



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/01266/2014

Appeal Numbers:

AA/01267/2014
& AA/01268/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 24 October 2014**

**Promulgated
On 10 December 2014**

Before

UPPER TRIBUNAL JUDGE LATTER

Between

**SY, VY AND PY
(ANONYMITY DIRECTION MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, instructed by SJS, Solicitors

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal by the appellant, SY born on 19 September 1976 and her two dependant children VY born on 5 December 2006 and PY on 2 August 2009, against a decision of the First-tier Tribunal (FtTJ Eban) dated 22 April 2014 dismissing their appeals against the respondent's decision made on 10 February 2014 to remove

them as illegal entrants following the refusal of their applications for asylum.

Background

2. The appellants are citizens of Sri Lanka who arrived in the UK on 29 April 2013. They left Sri Lanka on 22 April 2013 and then travelled to Singapore leaving on 28 April 2013 by a direct flight to London Heathrow. The appellant gained entry using a passport to which she was not entitled and she claimed asylum on 14 May 2013. Her application was refused for the reasons set out in the respondent's Reasons for Refusal Letter dated 10 February 2014. She appealed to the First-tier Tribunal and the appeal was heard on 17 April 2014.

The Decision of the First-tier Tribunal

3. The judge summarised the basis of the appellant's claim in [9] of her determination. She is a Tamil who married on 28 June 2006. Although her husband was not a member of the LTTE and never had any home visits from LTTE members, the appellant gathered from over-heard phone conversations that he had assisted that organisation between 2002 and 2008 by supplying batteries and other materials used in explosives. Her husband had not been arrested but the police had visited their home and had asked him to attend the police station 5 or 6 times between April 2007 and September 2009. As a result of an associate of her husband being arrested when it was disclosed that he had supplied materials to the LLTE they went into hiding and in about August 2012 the appellant travelled to India to meet an agent. They kept a low profile for six months and then left Sri Lanka for Latvia in September 2012. They did not claim asylum there as they had valid visas. The appellant returned to Sri Lanka on 5 April 2013 with her two sons having been told by her husband that she could return safely as the problems there had been because of his actions and not hers.
4. On return the appellant says that she was arrested at Columbo Airport, detained and ill treated. She was separated from her children and repeatedly asked questions about what items her husband had supplied to the LTTE. She was shown a document signed by her husband confessing that he had supplied goods to the LTTE and in the light of this, she also signed a confession that they were both involved. She was detained from 5 or 6 April to 17 April 2013 but then released because she had managed to get a letter sent from one of her family friends. It was her fear that, if returned to Sri Lanka, she and her children would be at risk from the authorities there.
5. However, for the reasons set out in [23, (1)-(20)] the judge found that there was no reasonable degree of likelihood that the

appellant's account of what had occurred in Sri Lanka was true or that reliance could be placed on the police notes or the arrest warrants which had been produced in evidence. The judge made the following findings in [24]:

- “... 1. The appellant is from Colombo.
2. The appellant is an ethnic Tamil.
3. The appellant has never worked for the LTTE or undertaken military training.
4. The appellant has never been detained, fingerprinted or made to sign a confession.
5. The appellant's husband has never been arrested, charged or detained for more than a few hours.”

6. The judge went on to consider the risk factors identified in GJ and Other (post civil war: returnees) [2013] UKUT 00319 Sri Lanka CG and found at [27] that on return the appellant would not be regarded as a Tamil or someone involved in the LTTE but instead as a woman who travelled to the UK last year with her children to see and stay with her family. She found that the appellant was not someone who was at real risk of being stopped or questioned at the airport or thereafter in the community. The judge went on to consider the position under article 8 and for the reasons set out in [32]-[38] found that there would not be a breach of that article in returning the appellant and her children to Sri Lanka.

The Grounds of Appeal and Submissions

7. Permission to appeal was refused by the First-tier Tribunal but granted by the Upper Tribunal on the basis that the grounds disclosed a arguable error of law in the judge's failure to answer the questions she asked herself at [23 (4)-(9)] and in disregarding the supporting Sri Lankan documents. The judge when granting permission commented that the argument in the grounds that there was demonstrable error of material fact in the light of further documentary evidence would depend on whether the principles in E and R [2004] EWCA Civ 49 were met.
8. In his submissions Mr Hawkin dealt with grounds 2 to 6 and then ground 1. He argued (ground 2) that at [23 (4)-(9)] the judge had asked herself a number of questions which she appeared to regard as material to the assessment of the asylum claim but did not actually answer them. He submitted that the judge could not take a rhetorical approach by asking questions and then not answering them. She had not indicated what her findings were and this must lead to a real doubt as to the fact- finding process. He then argued (ground 3) that the judge's concerns as to the appellant's supporting witnesses set out at [23 (10)-(12)] were peripheral and the core of their evidence had not been addressed. It was not enough, so he argued, simply to address omissions and to refer to matters that cast doubt on the evidence rather than addressing

the core of the evidence against the lower standard of proof. Issues which caused doubt should have been raised so that they could be resolved at the hearing. He submitted (ground 4) that at [23 (13)-(20)] the judge appeared entirely to disregard the supporting evidence from Sri Lanka simply on the basis that there were some spelling or grammatical errors in them. He submitted that the judge failed to engage with the fact that even if there were doubts about the evidence, nonetheless, it could still be evidence to which weight could properly be given.

9. He then submitted (ground 5) that further documentary evidence from Sri Lanka confirmed that the lawyer's evidence and the warrants were genuine and that taking into account the principles in E & R that there was a demonstrable error of material fact amounting to an error of law. Finally, he argued (ground 1) that the judge failed to consider the appeal in the light of the Asylum Gender Guidelines and in particular paras 5.40-5.44 and 3.20-3.24. She should have specifically considered the additional problems that women asylum seekers have and had failed properly to take the guidelines into account.
10. Mr Duffy submitted that these guidelines did not support an argument that the judge had erred in law. There was no reason to believe in any event that she would not have been aware of them. It was for her to decide what weight to attach to the evidence she had heard. The further evidence now relied on related to factual issues which the judge had had to resolve on the evidence before her. It was not arguable in the circumstances of this appeal that the further evidence produced could have any bearing on whether the judge had erred in law on the evidence before her. In so far as it was argued that the judge had not raised at the hearing matters which concerned her about the evidence, he referred to and relied on MM (unfairness: E & R) Sudan [2014] UKUT 105. He submitted that the judge had made clear findings of fact and had reached a decision properly open to her. Although the judge had not actually answered the questions set out in [23 (4)-(9)], it was clear what the answers were in the light of her subsequent findings of fact.

Assessment of whether there is an Error of Law

11. I must consider whether the judge erred in law such that the decision should be set aside. I will deal with the grounds in the order taken by Mr Hawkin.

Ground 2

12. This ground argues that the judge asked questions but did not answer them. It is based on [23 (4)-(9)] where she asked herself a number of questions but did not expressly answer them. By way of example in (4) the judge noted that the appellant had travelled to

India and returned in August 2012 on her own passport and had no problems with the authorities in contrast with the way she claimed she was treated less than a year later when she said she was detained at the airport. The judge said:

“I have asked myself what could have happened in the meantime to make her of interest to the authorities when she had clearly not been of interest before.”

13. Similarly, in the following paragraphs in relation to specific aspects of the evidence the judge set out a question that she considered. Mr Hawkin argued that it was not open to the judge to take a rhetorical approach asking questions without answering them.
14. I am not satisfied that there is any substance in this argument. The judge has set out her reasons for not finding the appellant to be credible in a full and comprehensive way. It was for her to decide what weight to give to the evidence she heard and what proper inferences could be drawn from it. The fact that the judge set out the questions which concerned her indicates that the evidence was analysed, that relevant matters were taken into account and cumulatively that the evidence was properly considered.

Ground 3

15. In this ground it is argued that the judge's concerns about the evidence of the supporting witnesses were peripheral and did not address the core of their evidence against the low standard of proof. This argument is based on the judge's comments at [23 (10)-(12)] where in (10) the judge noted what she described as a noticeable omission in the evidence of witness SS who made no mention of speaking to PV or PV's wife. In (11) the judge commented that it was odd that arrangements for payment of any outstanding moneys were not either made at that time or subsequently through the bank of PV's wife so casting doubt on whether SS had contacted PV as described by PV and in (12) she noted that there were no copies of emails said to be passed between SS and PV's wife. I am not satisfied that these grounds disclose any error of law on the part of the judge in her assessment of this evidence as part of the evidence as a whole. It was for her to decide what weight should be attached to omissions and to the other factors identified. The judge did address the relevant core issues.

Ground 4

16. This ground argues that the judge entirely disregarded the supporting Sri Lankan documents including an arrest warrant, letters from a lawyer and a police officer on the basis of spelling or grammatical errors. These documents are dealt with at [23 (13)-(20)]. It is argued that the judge has simply disregarded the

evidence because of the doubts she expressed rather than giving proper consideration to the weight to be given to them in the light of those doubts.

17. Again I am not satisfied there is any substance in this criticism. The judge's findings must be read as a whole. By way of example the judge was entitled to point out that the fact that the appellant had produced an arrest warrant had to be considered in the light of the information in the COI report of 7 March 2012 that it was difficult for an accused to obtain a copy of an arrest warrant and to point out that in the letter of 27 May 2013 it was stated that "courts sent notice of arrest warrant on 10 May 2013" with no indication to whom the warrant was sent. When assessing the letters produced in evidence the judge was fully entitled to take into account spelling errors and the fact that a letter was clearly in two different fonts. She was also entitled to comment on the fact that although the letter bore an original stamp, there was no letter heading.
18. In summary when the judge's findings and reasons are read cumulatively, I am satisfied that she reached findings properly open to her for the reasons she gave. Grounds 2-4 do not satisfy me that she erred in law.

Ground 5

19. In this ground it is argued that in the light of further documentary evidence supplied after the appeal was decided by the First-tier Tribunal, it is clear that there was a demonstrable error of material fact and therefore an error of law as the lawyer's evidence is confirmed and there is evidence that the warrant is genuine. However, this is not a case where the requirements in E & R are met. The reliability of these documents was in issue before the Tribunal and the judge had to determine that issue on the basis of the evidence before her. In E & R, the Court of Appeal set out the requirements to be met before it could be said that a mistake of fact constituted an error of law. There would have to be a mistake as to an existing fact including a mistake as to the availability of evidence on a particular matter; it must be possible to categorise the relevant factual evidence as "established" in the sense that it was uncontentious and objectively verifiable; the appellant or his advisers must not have been responsible for the mistake; and the mistake must have played a material, although not necessarily decisive part in the Tribunal's reasoning. There is no adequate explanation why it was not possible to obtain the evidence now relied on so that it was available at the hearing before the First-tier tribunal. Further, the issue of the reliability of the documents produced in evidence cannot be regarded as "established" in the sense it was uncontentious and objectively verifiable. It is in reality

further contentious evidence in relation to an issue clearly in dispute between the parties.

Ground 1

20. It was argued that the judge did not consider the Asylum Gender Guidelines. The paragraphs I have been referred to deal with general principles and there is no reason at all to believe that the judge would not have been fully aware of them in her assessment of this appeal. Paragraphs 5.40-5.44 deal with credibility, the absence of documentary evidence, corroboration, delay and demeanour whilst paras 3.20-24 deal more specifically with the circumstances in which there may be political reasons for a woman's persecution even though she may not have regarded herself as acting politically. However, again, there are general principles to be applied to the facts of each individual case. There is no reason to believe the judge would not have been aware of them and when the determination is read as whole, there is nothing of substance to indicate that the judge assessed the evidence in contravention of the gender guidelines.

Ground 6

21. This ground summarises the other grounds arguing that the judge's credibility findings are flawed; that it is strongly arguable that the appellant would be at risk of persecution on return and refers to the fact that GJ and Others was subject to an appeal to the Court of Appeal at the date when the grounds were drafted. However, the Court of the Appeal have now given judgment upholding in substance the Upper Tribunal's decision. This ground was not pursued at the hearing before me. In the light of the judge's findings of fact the appellant cannot bring herself within the country guidance in GJ and Others.

Decision

22. Accordingly, for the reasons I have set out the First-tier Tribunal did not err in law and the decision stands. There has been no application to vary or discharge the anonymity order made by the First-tier Tribunal and that order also stands.

Signed

Date 24 November 2014

Upper Tribunal Judge Latter