Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/04745/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34 Decision & Reasons Promulgated
On 31 July 2020

Before

UT JUDGE MACLEMAN

Between

JUDE ARJUNA CRIZANTHA LAZAROUS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. This determination is to be read with:
   (i) The respondent's decision, dated 25 April 2019, declining to grant asylum, humanitarian protection, or any other form of leave.
   (ii) The appellant's grounds of appeal to the First-tier Tribunal (in general terms only).
   (iii) The decision of FtT Judge David C Clapham SSC, promulgated on 22 August 2019, dismissing the appellant's appeal.
   (iv) The appellant's grounds of appeal to the UT, stated in his application for permission, filed on 15 October 2019.
   (v) The grant of permission by the UT, dated 4 November 2019 - principally on [4] of the grounds and [53] of the FtT's decision,

regarding evaluation of a "witness summons", but not excluding the other grounds.

(vi) The respondent's response under rule 24, dated 20 November 2019.

(vii) Directions of the UT, set on 16 January 2020, for parties to clarify whether the appellant had asked the SSHD to make enquiries in Sri Lanka, and whether the SSHD had done so.

(viii) The SSHD's response, dated 24 January 2020, clarifying that enquiries were made through the British High Commission at Kandana police station on 30 November 2016, and documents found "not genuine".

(ix) The appellant's response, dated 6 March 2020, clarifying verification procedures by his solicitors through a Sri Lankan lawyer and with Kandana police station in January 2017; British Embassy staff had been at the police station on 30 November 2016; the record was not available, but a complaint had been lodged by the appellant on 13 December 2009 "regarding receiving a death threat".

(x) Further directions of the UT, dated 6 and issued on 29 April 2020, with a view to deciding without a hearing whether the FtT's decision involved the making of an error of law and, if so, whether it should be set aside.

(xi) Submissions for the appellant made on 13 May 2020, inviting the UT at [8] to uphold the grounds, set aside the FtT's decision, and remit the case to the FtT; and at [9], alternatively, "to further consider matters … through agents continuing their submissions".

(xii) The SSHD's submissions, headed "skeleton argument", dated 15 May 2020, raising no objection to decision "on the papers", and inviting the UT to find no material error of law, and to uphold the decision of the FtT.

2. The first question is whether a hearing is required to resolve error of law.

3. Parties have had a prolonged opportunity to advance their arguments in writing. While oral advocacy is often of great value, it is not required in every case. Fair resolution of issues such as the present on written materials is carried out in this and in other jurisdictions, and is well within professional and judicial competence. The appellant does not develop any argument on why oral submissions might be needed in his particular case. His alternative request, in colloquial language, seeks "a second bite at the cherry".

4. I find that this case may now be determined justly, in terms of rules 2 and 34, without an oral hearing.

5. The reason for not concluding the hearing on 16 January 2020 was that in spite of the history of the case over several years, neither representative, on the day, could clarify the point at 1 (vii) above.

6. If there was any lack of clarity on that matter in the FtT, it appeared to be through little, if any, fault of the judge; but there was a possibility of inadvertent procedural unfairness.

7. Parties have dealt with that matter in the submissions listed above. It is now clear that a representative of the British High Commission *did* make an enquiry at Kandana Police Station on 1 December 2016, but there was only one visit, not two, as the appellant suggested – see the SSHD's submission at [7].

8. The Judge commented at [60] that he "would be very surprised if officers of the BHC had … gone to Kandana police station twice to check … documents". They did not go twice.

9. The judge went on, "I would be surprised if British officials started to try to bring the appellant back to Sri Lanka".

10. Such behaviour by officials in Sri Lanka would be surprising, but I do find the Judge's remarks unclear. Verification of documents is only indirectly linked to the return of the appellant, and return would be organised from the UK, not from Sri Lanka.

11. The SSHD's submission at [7], is that even if there was "an element of confusion" by the FtT it is immaterial in light of its other reasoning.

12. Any lack of clarity in those remarks needs to be put in context.

13. The main issue on which permission was granted was possible misinterpretation of the court document. The SSHD argues that the judge's main point was that the documents were unreliable. It was not that they appeared to relate to a witness summons rather than to a criminal charge. That point is well taken.

14. In any event, the appellant has not shown that the judge's interpretation of the document as a summons, not a charge, was not sensibly open to him, or that it lacks reasoning.

15. The appellant relies on a trace emerging from his later enquiries through the police station; but that refers to the appellant complaining of a threat received by him, not to criminal proceedings against him (translation of police letter dated 15 January 2017, page 7 of appellant's submission / "inventory 8", 6 March 2020).

16. If any point about that document was missed, it appears to run contrary to the appellant's case. He has not explained how it might improve his position.

17. The themes of the FtT's decision are that the previous negative tribunal decision was the starting point; there was no reliable evidence to displace that; and, prominently, the unlikelihood of his enemy in Sri Lanka, Mr

Bandara, waiting 9 years to bring proceedings against him in Sri Lanka, knowing that he was in the UK.

18. The appellant suggests that Mr Bandara may have wished to trap him by ensuring he was on a "stop list", in case of his return to the country; but he not shown that point, or the rest of his grounds, to amount to more than continued insistence and selective disagreement on the facts.

19. At best, the grounds show that the judge may have been led into confusion about the extent of enquiries made in Sri Lanka. This is a minor element, which does not undermine his overall reasoning.

20. The SSHD at [8] makes a sound final point. The FtT at [68] held that, taken at highest, the claim disclosed prosecution not persecution, and therefore failed on any view of credibility. Although the grounds of appeal to the UT burrow into the facts, there is nothing directed against that conclusion, and the appellant has not sought to counter the SSHD's point.

21. The decision of the First-tier Tribunal shall stand.

22. No anonymity direction has been requested or made.

23. The date of this determination is to be treated as the date it is issued to parties.

Hugh Macleman

UT Judge Macleman
On 21 July 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent’ is that appearing on the covering letter or covering email.