



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

**Appeal Number:
PA/05157/2018**

THE IMMIGRATION ACTS

Heard at Field House

**Decision & Reasons
Promulgated**

On 9th January 2019

On 4th February 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

**MR THUSARA CHAMINDA AMUGODA AMUGODA KANKANAMALAGE
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Jaffer of Counsel instructed by Lyon Legal Ltd
For the Respondent: Mr Tarlow, Senior Home Officer Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Goodrich promulgated on the 12th July 2018 whereby the judge dismissed the appellant's appeal against the decision of the

respondent to refuse the appellant's claims to international protection and claims based on Article 8 of the ECHR.

2. I have considered whether or not it is appropriate to make an anonymity direction. Having considered all the circumstances I do not consider it necessary to do so.
3. Leave to appeal to the Upper Tribunal was granted by Deputy Upper Tribunal Judge Chapman on 26 November 2018. Thus the case appeared before me to determine whether or not there was a material error of law in the decision.

Grounds of appeal

4. The appellant had submitted documentation allegedly from the Magistrate Court at Kegalle in Sri Lanka supported by letters from a lawyer that had collected the documentation from the court. The respondent had undertaken no checks to authenticate or establish the reliability of the documentation. In accordance with the case of PJ v SSHD 2014 EWCA Civ 1011, given the failure on the part of the Home Office to authenticate the documentation the judge's approach to the evidence in respect of the documentation did not follow the guidance given in the case law. As reliance could be placed upon the documentation and as an arrest warrant had therefore been issued against the appellant, the appellant fell to be considered in accordance with the country guidance case of GJ 2013 UKUT 00319 as a person that would on return to Sri Lanka be arrested and at risk of mistreatment.
5. The 2nd ground of appeal asserts that the judge has made findings which are contrary to the country guidance case and objective evidence. The judge had found that the appellant, a Tamil, had never supported the Tamil cause and had no involvement in diaspora activity in the UK. It is suggested that the country guidance and background evidence established that the authorities in Sri Lanka targeted people of all backgrounds who they considered to be supporters or sympathisers of the LTTE. In that respect it reliance is placed upon the Court of Appeal decision in GJ Sri Lanka wherein references made to the government taking action against those that they perceive as threats to the integrity of the Sri Lankan unitary state. Diaspora activity whether real or perceived as the principal basis for the Sri Lankan government assessing whether an individual is of interest and therefore at risk.
6. The 3rd ground alleges that the judge has placed too much weight in the discrepancies between the appellant screening interview and his SEF statement. The judge has noted discrepancies but it is alleged that the judge has failed to consider the explanation given by the appellant.

7. The 4th ground alleges that the judge has failed to give the appellant's case anxious scrutiny
8. the 5th ground alleges that the judge has made findings based upon the judges own assumptions
9. Finally the 6th ground it is alleged that the judge has placed too much weight on the appellants delaying claiming asylum.

Consideration

10. Judge a very detailed and careful assessment of the evidence has pointed out clear discrepancies and inconsistencies in the accounts given by the appellant in his SEF interview, his substantive interview, his statement and his evidence otherwise. The judge was entitled to take such discrepancies into account.
11. In considering the evidence as a whole the judge has clearly considered the criteria set out in the case of PJ as is evident from paragraph 56 of the decision in this case.
12. In that respect I would draw attention to the fact that in paragraph 29 of the judgement of decision of Lord Justice Fulford, which states:-

... There is no basis in.... Jurisprudence of the general approach that Mr Martin submitted ought to be adopted whenever local lawyers obtain relevant documents from a domestic court, and thereafter transmit them directly to lawyers in the UK. The involvement of lawyers does not create a rebuttable presumption that documents they produce in this situation are reliable.
13. The case law does go on to indicate that there may be circumstances in which it would be appropriate for the respondent to make enquiries. However it has to be noted in the present circumstances that there is no suggestion of instruction and transmission lawyer to lawyer in the present case. The documents are obtained and created at the behest of the appellant's family and are given to the appellant's family before being transmitted to the lawyers in the United Kingdom.
14. With regard to whether the Secretary of State had a duty to make enquiries, it was a matter for the court to determine (as set down in paragraph 32 PJ) whether or not there was an obligation on the Secretary of State to make enquiries to establish the authenticity of the documents. In the case of PJ as is evident from paragraph 41 where an individual had in the past been arrested in connection with a bomb incident, 3 members of his family had close ties with the LTTE and he was wanted for questioning with regard to other activities, there was in those circumstances sufficient evidence to show that the court document should have been verified by the respondent.

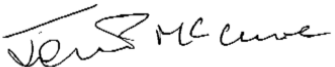
15. The same cannot be said in the present case. Consideration of the appellant's case has to be put in the context of his evidence otherwise. The judge has carefully considered not only the criteria within PJ but also the country guidance case and has considered the evidence of the appellant in that context.
16. Having analysed the account given by the appellant the judge was entitled to conclude that the crucial issue was whether or not the Sri Lankan authorities would consider or perceive the appellant is a present risk to the unitary state of Sri Lanka. The judge has properly considered the facts and given valid reasons for coming to the conclusion that the appellant had not been involved in any diaspora activity and would not be perceived as an individual who had brought into issue or assisted in challenging the unitary state of Sri Lanka as identified in the country guidance case. That the appellant otherwise would not be otherwise perceived as an individual of interest to the Sri Lankan authorities.
17. Those were findings of fact that the judge was entitled to make on the basis of the evidence that was before him.
18. With regard to the issue of weight which is the basis of at least 2 of the grounds of appeal matter of weight is entirely for a matter for the judge as is evident from the case of FK (Kenya) 2010 EWCA Civ 1302 paragraph 23 of the judgment of Lord justice Maurice Kay :-

23..... It follows that the appeal on this ground is in effect a perversity challenge, and the submission that undue reliance was being placed by the Immigration Judge on the appellant's convictions amounts to no more than a submission that the Immigration Judge gave that factor too much weight. It is well established that a submission that too much or too little weight has been given to a particular factor does not raise an arguable point of law. There is no suggestion, apart from the submission that the Immigration Judge gave undue weight to the appellant's criminal record, that she failed to take into account any other relevant factor or that she took into account any irrelevant factor. In these circumstances it seems to me there is no proper basis on which this perversity challenge to the Immigration Judge's conclusions can succeed.

19. The judge has carefully considered the evidence presented to him and given valid reasons for finding material parts of the appellant's evidence not credible. It is in that context that the judge has assessed the documentation submitted and has made findings that were open to him having considered the guidance given in the case law. The judge has properly considered all the evidence and has fully justified the conclusions reached. There is no material error of law in the decision.

Notice of Decision

20. I dismiss the appeal on all grounds.

Signed 

Deputy Upper Tribunal Judge McClure
January 2019

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