was highly material to the outcome careful and rigorous investigation was required to satisfy article 3. Reference is made to the Upper Tribunal decision of MJ v SSHD [2013] UKUT 00253 which referred to the decision of Tanveer Ahmed [2002] UKIAT 000439. That decision did not preclude the existence of an obligation on the Home Office to make enquiries in particular cases. Reference was also made to PJ v SSHD 2014 EW CAA Civ 1011 para 30 onwards which referred to situations where it may be necessary to make enquiries of a document which was at the centre of a request for protection and where the enquiry would conclusively resolved its reliability. Otherwise, in such a situation the national authorities would be in breach of their obligations and that meant the respondent would be unable to challenge the document subsequently without the proper enquiry.
16. For the hearing I have also been provided with the decision of MA (Bangladesh) -v- SSHD 2016 EW CA Civ 175 which refers to the earlier decision of the Court of Appeal and in certain situations it may be necessary for an authority to make an enquiry to verify a document. The court did caution however that it is not necessarily follow that such a duty will arise and that the circumstances must be looked in the entirety.
17. At hearing the appellant's representative again indicated the challenge was in relation to the documents in the appeal. She submitted that the findings did not amount to an assessment of the documents. She submitted the statistics quoted by the High Commission had to be treated with caution and challenges were open to the checks carried out in the past on behalf of the respondent. The fact that false documentation can be easily obtained in Sri Lanka does not mean that all documents therefore are false.
18. The presenting officer referred me to the chronology, with the appellant coming here in 2009. Reference is made to the passage of time. It was submitted that the documentation did not resolve the credibility issues.

Consideration

19. I have considered the refusal decision and the judge's decision in their entirety. I also had regard to the caselaw I have been referred to in relation to documentation. The judge clearly appreciated this issue.

20. It is my conclusion the judge has given anxious scrutiny to the claim. There were multiple credibility issues arising. These are set out at paragraph 20(5) and run to paragraph 20(22) of the decision. I will not recite them all but the judge refers to the fact that in 2009, when the appellant claimed there was a travel ban on him and an arrest warrant issued peace had been declared. The authorities were not tracking down low-level LTTE supporters. The judge did not find it likely that taking someone to an airport would result in the sustained interest described.
21. There was the issue about the chronology in relation to the LLRC. The judge questioned why, if an arrest warrant had been issued the appellant's father-in-law would have allowed him to give evidence to the LLRC
22. The judge referred to the fact the appellant was able to obtain a passport and leave. The judge queried why if there were a warrant he would not have been arrested earlier, especially before he could give evidence to the LLRC.
23. The judge did not accept his explanation of inaccessibility to a lawyer and bad advice about delay in claiming.
24. The judge referred to the documentation produced and the question of checks by the respondent. The judge concluded from the letter provided from the High Commission that checks were labour-intensive. The judge did not dismiss the documents out of hand but said that they can only be afforded limited weight. The judge had country information about Sri Lanka and the known difficulty over the reliability of documentation.

Conclusions

25. The judge has carefully considered the appeal. This is not one of those rare cases where it has been shown there was an obligation on the respondent to make further enquiries. Aside from the labour-intensive nature of the enquiries it is not apparent if the outcome would have been decisive. As the judge points out, there were multiple credibility issues. Ultimately, it is for the appellant to make out his case. Verification would have not had been simple nor would it have conclusively resolved matters.

Decision.

No material error of law has been established. The decision of First-tier Judge Eban dismissing the appeal shall stand.

F.J.Farrelly
Deputy Upper Tribunal Judge

9th April 2018