



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

Appeal Number: AA/06856/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 January 2016**

**Decision and Reasons  
Promulgated  
On 8 February 2016**

**Before**

**UPPER TRIBUNAL JUDGE CANAVAN**

**Between**

**NIROSAN SELVARATHINAM**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr N. Garrod, Counsel instructed by Marsh & Partners  
Solicitors

For the Respondent: Mr L. Tarlow, Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. The appellant appealed against the respondent's decision to refuse to vary and extend his leave to remain and to refuse asylum. Designated First-tier Tribunal Judge McCarthy ("the judge") dismissed the appeal in a decision promulgated on 28 September 2015.

2. The appellant seeks to appeal against the First-tier Tribunal decision on the ground that the First-tier Tribunal Judge erred in his assessment of what weight to place on a newspaper article reporting the arrest of the appellant's father in 2001. The appellant's previous solicitors translated the article inaccurately to indicate that two owners of the vehicle were arrested. The appellant's evidence was that his mother wasn't arrested. The discrepancy between the translation and the appellant's evidence was relied upon by the judge and formed part of his adverse credibility findings. While the error was caused by the solicitor and not the judge, it nevertheless undermined his credibility findings because they were based on a mistake of fact.

### **Decision and reasons**

3. After having considered the grounds of appeal and oral arguments I satisfied that the First-tier Tribunal decision did not involve the making of an error on a point of law.
4. The judge gave some weight to the apparent discrepancy between the appellant's evidence and the (incorrect) translation of the newspaper article [32-33 & 36]. However, it is clear from an overall reading of his decision that this was only one factor amongst a number that he took into account in coming to his conclusions about the credibility of the appellant's account.
5. Mr Garrod sought to widen the scope of the grounds by including further arguments relating to other aspects of the judge's credibility findings. However, I conclude that none of those points are sufficiently persuasive for me to permit an amendment to the grounds. The judge gave adequate reasons to explain why he did not place weight on the letter from the Human Rights Commission of Sri Lanka on the ground that it only stated what his mother reported to them. There was no evidence to show that they had carried out an investigation. That finding was open to him on the evidence. The evidence related to an alleged arrest in 2013 and not to his father's arrest in 2001, which was the subject of the original error alleged in the grounds of appeal. An issue is taken with the judge's findings relating to the evidence from his brother [40-44] but even if the letter had been written in more fluent English it would have been open to the judge to place little weight on it given the evidence was not independent.
6. Mr Garrod also argued that the decision was flawed because the judge failed to make specific findings in relation to a letter from a Sri Lankan attorney, who stated that he had made enquiries at Kotahena police station. He confirmed that the appellant's father had been arrested on 24 July 2001 on suspicion of involvement in the attack on Katunayake airport.
7. Even if the judge overlooked this evidence I find that neither this, nor the original error alleged in relation to the judge's assessment of the newspaper article, is material to the overall outcome of the appeal. In the original reasons for refusal letter the respondent did not appear to dispute


that the appellant's father might have been arrested for three days in July 2001. However, the respondent concluded that it was not credible that the authorities would have had an ongoing interest in his father in 2013 given the length of time that had passed since the arrest [38].

8. Even if the judge accepted that part of the appellant's account, his findings relating to the other aspects of the evidence, including his immigration history and the delay in claiming asylum, were all matters that he was entitled to take into account. The crucial issue was whether the appellant's father was re-arrested in 2013, but the appellant has failed to demonstrate any material error in the judge's findings in relation to that aspect of the case. The judge's findings relating to *sur place* activities and risk on return are sustainable and in accordance with the relevant country guidance.
9. For the reasons given above I conclude that the First-tier Tribunal decision did not involve the making of a material error on a point of law. The decision shall stand.

#### DECISION

The First-tier Tribunal decision did not involve the making of an error on a point of law

The First-tier Tribunal decision shall stand

Signed   
Upper Tribunal Judge Canavan

Date 02 February 2016