



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

Appeal Number: PA/01648/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> December 2017**

**Decision & Reasons  
Promulgated  
On 8<sup>th</sup> January 2018**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**MHIA  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Mr D Neale, Counsel*

*For the Respondent: Mr L Tarlow*

**REASONS FOR FINDING AN ERROR OF LAW**

**Immigration history**

1. The appellant is a citizen of Sri Lanka who was born on 2 April 1976. He applied for a visa on 17<sup>th</sup> December 2009 and this was granted to him until 11<sup>th</sup> May, 2011. He entered the United Kingdom on 14<sup>th</sup> January 2010 and in April 2011 he applied for further leave to remain as a Tier 4 Migrant Student. The respondent refused this application on 30<sup>th</sup> December 2012 and the matter went to an appeal hearing. At the appeal hearing, which

took place on 25 February 2012, the appellant's appeal was allowed. The decision was promulgated on 27<sup>th</sup> February 2012.

2. On 13<sup>th</sup> June 2014, the appellant then applied for leave outside the Immigration Rules on form FLR(0), on the basis that he was unable to complete his study due to mental health issues. The appellant claims to have returned to Sri Lanka, first in 2012. On 7<sup>th</sup> July 2012 he was granted further leave to remain in the United Kingdom until 13<sup>th</sup> June 2014. He claims then that he returned again to Sri Lanka in September 2013. It was on 16<sup>th</sup> September 2015 that the appellant claimed asylum.

### **The First Tier Tribunal**

3. On 4<sup>th</sup> February 2016, the respondent considered and rejected the appellant's asylum claim. The appellant appealed to the First-tier Tribunal. A pre-hearing review was set down for hearing on 8<sup>th</sup> July 2016, when the appellant's solicitors, who have been the same ones throughout, applied for their first adjournment. They applied for an adjournment on the basis that the appellant had scarring on his leg which required clinical analysis and a report. They have been attempting to contact a psychiatric and scarring expert, but all the experts were busy. The matter proceeded at the pre-trial review on 22 July 2016, when the appellant was represented by Counsel. The matter was adjourned until 20<sup>th</sup> October 2016. On 20<sup>th</sup> October 2016, Mr Selwyn again appeared on behalf of the appellant and again applied for an adjournment. The judge granted an adjournment and issued the following directions:

- (1) *Both parties to endeavour to verify and arrest warrant **if they are able to provide such verification** and then to inform the Tribunal of the earliest possible time if they are able to verify then to file and serve fourteen days before the next hearing.*
- (2) *The appellant to file and serve a medical legal report and further medical documents relating to the appellant's health to be filed and served fourteen days before the next hearing. [My emphasis]*

4. The matter was adjourned until Wednesday 3 May 2017, more than six months later. Unfortunately, that did not stop the appellant's solicitors seeking a further adjournment.
5. The respondent had served and filed a verification report in accordance with directions in January 2017. It appears that those representing the appellant did nothing to obtain a verification report until receipt of the respondent's report, and only then did they arrange with the appellant to seek through his brother confirmation from the family lawyer in Sri Lanka that the document was genuine.
6. The Sri Lankan lawyer who originally obtained the document had moved to Australia. The appellant's brother met another lawyer and he agreed to

provide a letter confirming authenticity of the documents, but unfortunately, he was away and out of the country and that was the basis on which an application for an adjournment was made.

7. This application was considered by the First-tier Tribunal Judge, Judge M A Khan and he refused the adjournment request on the basis that the matter had been adjourned on two previous occasions, the last time in October 2016 when the parties were directed to obtain verification evidence *if it was available*. The matter comes to me today because there are three challenges to the determination of Judge Khan.

### **The hearing before me**

8. The second of the three challenges suggests that there is an inadequacy of reasons for rejecting the genuineness of the arrest warrant. Judge Khan questioned why the arrest warrant was issued by an officer in charge of a police station at Kalutara, when the appellant's home town was in Beuwala. The grounds suggest this was not raised by the respondent and was not a matter which the judge sought clarification upon from Counsel at the hearing, had he done so he would have been told that Beuwala is a town in the Kalutara district.
9. The second point that Judge Khan takes issue with is the fact that the warrant was issued in 2013, rather than in 2009. The judge appears to overlook the fact that it may very well have been the case that the warrant was not issued until such time as the authorities became aware that the appellant was back in the country.
10. The third challenge is in respect of the credibility findings made by the judge and the fact that he has had little or no regard to the medical report prepared by Dr Sinha. This assesses the consistency of the appellant's physical scarring and psychological symptoms with his claim to have been tortured in Sri Lanka. Nowhere in the determination did the judge consider the potentially corroborative nature of the medical report.
11. In respect of both these challenges, there **are clear errors of law** and I am grateful to Mr Tarlow for confirming that he agreed.
12. So far as the first challenge is concerned, this suggests that the judge should have granted an adjournment, given that the potentially important evidence was likely to become available in the near future, since a letter had been received by the appellant's brother indicating that a new lawyer would be in a position to shortly provide such evidence.
13. I have been told today that even now, more than a year after the original direction was issued, such evidence is not available but that it is likely to become available.
14. I am concerned, because the appellant appears to be particularly vulnerable. He has health issues which almost certainly are not being

helped by his current predicament. The first direction issued on 20<sup>th</sup> October 2016, by First-tier Tribunal Iqbal is to the effect that both parties **endeavour to verify the arrest warrant** and if they are unable to provide such verification, then to inform the Tribunal. The appellant has had over a year in which to provide such verification and it is still not available.

15. I have concluded that given the errors of law in the determination which have been quite properly accepted by the Presenting Officer, **I must set aside the determination of First-tier Tribunal Judge M A Khan.** Were I to adjourn this matter so that I could hear the appeal in the Upper Tribunal it is likely to be months before the matter were to come back to be heard by me. In the circumstances, therefore, I believe that the interest of justice require that I remit this appeal to be heard afresh by a judge other than Judge M A Khan. Three hours should be allowed for the hearing of the appeal and a Tamil interpreter will be required.
16. I want to make one thing perfectly clear to those representing the appellant. It is **most unlikely** that any further applications for adjournments made by them for verification documentation to be obtained and filed will be granted.
17. The original direction makes it clear that the appellant was under an obligation to **endeavour to verify the arrest warrant if he is able.** He clearly is not able to do so. The matter will be heard whether or not such evidence is filed. Inevitably there will be some delay before this matter is listed and if it is possible for that evidence to be obtained before the matter is listed then all well and good, provided it is served and filed at the very earliest opportunity and not left until the day of the hearing. If it is not available, then it is extremely unlikely that any further application for an adjournment will be granted in order that it can be obtained.
18. I hope that those representing the appellant will now proceed to prepare the file for a fresh hearing without further delay.

**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.

*Richard Chalkley*  
**A Judge of the Upper Tribunal.**