



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 102

P729/25

OPINION OF LADY TAIT

in Petition of

ROMESH WARNAKULASURIYA

Petitioner

for

Judicial Review of a decision of the Upper Tribunal (Immigration and Asylum Chamber)
dated 21 May 2025 refusing permission to appeal to the Upper Tribunal

Petitioner: Winter; Drummond Miller LLP
Respondent: Dingley; Office of the Advocate General

16 October 2026

Introduction

[1] This petition for judicial review challenges a decision of the Upper Tribunal (Immigration and Asylum Chamber) dated 21 May 2025 refusing permission to appeal a decision of the First-tier Tribunal (“the FtT”) dated 28 December 2024 to the Upper Tribunal (“the UT”). The petitioner solely seeks reduction of the UT’s decision with the consequence that the matter is remitted to the UT to reconsider whether to grant permission to appeal. The Advocate General for Scotland, on behalf of the Secretary of State for the Home Department, is the respondent. The issue is whether the UT’s decision falls within the

exception identified in section 11A(4)(c)(ii) of the Tribunals, Courts and Enforcement Act 2007 (“the 2007 Act”), namely whether the UT acted in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice. The petitioner seeks to persuade the court that a serious inadequacy in the UT’s reasons means that the UT has acted in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

[2] The respondent frames the issue as whether the petition is competent, having regard to sections 11A(2) and 11A(3)(b) of the 2007 Act which render the decision of the UT final and not liable to be questioned or set aside in any other court, save where one of the exceptions preserved by section 11A(4) is engaged; and in particular, whether the petitioner has demonstrated a procedural defect of the requisite character to bring it within the section 11A(4)(c)(ii) exception.

Background

[3] The petitioner is Sri Lankan, born on 2 April 1988. He entered the United Kingdom on 24 October 2009. Thereafter, he absconded before coming to the attention of the immigration authorities on 6 March 2018 when he claimed asylum on the basis that he was at real risk from the Lanza family. His claim was refused on 4 September 2018. His appeal to the FtT was refused on 21 February 2019 (6/1). On 10 October 2022 the petitioner made further submissions under paragraph 353 of the Immigration Rules. Although those were refused by letter dated 8 September 2023, the petitioner was afforded a further in-country right of appeal to the FtT. In support of the appeal, he relied upon a purported arrest warrant (6/2); a letter from a lawyer in Sri Lanka, Mr Imam, speaking to the existence of the arrest warrant (6/3) and the written and oral evidence of Dr Chris Smith (6/4 to 6/7),

a country expert on Sri Lanka, who expressed the opinion that the arrest warrant was authentic and that the petitioner was at real risk ([31] of 6/5).

[4] By decision dated 28 December 2024, the FtT refused the appeal (6/8). The FtT made material adverse credibility findings and held that the documents relied upon, including the purported arrest warrant, had not been established as reliable. In reaching that conclusion, the FtT relied on three matters: (i) the absence of any direct account from the third party (Mr Madawala) said by Dr Smith to have attended court and confirmed the existence of the warrant ([31]); (ii) contradictory evidence from the petitioner himself ([32]); and (iii) verification not conclusively resolving authenticity of the arrest warrant ([33]). Assessing the evidence in the round, the FtT was not persuaded, even to the lower standard of proof, to depart from the adverse findings of the 2019 determination, which it adopted ([34]).

[5] The petitioner's application to the FtT for permission to appeal to the UT was refused by decision dated 9 April 2025 [6/10]. The petitioner applied directly to the UT for permission to appeal [6/11]. For the purposes of this petition, the focus is on Grounds 2 and 3 before the UT. The credibility and contradiction findings underlying Grounds 1 and 4 are not the subject of any sustained challenge.

[6] Ground 2 focused on the country expert report. Ground 2 stated as follows:

"The FTT erred at [31] and [32]:

(i) Dr Smith's evidence was that he used an individual Mr Madawala, who was Dr Smith's driver when Dr Smith went to Sri Lanka and where he has been used by Dr Smith to verify the existence of other arrest warrants. The FTT finds that it would have expected some form of paperwork and statements to confirm the chain of evidence. That finding is irrational where the FTT had evidence to confirm the chain of evidence and there was no dispute over the expertise of Dr Smith ([30] of the FTT decision). Namely that of Dr Smith who had in turn spoken with Mr Madawala who confirmed he had gone to the Court and the clerk at the Court had confirmed the existence of the arrest warrant and where Dr Smith had evidenced his position in

writing (pages 288-290 of the consolidated bundle before the FTT). The hypothesis that the FTT operates on includes that Dr Smith has been fed an untruth by a colleague he trusts and has used previously to verify arrest warrants. Such an approach is irrational particularly where neither Dr Smith nor Mr Madawala would have any interest in fabricating the existence of an arrest warrant for the appellant;

(ii) by adopting a contradictory approach and failing to resolve that and thus either materially erring in law or acting irrationally (*R (Iran) v Secretary of State for the Home Department* [2005] Imm AR 535 at [9] per Brooke LJ). The FTT places less weight on the evidence of Dr Smith due to part of his evidence being based on hearsay. However the FTT at [32] then places reliance on part of the appellant's evidence which was hearsay, namely that his cousin had told him that the lawyer, Mr Imam, had had to bribe the police (page 57 of the consolidated bundle before FTT at [23]). The FTT adopted a contradictory approach to hearsay evidence without explaining why and thus failing to resolve that contradiction. In light of that the FTT materially erred in law *et separatim* acted irrationally;

(iii) the FTT was wrong to refuse permission. Although irrationality is a high hurdle, it is to be viewed on a spectrum and where human rights is in issue, the tribunal is entitled to exercise close scrutiny to the FTT decision at first instance. The standard of rationality varies according to the circumstances of the case (eg [21.06] of Judicial Review, Lord Clyde and Denis Edwards, *W Green, 2000*). The reasons are not rational where in relation to [2(i)] of the grounds the reasons are absurd, when the evidence is viewed as a whole, to suggest that the evidence of Dr Smith is only entitled to little weight. The weight given to that evidence is vitiated where there is either a material error of law or irrationality is demonstrated (*Tesco Stores v Secretary of State for the Environment* [1995] 1 WLR 759 at 764G-H per Lord Keith). In relation to [2(ii)] of the grounds this ground is either a material error of law or is irrational where the FTT has adopted a contradictory approach to facets of the evidence which are material and failed to resolve that contradiction."

[7] Ground 3 focused on the respondent's duty to have verified the documentary evidence. Ground 3 stated as follows:

"The FTT erred at [33] when finding that there was no breach of the verification duty:

(i) the informed reader is left in real and substantial doubt as to why the FTT finds that whilst the respondent could have telephoned Mr Imam that would not be authentication of the arrest warrant or the existence of Mr Imam's practice, although it would go some way in respect of the latter. *Separatim* such a finding is irrational. The appellant is prejudiced where confirmation of Mr Imam's practice and letter would show the letter from Mr Imam to be authentic (as well as the information therein) and reliable as well as Mr Imam being a bona fide lawyer (*Tara Kazari Biuma, Ptr* [2019] CSOH 93 at [12]-[13] per Lord Arthurson; *RS (aka RUS), Ptr* [2015] CSOH 19 at [14] per Temporary Judge Arthurson QC (now Lord Arthurson)). That is material where the FTT would have to explain how the appellant infiltrated an arrest warrant into the court system where the lawyer was bona fide and absent

any allegation of discreditable conduct (*PJ (Sri Lanka) v Secretary of State for the Home Department* [2015] 1 WLR 1322 at [42] per Fulford LJ);

(ii) in relation to the arrest warrant, the FTT failed to take account that if the British Embassy phoned the court it was not said that the court would not give that information to a government body. Further the FTT failed to take account that checks could still have been made by a member of staff going to the court to ask for sight of the arrest warrant (the court is in Colombo as is the British High Commission). The FTT failed to take account that telephoning the court was not the only option and does not exhaust other alternatives (*AR, supra* at [35] per Lord Malcolm). It was not said that either of those were not feasible or would be refused. If that has been taken into account, the informed reader is left in real and substantial doubt as to how the FTT has assessed whether those are viable alternatives and if not, why not. Separately such a finding is irrational where telephoning the court was not the only option and does not exhaust other alternatives (*AR, supra* at [35] per Lord Malcolm);

(iii) the foregoing errors are material where if either Ground 3(i) or Ground 3(ii) is well-founded then that would resolve reliability. In this case authenticity is bound up with reliability;

(iv) the FTT was wrong to refuse permission in relation to this ground. The grounds rely on failure to take account of material factors or if those have been taken into account the informed reader is left in real and substantial doubt as to why the FTT has reached the decision it has as well as irrationality. The approach of the FTT is vitiated by material error and/ or irrationality. As averred above although irrationality is a high hurdle, it is to be viewed on a spectrum and where human rights is in issue, the tribunal is entitled to exercise close scrutiny to the FTT decision at first instance. The standard of rationality varies according to the circumstances of the case (eg [21.06] of *Judicial Review, supra*). The reasons are not rational where if the letter from the lawyer is authentic then that also is bound up with the reliability of the arrest warrant. The weight given to that evidence is vitiated where there is either material error of law or irrationality is demonstrated (*Tesco Stores, supra*)."

[8] By decision dated 21 March 2025, the UT refused permission to appeal (6/12):

(i) In relation to Ground 2, the UT held that there was no arguable flaw in the FtT's analysis of the process used to authenticate the documents relied on; that the FtT was entitled to assess the manner in which the expert relied on the steps taken by a third party (the driver) not before it to verify the documents; that it was properly noted that there was nothing in the shape of a direct account from the third party to explain the process he followed; that it was open to the FtT to point to gaps in the evidence such as this as undermining the cogency of the authentication

process especially given the country background information which notes the ease with which false documents can be obtained; that there was no principled tension in the FtT appearing not to question hearsay evidence which the petitioner delivered; and that there was no principled tension in the FtT's treatment of the two categories of hearsay: the expert was giving opinion evidence which was founded on the steps taken by another in circumstances where those steps were not fully particularised by the third party which is qualitatively different from an appellant relying on what he had been told by a relative.

(ii) In relation to Ground 3, the UT held that the FtT had adopted a lawful approach to whether the respondent fell under the exceptional duty to verify the documents relied upon, applying *QC (verification of documents; Mibanga duty) China* [2021] UKUT 00033 (IAC); that it was not arguable that the documents demanded a different answer as to whether the respondent was required to verify them; and that it could not be said that the verification process was achievable without much difficulty.

Relevant legal framework

[9] Section 11A of the 2007 Act, inserted by section 2 of the Judicial Review and Courts Act 2022, provides that a decision of the UT to refuse permission to appeal is final, and not liable to be questioned or set aside in any other court (section 11A(2)). The supervisory jurisdiction does not extend to, and no application for judicial review may be made in relation to, such a decision (section 11A(3)(b)). The effect of the provision is not to exclude the supervisory jurisdiction altogether but to narrow its scope, by confining review to the

limited categories preserved by section 11A(4): *R (LA (Albania)) v Upper Tribunal* [2024] 1 WLR 1673 at [31] per Dingemans LJ.

[10] That construction has been authoritatively adopted in Scotland by the Inner House in *Singh, Petitioners* 2025 SLT 146. The Lord President (Lord Carloway), delivering the Opinion of the Court, held at [45] that section 11A lies entirely within the scope of the legislature's powers and does not interfere with the rule of law; that the court's supervisory jurisdiction has been redefined rather than excluded; and that the provision may be seen "simply as a return to the scope of review as defined by the Lord President (Emslie) in *Watt v Lord Advocate* 1979 SC 120". The court will interfere only where the UT did not have a valid application before it; was not properly constituted; acted in bad faith, or acted in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.

[11] In *Singh* above at [47], the Lord President addressed the rationale for the narrow scope of review:

"...too much resource was being spent on the very few applications for judicial review that resulted, not just in the quashing of the Upper Tribunal's decision to refuse permission to appeal, but also in ultimate success on the merits of the applications. That is a concern which Parliament was entitled to address by considering what the scope of judicial review should be where an application had already been considered by a First-tier and an Upper Tribunal, both of which are judicial in nature, and where the latter will often have a superior court judge presiding."

[12] Section 11A provides:

"11A Finality of decisions by Upper Tribunal about permission to appeal

- (1) Subsections (2) and (3) apply in relation to a decision by the Upper Tribunal to refuse permission (or leave) to appeal further to an application under section 11(4)(b).
- (2) The decision is final, and not liable to be questioned or set aside in any other court.

- (3) In particular—
 - (a) the Upper Tribunal is not to be regarded as having exceeded its powers by reason of any error made in reaching the decision;
 - (b) the supervisory jurisdiction does not extend to, and no application or petition for judicial review may be made or brought in relation to, the decision.
- (4) Subsections (2) and (3) do not apply so far as the decision involves or gives rise to any question as to whether—
 - (a) the Upper Tribunal has or had a valid application before it under section 11(4)(b),
 - (b) the Upper Tribunal is or was properly constituted for the purpose of dealing with the application, or
 - (c) the Upper Tribunal is acting or has acted—
 - (i) in bad faith, or
 - (ii) in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice.....”

Submissions for the petitioner

[13] The challenge is that the UT has acted in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice. As such the petition falls within section 11A(4)(c)(ii) of the 2007 Act. A serious inadequacy in the UT’s reasons for refusing permission to appeal can in principle constitute a question of whether the UT has acted in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice: *R (Karim) v Secretary of State for the Home Department* [2024] 1 WLR 5135 at [22]-[23] per Fordham J; *R (LA (Albania)) v Upper Tribunal* [2024] 1 WLR 1673 at [39]-[46] per Dingemans LJ. No gloss should be put on the terms of the section: *R (Chowdhury) v Secretary of State for the Home Department* [2025] 1 WLR 5507 at [46] per Underhill LJ.

[14] There is submitted to be a serious inadequacy for the following reasons:

- (i) Verification: in relation to Ground 3, the UT acted in a procedurally defective way by relying on a reason which was not relied on by the Home Office as to why

verification did not arise. The UT stated that it could not be said that the verification process was achievable without much difficulty. That was not a reason relied upon by the Home Office where it would be the Home Office undertaking the verification. It is not inevitable that the UT would reach the same decision where the UT accepted the FtT's assessment that the documents were central to the claim. The test is whether the documents can be said to be central to the case (as was accepted by the FtT) and whether the Home Office can undertake a simple process of verification which will conclusively resolve both authenticity and reliability: *Tara Kazadi Mbuyi-Biuma* [2019] CSOH 93 at [12] per Lord Arthursen. The UT can only assess whether there is a simple process of verification on the basis of all the circumstances of the case: *Biuma* above at [11]. That must include what the Home Office's position is, as the duty of verification (if established) falls on the Home Office and not the tribunal: *Biuma* at [13]. If the Home Office accepts the documentary evidence is central and accepts that there is a simple process of verification, it is difficult to see why the FtT, or indeed the UT, would reject that. In the present case, the Home Office did not dispute that there was a simple process. That forms part of the circumstances where the responsibility for verification lies with the Home Office. *Biuma* above, *AR* [2017] CSIH 52 and *AR* [2021] CSOH 10 address processes of verification which could be undertaken by the Home Office conclusively to resolve authenticity and reliability. The Home Office could have contacted the lawyer who issued the letter confirming the position regarding the petitioner (as in *Biuma* above) or could have contacted the court (as in *AR* [2017] above). The question is whether there is a serious inadequacy in the UT's reasons such that there is a breach of natural justice. The UT states in relation to Ground 3, "...It is not arguable that the

documents relied upon demanded a different answer as to whether the respondent was required to verify them. It cannot be said that the process to do so was achievable without much difficulty.” There is a serious inadequacy in the UT’s reasons where the Home Office did not say that a simple process would not conclusively resolve the authenticity and reliability of the documentary evidence. The consequence is that the exception is met and that vitiates the assessment of whether permission ought to be granted in relation to Ground 3 which was before the UT.

(ii) Fraudulent documents: in relation to Ground 2, the UT has acted in such a procedurally defective way as amounts to a fundamental breach of the principles of natural justice. The UT relies on a reason which was not relied on by the FtT, namely the UT refers to the country background information noting the ease with which false documents can be obtained. That is material where the reader is left with the impression that the UT is focusing on whether the case involves false documents: *J (or AJ) v Secretary of State for the Home Department* 2012 SLT 162 at 165E, 165J-K.

Where that is the case, the UT would have to identify the basis on which the documents were indeed false. There were no such findings by the FtT. The UT thus appears to have operated on a misapprehension. That is a serious inadequacy, and it is not inevitable that the UT would reach the same decision. The reader is left with the impression that the existence of false documents is in the UT’s mind. The UT did not have to go so far if the UT was providing contextual reasoning where the FtT did not rely on same, and neither did the Home Office before the FtT.

The petitioner’s position is that if forgery were not in the mind of the UT, then it is unclear why that is referred to and used as part of the reasoning. The answers seem

to accept that there would be no basis for saying that the documents were false.

As such, the UT has fallen foul of the exception. Further in relation to the FtT's treatment of hearsay evidence, the distinction is not qualitative and principled. Each witness was speaking to evidence they had been told by a third person. The UT did not draw a distinction in terms of the possibilities open to the fact finder. Neither the Home Office nor the FtT went so far as to suggest the documentary evidence was fraudulent. Whether the documentary evidence was fraudulent did not form part of the FtT's assessment. If it did not form part of the FtT's thinking, the UT has introduced a reason which was not part of the Home Office's case and/or was not part of the FtT's consideration.

(iii) Materiality/inevitability: There is a real possibility of the UT coming to a different decision: *Tesco Stores v Dundee City Council* 2012 SC (UKSC) 278 at [31] per Lord Reed JSC or where the respondent has not met the very high onus to show the decision would inevitably be the same (*Khan v Secretary of State for the Home Department* 2015 SC 583 at [11]-[12] per Lord Eassie; *Biuma* above at [12]; *AR* [2017] above *AR* [2021] above [39] to [41]; *J (or AJ)* above). In particular if the position is that there was a simple process of verifying the authenticity of the arrest warrant, then either that would overlap with reliability or where the FtT would have to explain how the petitioner was able to infiltrate forged material into official records and which the FtT did not do. The respondent cannot say that the verification exercise would be inconclusive when the respondent has not undertaken it. In addition, if the UT were to approach matters without having in mind whether the documents were fraudulent, there is a real possibility of a different decision being reached in terms of Ground 2 or where it is not inevitable the same decision would

be reached. In effect, the errors go to documentary evidence which is material to the outcome and requires to be assessed in a legally correct manner and bearing in mind that adverse credibility findings cannot be used as an *a priori* reason to discount that documentary evidence: *AR* [2017], above at [35] per Lord Malcolm.

[15] The petitioner's counsel appropriately accepted that a number of the authorities relied upon predate section 11A of the 2007 Act and address a different question.

Submissions on behalf of the respondent

[16] Permission to proceed having been granted, the issue is whether the UT decision falls within the single, narrow exception preserved by section 11A(4)(c)(ii) of the 2007 Act and, if so, whether reduction ought in the exercise of the court's discretion to follow. Neither of the two grounds founded upon by the petitioner discloses any procedural defect, far less one of the requisite gravity, and therefore the petition is, in substance, an impermissible attempt to reopen on their merits two evaluative permission judgments which Parliament has rendered final and not liable to be questioned in any other court.

[17] The exception relied upon by the petitioner under section 11A(4)(c)(ii) is a high and demanding threshold. It is not enough that the UT may have erred in law or failed to appreciate an arguable error on the part of the FtT. The petitioner bears the burden of demonstrating a procedural defect of the requisite character, and he cannot do so on the averments made.

[18] In relation to Ground 2 and the country expert report, the UT's reference to country background information concerning the ease with which false documents may be obtained in Sri Lanka was contextual and explanatory, directed to why the unrecorded authentication chain mattered, and was in no sense a finding, or the assumption, of forgery. The *J* (or *AJ*)

line of authority is therefore inapposite, and no misapprehension, far less a procedural defect, is disclosed.

[19] In relation to Ground 3 and the asserted verification duty, the question whether verification was achievable without much difficulty is not an extraneous reason imported by the UT. It is a core, cumulative component of the very legal test which the petitioner himself invoked. The UT was bound to determine that question for itself in the context of whether it was arguable that the FtT had erred in law in its approach to assessing that duty, and the respondent's silence upon a particular sub-limb of that test below was no concession and could not relieve the petitioner of his onus. Indeed, the petitioner's own expert evidence demonstrates that no simple, conclusive process of verification was in fact available: when verification was attempted on his behalf, the Sri Lankan court declined to provide any document confirming the result [6/6], leaving the issue of reliability necessarily unresolved.

[20] On a fair reading, the petition is a reasons challenge deployed as a vehicle for a merits challenge. The UT's reasons, though concise, are entirely intelligible: the informed reader, and particularly this petitioner as author of the grounds, is left in no doubt as to why permission was refused. Brevity is not inadequacy. *Esto* any inadequacy was disclosed, which is denied, reduction is a discretionary remedy which the court should withhold on the ground of materiality. The refusal of permission rested upon a cumulative, holistic assessment, the determinative elements of which would survive intact even if the impugned passages were set aside. The same outcome would inevitably follow. For the reasons developed below, the petition should be dismissed.

[21] A serious inadequacy in the UT's reasons for refusing permission may in principle satisfy the exception, but only where the inadequacy truly crosses the threshold of a fundamental breach of natural justice, and not where it amounts merely to an error or

insufficiency in reasoning: *R (Karim)* above at [22]. As Fordham J made clear at [23], it is necessary to distinguish between an error in the exercise of the permission jurisdiction on the one hand, and a procedural defect of the requisite severity on the other. An evaluative misjudgement, even if wrong, is at highest an error of law, which section 11A(2) renders unreviewable.

[22] The respondent accepts, consistent with *R (Chowdhury)* above at [46] per Underhill LJ, that no gloss is to be placed upon the statutory words of section 11A(4)(c)(ii); but the corollary as he confirmed at [36], is that the court's focus must remain upon whether the exception is met and not upon the underlying merits of the proposed appeal to the UT. The petitioner's grounds, properly analysed, are directed to the latter rather than the former. This distinction is of decisive importance to the present petition. *Biuma*, AR [2017] above, AR [2021] above and *J (or AJ)* above were decided under the supervisory or appellate jurisdiction as it existed before the insertion of section 11A, when the question for the court was whether the UT had materially erred in law. These authorities are concerned with the substantive content of the duty to verify and with what constitutes an arguable error of law; not one of them addresses, because none could address, what amounts to a fundamental breach of the principles of natural justice for the purposes of section 11A(4)(c)(ii). At their very highest, and even if read entirely in the petitioner's favour, they establish no more than an arguable error of law on the part of the FtT or the UT, which is precisely the category of complaint that section 11A(2) now renders final and not liable to be questioned in this court.

[23] The respondent acknowledges that, this being an asylum matter, the question whether the exception is engaged falls to be approached with anxious scrutiny. But anxious scrutiny does not dilute the statutory threshold or convert an arguable error of law into a

fundamental breach of natural justice. The standard prescribed by Parliament is the same, however carefully it is applied.

Ground 2

[24] The petitioner's case under Ground 2 is that the UT acted in a procedurally defective way by relying upon a reason not relied upon by the FtT, namely country background information noting the ease with which false documents can be obtained, thereby leaving the informed reader with the impression that the UT was focusing upon whether the documents were false; that the UT would, on that footing, have had to identify the basis upon which the documents were false; that there were no such findings; and that the UT thus operated upon a misapprehension. That contention should be rejected. The UT was not making, and did not purport to make, a finding that the documents were false. Its reference to country background information was contextual reasoning, deployed to explain why the absence of any direct account from Mr Madawala, the third party upon whose unrecorded steps Dr Smith's opinion depended ([6/8] [31]), properly undermined the cogency of the authentication process. It was an explanation of why the evidential gap identified by the FtT was material; it was not a new and independent finding of forgery. The distinction between unreliability and forgery is fundamental to the petitioner's error. A document may be of unproven provenance, insufficiently authenticated, or simply not established as reliable, without any finding, or suspicion, that it is a forgery. It is well settled that documentary evidence is to be assessed in the round, in the light of all the evidence, and that a tribunal need make no binary finding of authenticity or forgery to attach reduced weight to a document: *Tanveer Ahmed v Secretary of State for the Home Department* [2002] UKIAT 00439. The general country background, including the prevalence of fraudulent

documentation, is a legitimate and conventional element of that holistic assessment, going to the weight which an unverified document can bear. That this is a real and pervasive feature of Sri Lankan documentary evidence is, moreover, confirmed by the petitioner's own expert: Dr Smith accepts in terms [6/7] that documents of this kind are frequently genuine, *pro forma* documents that have been obtained illegally and then completed with information chosen to suit the claim. The UT's reference to the country background was thus not merely orthodox; it reflected the unchallenged evidence of the petitioner's own witness.

[25] It follows that the authorities upon which the petitioner relies are not in point. The observations of the Inner House in *J (or AJ)* above at [6]-[7] per Lord Clarke, are concerned with the situation in which a decision-maker has treated a document as a forgery without an evidential foundation, and require that, where it does so, it say so expressly and give reasons based on evidence. That very authority draws the distinction upon which the respondent relies. The Extra Division recorded at [6] that the Secretary of State "apparently took no position that the Fatwah document was a forgery but simply contended that no reliance could be placed upon it", and that the error lay in the fact that the immigration judge "may, it seems, have proceeded on the basis that the document was a forgery". The principle the court applied at [7], drawn from *RP (Proof of Forgery) Nigeria* [2006] UKAIT 86, was that

"an immigration judge is not entitled to find or assume that a document is a forgery, or to treat it as a forgery for the purposes of his determination, save on the basis of evidence before him",

and that "[if] the immigration judge considered the document to be a forgery she should have said so in terms and set out reasons based on evidence as to why that was so." The vice in *J (or AJ)* was therefore the unexplained slide from "no reliance can be placed" into an implicit finding of forgery. The present case sits squarely on the lawful side of that very

line: neither the FtT nor the UT found, or proceeded upon the basis, that the arrest warrant was a forgery. The FtT's conclusion was that the documents had not been established as reliable; the UT confirmed that the FtT was entitled to point to the evidential gap as undermining the cogency of the authentication process. That is a finding of insufficient proof of reliability, the precise "no reliance" position which was regarded as unobjectionable in *J (or AJ)*, not a finding of forgery, and the *J (or AJ)* line of authority has no application to it.

[26] The petitioner's premise that, if forgery was not in the UT's mind, there was no reason to refer to the country evidence, accordingly fails. The country evidence was referred to precisely because it bore upon the weight which an unrecorded and unparticularised authentication chain could carry; it was explanatory of why that gap mattered. It neither asserted, nor required the identification of an evidential basis for, any finding of falsity.

Read fairly and as a whole, the UT's reasoning was: first, that the FtT was entitled to assess the manner in which the expert relied upon the steps taken by Mr Madawala; second, that the FtT had properly noted the absence of any direct account from Mr Madawala particularising the process followed; third, that it was open to the FtT to treat that gap as undermining the cogency of the authentication process; and fourth, that the country background assisted in explaining why that gap was material. None of that involves a misapprehension.

[27] Nor is there substance in the petitioner's contention, under Ground 2(ii), that the UT failed to recognise a contradiction in the FtT's approach to hearsay, the FtT having placed reduced weight upon the hearsay underpinning the expert's opinion whilst relying upon the petitioner's own hearsay account of the bribery of the police. The two categories are qualitatively and as a matter of principle distinct. The petitioner's evidence was his own first-hand testimony of what he personally had been told, the credibility of which the FtT

could assess directly by reference to him as a witness before it. The expert's material, by contrast, was opinion evidence whose factual foundation was a verification exercise said to have been performed by a non-witness, Mr Madawala, who gave no account, made no statement, and was not before the tribunal in any form. The concern is not that the expert relayed hearsay but that the unrecorded and unparticularised steps of a third party formed the very foundation of the opinion relied upon. To treat those two situations differently is not contradictory; it reflects the orthodox distinction between assessing a witness's own account and assessing the evidential premise of an expert opinion. No inconsistency of the kind contemplated by *R (Iran) v Secretary of State for the Home Department* [2005] Imm AR 535 at [9] arises. In any event, the FtT did not "rely upon" the petitioner's account of the bribery as evidence of its truth at all. As is plain from paragraph [32] [6/8], that account featured only as an internal inconsistency in the petitioner's own case, it was at odds with Dr Smith's evidence that lawyers may lawfully obtain such documents, and was deployed against the petitioner, not in his favour. There is accordingly no question of the FtT having credited one body of hearsay while discounting another; the supposed contradiction does not exist.

[28] Finally, insofar as the ground asserts that the FtT acted irrationally in giving reduced weight to the opinion of an acknowledged country expert, that contention discloses no error in the FtT, still less a procedural defect by the UT in declining to identify one. A fact-finder is not bound to accept expert evidence, particularly where the factual premise upon which the opinion rests is itself undermined by gaps in the evidence. As Lord Braid observed in *T v Secretary of State for the Home Department* [2022] CSOH 72 at [16], the holistic assessment of credibility requires the fact-finder to weigh all of the evidence in the round, including expert evidence, but does not require that expert evidence be accepted uncritically. The FtT's reduced weighting of Dr Smith's opinion, where the account of the steps taken to

verify the warrant was not directly corroborated by Mr Madawala, was a legitimate evaluative judgment, not irrationality.

[29] Accordingly, the exception in section 11A(4)(c)(ii) is not engaged in respect of Ground 2.

Ground 3

[30] The petitioner's case under Ground 3 is that the UT acted in a procedurally defective way by relying upon a reason not advanced by the Home Office, namely that the verification process was not achievable without much difficulty, in circumstances where the duty of verification, if it arises, falls upon the respondent; that the UT could only assess the existence of a simple process in the light of all the circumstances, which must include the Home Office's position; that the Home Office had not disputed the existence of a simple process; and that there is consequently a serious inadequacy in the UT's reasons. That contention is unsound. The question whether verification was achievable without much difficulty is not a collateral or extraneous consideration introduced by the UT. The UT had to determine that question for itself in the context of whether it was arguable or not that the FtT had erred in law in its approach to assessing the duty to verify. That test, set out in *QC (verification of documents; Mibanga duty) China* above, requires, *inter alia*, that there be "a simple process of verification" which "will conclusively resolve both authenticity and reliability". As Lord Braid confirmed in *T* above at [17], the obligation to verify arises only exceptionally, and only where those conditions are met cumulatively. The ease or difficulty of verification is therefore an integral element of the test the UT was required to apply, not a free-standing reason of the UT's own devising.

[31] Four matters dispose of the petitioner's complaint. First, the burden of establishing that the duty to verify arises rests upon the party who asserts it, namely the petitioner; the cumulative conditions of the QC test must be satisfied by him. The respondent's silence upon a particular sub-limb is not a concession that the sub-limb is made out and cannot relieve the petitioner of his onus. Secondly, whether the legal precondition to the duty is satisfied is a question of law for the tribunal, which the tribunal is bound to determine for itself; it is not constrained to decide that question only by reference to the points the parties have chosen to take, and there is no rule, in the permission jurisdiction or otherwise, that a tribunal may rely only upon reasons expressly pled by the successful party as per *AZ (error of law; jurisdiction; PTA practice) Iran* [2018] UKUT 00245 (IAC) at [68] - [70] and also *SA (by her litigation friend, David Wedgwood) v The Secretary of State for the Home Department* [2025] EWCA Civ 357 at [44]. Thirdly, and in any event, the simplicity and conclusiveness of any verification exercise was squarely in issue before both tribunals. The petitioner's own grounds canvassed the supposed alternatives, attendance at the court in Colombo, and contact with Mr Imam's practice, and the QC test which the petitioner himself invoked makes the existence of a simple process a necessary element. A party cannot be heard to complain of want of notice of the application of the very test he has asked the tribunal to apply. There was, accordingly, no procedural unfairness: the petitioner had every opportunity, before both the FtT and the UT, to advance his case on feasibility, and the UT considered and rejected it. Fourthly, the petitioner conflates the operational allocation of the verification duty, which lies with the respondent, with the anterior judicial question of whether the duty arises at all, which lies with the tribunal. That the duty, once it arises, must be discharged by the respondent (*Biuma* above at [13]), and that the existence of a simple process is to be assessed in all the circumstances (*ibid* at [11]), are propositions which

are admitted and which do not advance the petitioner's case. The UT's determination of the anterior question, adverse to the petitioner, is an evaluative judgment on the merits; even if wrong, it would amount at highest to an error of law, rendered unreviewable by section 11A(2).

[32] The authorities upon which the petitioner relies, *Biuma*, AR [2017] and AR [2021], do not assist him; on analysis, they assist the respondent. They are authority upon the substantive content of the verification duty, not upon what constitutes a fundamental breach of natural justice for the purposes of section 11A of the 2007 Act. Moreover, each is distinguishable in a manner which underscores why no simple process arises here. In *Biuma* the verification step was the single, discrete and self-contained act of contacting a named lawyer to confirm the existence of an All Ports Warning; Lord Arthursen's ratio depended precisely upon that simplicity, holding at [12] that "a simple process of enquiry would resolve any question of the reliability and authenticity of that source, namely the barrister himself", and emphasising at [11] that the duty "can only be said to arise exceptionally". In the AR cases the documents were court interlocutors and a First Information Report ("FIR") capable of confirmation by a single telephone call to an identified court or police station. Indeed, in AR [2017] above the Inner House described the documents as bearing "the hallmarks of valid documents" and as being "all easily verifiable" ([30]); and the court held at [33] that the verification question is not even reached unless the rejection of the documents is itself unsound:

"it does not address the logically prior question, namely, did the First-tier Tribunal have and explain a sound basis for their rejection? If the answer to that question is no – the test set out in *PJ (Sri Lanka)* does not arise".

Here, the position is the converse: the FtT had, and explained, a sound basis for treating the documents as unreliable, the unvouched authentication chain, the petitioner's own

contradictions, and the Devaseelan starting point, so the *AR* analysis goes against the petitioner, not for him. Critically too in *AR* [2021] above, verification was not merely theoretically available but was in fact carried out and produced concrete documentary product on both sides: the petitioner's agent physically attended the police station and obtained a signed letter, and the respondent obtained a Document Verification Report; the dispute there was which conclusive verification to prefer, not whether any conclusive verification could be obtained at all. Here, by contrast, the only route to verification advanced by the petitioner runs through a multi-stage and unrecorded chain: an expert's driver, Mr Madawala, said to have attended an unspecified court, where an unnamed clerk is said to have confirmed the existence of the warrant, none of it vouched by any direct account from Mr Madawala himself. Decisively, the petitioner's own productions demonstrate that the process he advances cannot conclusively resolve both authenticity and reliability. Dr Smith's own methodology requires physical attendance at Fort Court in Colombo, location of the file by the reference number on the warrant, cross-checking of the warrant against the contents of that file, and the possible identification of a signature [6/5]. When that very exercise was attempted on the petitioner's behalf on 7 May 2024, Dr Smith records [6/6] that the court declined to provide any letter or document confirming the result, and that in 19 years of expert practice he has never once persuaded a Sri Lankan court to provide such confirmation. The product of the process is therefore not a conclusive and verifiable authentication but an unvouched, second-hand oral report, precisely the kind of exercise that leaves the reliability of the document in live dispute rather than resolving it. The contrast with the petitioner's argument could not be sharper: where *Biurma* and the *AR* cases each turned upon a process that was "easily verifiable" and capable of yielding a definite confirmatory document, the present process is, on the petitioner's own expert's

evidence, structurally incapable of yielding one. That is the antithesis of the simple process which the QC test requires. The UT's conclusion that the process was not achievable without much difficulty was therefore not merely lawful but plainly correct and squarely consistent with the very authorities the petitioner cites. Insofar as the petitioner seeks to deploy *AR* [2021] above at [41] for the proposition that the emergence of competing material heightens the obligation to verify, that reasoning does not follow when considering the facts of this case. In *AR* the duty was held to have crystallised because there were two reliable, conclusive verifications in conflict, a signed letter from an advocate who had physically inspected the FIR, and a Document Verification Report, such that the genuineness of the documents could be, and had been, the subject of a definite check. The exceptional duty in *AR* arose at the point where a conclusive process had demonstrably been performed and had produced opposing results. The present case never reaches that point: the petitioner's own expert confirms that no conclusive verification can be obtained at all, and accordingly there is no competing, conclusive verification capable of generating the *AR* obligation. The very feature that founded the duty in *AR* is absent here.

[33] The respondent accepts, as the petitioner correctly identifies, that the relevant question is whether there is a serious inadequacy in the UT's reasons such as amounts to a fundamental breach of natural justice. Having identified the test, the petitioner nonetheless fails to satisfy it. The UT's reasons on Ground 3 are concise but entirely intelligible. The informed reader, and in particular this petitioner, the author of the grounds, is left in no doubt as to why permission was refused: the documents did not demand a different answer as to whether the respondent was required to verify them, and the verification process could not be said to be achievable without much difficulty, with the consequence that the exceptional duty did not arise. That is an adequate explanation of the determinative point.

Reasons for refusing permission may properly be short, and the standard is whether the informed reader is left in genuine and substantial doubt as to the basis of the decision: *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953 per Lord Brown. Here there is no such doubt. The petitioner's true complaint is not that he cannot understand why he lost, but that he disagrees with the conclusion. A reasons challenge cannot be deployed as a vehicle for a merits challenge.

[34] Accordingly, the exception in section 11A(4)(c)(ii) is not engaged in respect of Ground 3, and the asserted vitiation of the permission assessment does not arise.

[35] *Esto* the court were satisfied that any inadequacy in the UT's reasoning is disclosed, which is denied, the petition would nonetheless fall to be refused on the ground of materiality. Reduction is a discretionary remedy, which the court will withhold where it would serve no practical purpose because the outcome would inevitably have been the same. Both the FtT and the UT proceeded upon a holistic assessment which turned not upon any single reason but upon the cumulation of: (i) the absence of any direct account from Mr Madawala vouching the authentication chain; (ii) the petitioner's own contradictory evidence ([6/8] [32]) namely his shifting account of when and how he and his mother learned of the warrant, which directly contradicted Mr Imam's letter, together with the antecedent adverse credibility findings of the 2019 determination, adopted as the Devaseelan starting point ([6/1]; [6/8] [29] and [34]); and (iii) the inconclusive character of any verification exercise. These pillars are wholly independent of the two passages the petitioner impugns. The contradiction finding does not depend upon, and is untouched by, either the country background reasoning under Ground 2 or the verification-difficulty reasoning under Ground 3; and the Devaseelan starting point is anterior to both. Even if the UT's reference to the difficulty of verification, or to the country background material,

were set aside, the determinative reasoning would remain intact, and the refusal of permission would inevitably follow. Any error is therefore immaterial to the outcome, and the petition should be refused on that separate and independent basis.

Conclusion

[36] For the foregoing reasons, the UT applied the correct legal test in relation to both Ground 2 and Ground 3, and gave reasons which, though concise, were lawful and adequate. The petition discloses no more than a disagreement with the UT's evaluative conclusions on permission, which does not found a competent judicial review having regard to the demanding threshold imposed by section 11A(4)(c)(ii) and the absence of any procedural defect.

Decision

[37] The respondent accepts that a serious inadequacy in the UT's reasons for refusing permission may in principle satisfy the exception set out in section 11A(4)(c)(ii) of the 2007 Act. That is the basis on which the petitioner seeks to persuade the court that the present petition is competent. However, it seems to me unarguable that the exception will be satisfied only where any such claimed inadequacy amounts to a fundamental breach of the principles of natural justice, and not where it amounts merely to an error or insufficiency in reasoning. The wording of the statutory exception demands no less. As submitted by the respondent, it is necessary to distinguish between an error in the exercise of the permission jurisdiction on the one hand, and a procedural defect of the requisite severity on the other. An evaluative misjudgement, even if wrong, is at the highest an error of law, which section 11A(2) renders unreviewable.

[38] It is important to recall, as Lord Sandison observed in *Elkabany v Advocate General for Scotland* 2025 SLT 871 at [23], that section 11A is specifically directed at rendering decisions of the UT

“immune from review save in the extremely specific and exceptional circumstances which it instances. The language of sections 11A(2) and (3) could scarcely be more emphatic - such decisions are to be ‘final, and not liable to be questioned or set aside in any other court’”.

The UT is not to be regarded as having exceeded its powers by reason of any error (whether of fact or law) made in reaching its decision, howsoever plain that error may be, and the supervisory jurisdiction “does not extend to, and no application or petition for judicial review may be made or brought” in relation to such a decision.

[39] It is equally important to recall that section 11A was introduced with the policy aim of bringing finality to proceedings in circumstances where an application had already been considered by a FtT and an UT, both of which are judicial in nature. As noted in *Singh* above at [47]:

“...too much resource was being spent on the very few applications for judicial review that resulted, not just in the quashing of the Upper Tribunal's decision to refuse permission to appeal, but also in ultimate success on the merits of the applications. That is a concern which Parliament was entitled to address by considering what the scope of judicial review should be...”

[40] Has then the UT acted in a procedurally defective way, and if so, does that amount to a fundamental breach of the principles of natural justice? In *R (Chowdhury)* at para [57] Underhill LJ addressed the question of procedural defect anent the court's jurisdiction:

“[The] focus of section 11A(4)(c)(ii) is on procedural fairness, and I do not think it can be read as involving an assessment of the substantive merits of the decision. Again, I emphasise that this conclusion is concerned only with the question of jurisdiction. If the court concludes that the natural justice exception applies, it will then have to consider whether to grant PTAJR. If it is satisfied that the claim which the UT unfairly failed to consider could not have succeeded in any event it will be entitled to refuse permission on that basis as a matter of discretion...”

[41] As observed by Saini J in *R (Oceana) v Upper Tribunal (Immigration and Asylum Chamber)* [2023] EWHC 791 (Admin) at para [32]:

“....the principles of fairness are not to be applied by rote identically in every situation. What fairness demands is dependent on the context of the decision. An essential feature of the context is the statute which gives the relevant public body the power to make decisions, as regards both its language and the shape of the legal and administrative system within which the decision is taken. The requirements of fairness must be interpreted in a manner which does not frustrate the intention of Parliament.”

[42] The contended serious inadequacy in the UT’s reasons for refusing permission is helpfully summarised in the respondent’s statement of issues as follows:

- (i) in relation to Ground 2, whether the UT’s reference to country background information about the availability of false documents in Sri Lanka constitutes contextual reasoning directed to the weight of an unvouched authentication chain, or whether it discloses a misapprehension amounting to an implicit and unsupported finding of forgery such as engages the exception in section 11A(4)(c)(ii); and whether the UT’s treatment of the asserted contradiction in the FtT’s approach to the two categories of hearsay evidence discloses any procedural defect of the requisite character, as opposed to an evaluative judgment rendered final by section 11A(2).
- (ii) in relation to Ground 3 and any duty to verify, whether the UT’s consideration of whether the verification process was achievable without much difficulty was the determination of a core, cumulative component of the legal test it was bound to apply, or whether it constituted reliance upon an extraneous reason not advanced by the respondent such as to give rise to a serious inadequacy in its reasons amounting to a fundamental breach of the principles of natural justice for the purposes of section 11A(4)(c)(ii).

[43] The very framing of the issues in the preceding paragraph (and the manner in which they were argued) disclose evident challenges to evaluative judgments by the UT. At their highest, they allege errors of law. The petitioner seeks somewhat artificially to isolate aspects of what is a holistic decision-making process so as to elevate the complaint to a serious inadequacy in the UT's reasons as the route to establish a fundamental breach of the principles of natural justice. The challenges involve the assessment of, and weight attached to particular evidence in the scope of a wider assessment of all evidence and consideration of a legal test. It is difficult to conclude that any of the present challenges qualifies as the serious inadequacy in reasons envisaged by Fordham J in *R (Karim)* above as being capable in principle of satisfying the section 11A(4)(c)(ii) exception. There is nothing within the petitioner's challenges which suggests a fundamental breach of the principles of natural justice. The matters complained of fall foul of sections 11A(2) and (3).

[44] Accordingly, I shall refuse the orders sought and dismiss the petition. I reserve expenses meantime.