



IAC-UT

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

Appeal Number: AA/07156/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 4 February 2016**

**Decision & Reasons Promulgated
On 23 February 2016**

Before

**Mr H J E LATTER
(DEPUTY UPPER TRIBUNAL JUDGE)**

Between

**VA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, instructed by Duncan Lewis & co, solicitors.

For the Respondent: Ms J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the appellant against a decision of the First-tier Tribunal (Judge Monson) dismissing her appeal against the respondent's decision made on 3 March 2015 refusing to vary her leave to remain and to make removal directions following a finding that she was not entitled to asylum or relief on human right grounds.

Background

2. The appellant is a citizen of Sri Lanka born on 5 November 1979. She arrived in the UK on 2 July 2011 to join her husband as a student dependant. Her leave was subsequently extended and her husband's in line with hers expiring on the 30 August 2014. The appellant claimed asylum on 3 September 2014. Her application was refused for the reasons set out in the respondent's decision letter annexed to the asylum decision of 27 February 2015.
3. Her reason for claiming asylum was that she could not now return to Sri Lanka because the authorities there were accusing her of being an LTTE intelligence worker and of promoting the LTTE organisation. This was a problem which had arisen after she had left Sri Lanka [14]. The trigger for her asylum claim had been that when her husband went to Sri Lanka in June 2014 he had taken on her behalf money for a friend of hers in Vanni who wanted to start a small business. After he had given her the money, unknown people had gone to the friend's house to arrest her husband but by that time he had already left the country, so instead on 14 July 2014 they arrested her brother. He was detained for 20 to 25 days and released on condition that he should report fortnightly. She could not now return to Sri Lanka as she would be arrested by the Sri Lankan army. When her brother had been arrested he had been asked about her whereabouts [16].
4. The respondent accepted that the appellant had had a minimal involvement with the LTTE. She had completed a month's training in June/July 2004 and in 2011 had helped three ex-LTTE members find accommodation in Colombo. However, the respondent did not accept that the account of events in June/July 2014 was credible and found that the appellant would be of no adverse interest to the authorities in Sri Lanka.

The Findings of the First-tier Tribunal Judge

5. At the hearing before the immigration judge the appellant and her husband gave oral evidence and evidence was produced to confirm the appellant's account. In [62] the judge identified this as falling into three main categories: (a) medical evidence relating to the appellant, her husband and her brother; (b) oral and documentary evidence from the appellant's close family members, namely her husband, brother, mother and uncle; and (c) what purported to be independent evidence from Sri Lanka, most notably the letter from Mr Punethnanayagam, an attorney at law. The judge summarised the oral evidence at [40]-[58]. He set out at [61] a summary of the most recent country guidance in Gj and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319. His analysis of the evidence is at [63]-[102] and his conclusions at [103]-[105]. In summary, the judge did not find that the core of the appellant's account was true, commenting that there were no substantial grounds for believing that her husband had travelled to Vanni in order to hand over a small sum of money to a friend of the appellants at the same time as visiting his

mother-in-law in July 2014. Alternatively, if he did so there were no substantial grounds for believing that his visit aroused suspicion in the local militia, that the appellant became of adverse interest to the authorities at that stage or later, or that her brother had been arrested and detained in July 2014. Accordingly, the appeal was dismissed.

The Grounds of Appeal and Submissions

6. The grounds of appeal raise four issues. Firstly, it is argued that the judge was wrong to attach little weight to statements from the appellant's family members "solely" because "they have a motive to misrepresent the truth" [77]. It is argued that such a conclusion is patently unsustainable because it operates on a false or unfair assumption, that there is a need to misrepresent the truth. Secondly, the basis of the judge's rejection of the evidence from the Sri Lankan attorney is criticised as being a finding based on no evidence. Thirdly, the judge was irrational to find that the decision by the appellant's husband to secure protection as a dependant rather than claiming asylum in his own right was consistent with him being aware that the letter from the lawyer was false. Fourthly, the judge's comment at [96] that the Sri Lankan authorities would not act in a "preposterous" manner or "on a flight of fancy" was based on the misconception that torturers acted and thought rationally and was neither a reasonable nor a rational finding.
7. Permission to appeal was granted by the First-tier Tribunal on grounds 1, 3 and 4 but not on ground 2 as that was a challenge to the weight the judge attached to the evidence.
8. Mr Bandegani adopted these grounds in his submissions, arguing that the judge's approach to the evidence of the witnesses was flawed by his comment that they had a motive to misrepresent the truth. He accepted that the judge had provided some further reasons at [78]-[80] why he did not accept their evidence but this was not sufficient to compensate for the fact that he had approached the evidence on an impermissible basis. He had failed to confront directly the evidence that government officials had come to the family home in Sri Lanka. The judge's approach, so he submitted, about why the appellant's husband had not claimed asylum and about how the authorities were likely to behave was irrational. The background evidence showed that torture was routinely practised to extract information and the behaviour of Sri Lankan officials could not be described as sophisticated. It showed that there was an extensive use of informers and an interest in those who had attended heroes day ceremonies as had the appellant [37].
9. Ms Isherwood pointed out that attendance at heroes day ceremonies had never been part of the appellant's claim. The core of a claim had always been in relation to events in Sri Lanka in June/July 2014. The judge's comment at [77] had to be read in context. The judge had discussed the evidence at length and so far as the statements from the family members were concerned, the judge had found that the medical report relating to

the appellant's brother was wholly inconsistent with the claim that he had been released from detention having been brutally tortured [65]. Further, the judge's comment at [77] was supported by his previous findings. She submitted that the judge had given clear and sufficient reasons for his credibility findings. He had taken into account the country guidance in GJ and had reached conclusions properly open to him.

Assessment of whether the First-tier Tribunal erred in law.

10. The first ground argues that the judge took the wrong approach to the evidence in the written statements from the appellant's relatives in Sri Lanka. This was the second category of evidence he had identified at [62] as corroborative evidence. At [77] the judge said:

"As they are all close family members, they have a motive to misrepresent the truth in order to assist the appellant. So for that reason alone I attach little weight to the evidence."

In the grounds reliance is placed on R (SA Iran) v Secretary of State for the Department [2012] EWHC 2575 (Admin) where it had been argued that because the claimant had given evidence about her husband's conduct, the evidence of her son added nothing and could not make a difference. That approach was rejected as unarguable if advanced as a rule of general application. In cases where credibility was in issue, the fact that the witness' account was corroborated by another witness could add to its credibility. The judge expressed concern that so straightforward and long-standing a concept as one witness giving support to another's credibility should have been overlooked by the Home Secretary.

11. However, this is not the approach the judge was taking in this appeal. He was not discounting the evidence simply because it was evidence put forward to confirm the appellant's own evidence. The judge was entitled to approach the evidence with caution and to consider the extent of the witnesses' personal interest in the outcome of the appeal. In HJ (Iran) [2010] UKSC 31, Lord Walker at [88] commented that the appellant's evidence "may have to be treated with caution because of his strong personal interest in the outcome". It may be that the judge expressed himself strongly on this issue commenting that for this reason alone he attached little weight to their evidence but the comment must be read in the context of the whole determination. The judge had considered the medical evidence in respect of both the appellant and her brother and for clear and compelling reasons (see in particular [65] and [70]-[71]) explained why he considered that it did not materially support the appellant's case and in some respects undermined the core claim [63].
12. The judge went on to consider the evidence from the relatives. He set out in [78]-[80] three specific reasons which he regarded as undermining that evidence, the first that the brother's medical report referred to injuries from an accidental fall rather than torture and the second and third to implausibilities in the account. He went on to explain why he found the evidence from the Sri Lankan attorney to be unsatisfactory and permission

to appeal against that finding was refused. When considering the oral evidence of the appellant and her husband about the hand-over of money the judge was entitled to comment that this account had become progressively more detailed and elaborate over time [99]. The judge's comments at [100]-[101] are compelling. This was not a case of the judge simply rejecting the evidence in the statements without considering it in the context of the evidence as a whole. If the judge's comment in [77] stood alone, it might well give concern as to whether he had approached the evidence in the written statements correctly. But when the decision is read as a whole, there is no basis for an argument that his comment indicated an unlawful approach to the evidence. The witnesses' interest in the outcome of the appeal was one of a number of factors properly taken into account.

13. It is argued that the judge was irrational when commenting at [95] that the fact that the appellant's husband was content simply to be a dependant on her claim was not consistent with him having a genuine, still less a well-founded, fear of persecution on return but more consistent with him being aware that the letter from the lawyer was false. Again, read by itself, this comment might be susceptible to criticism but it was one of five reasons (at [90]-[98]) given by the judge which led him to give little weight to the letter from the lawyer and the fact that the appellant's husband had not himself made a claim was a matter the judge was entitled to take into account.
14. The comments in [96] that the claims attributed to the officer at the police station were "preposterous" have regard to the country guidance of Gj and that the approach of the Sri Lankan authorities was based "on sophisticated intelligence, not complete flights of fancy" must also be read in the light of the findings as a whole (and in particular [98]) and also the context of the use of the phrase "sophisticated intelligence" in paragraph 8 of the head-note in Gj. The fact that the Sri Lankan authorities regularly resort to torture does not have any bearing on the point the judge was making in the light of the country guidance. He was seeking to assess whether the appellant could, on the basis the evidence he had heard, fall within the risk categories identified in Gj. He found that she could not for the reasons he gave. The issue of attendance at heroes day celebrations raised in submissions was not raised in the grounds and in any event in the light of the judge's findings of fact has no material bearing on the outcome of the appeal.
15. In summary, the grounds do not satisfy me that the judge erred in law in his approach to the evidence or in his assessment of whether the appellant would be at real risk on return to Sri Lanka. The decision sets out a careful analysis of the evidence and I am satisfied that the judge reached findings and conclusions properly open to him for the reasons he gave.

Decision

16. The First-tier Tribunal did not err in law. It follows that the appeal is dismissed and the decision of the First-tier Tribunal stands including the anonymity order, no application having been made to this tribunal to vary or discharge it.

Signed H J E Latter

H J E Latter
Deputy Upper Tribunal Judge

Date: 15 February 2016