



IAC-AH-SC-V1

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

Appeal Number: AA/07846/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 8th February 2016**

**Decision & Reasons
Promulgated
On 29th March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MS N R
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr Aslam, instructed by Inayat Solicitors

For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

1. The application for permission to appeal was made by the Secretary of State but nonetheless I shall refer to the parties as they were described before the First-tier Tribunal, that is Ms N R as the appellant and the Secretary of State as the respondent.

2. The respondent appeals, with permission, against the decision of the First-tier Tribunal promulgated on 26th November 2015 allowing the appellant's appeal against the Secretary of State's decision to refuse the appellant asylum, humanitarian protection and protection under the European Convention. The Secretary of State's decision was made on 24th April 2015. The background to the decision is that the appellant is, and this was accepted by the respondent, a victim of domestic violence. The appellant married in 1998 and separated from her husband on 23rd September 2014 when she reported him to the UK police for domestic violence. Her husband was currently in Sri Lanka where he returned following his release from imprisonment in the UK on 5th November 2014. The appellant did not know her husband's whereabouts in Sri Lanka but she knew that he used to live in Pannipitiya and his father, now retired, worked as the director of customs in Colombo. The appellant maintained that her husband had many relatives in the police and also in the CID (police). One of her husband's maternal uncles, SC, was a politician with the United National Party [Questions 53 to 58 of the appellant's asylum interview]. Those details were recorded in the respondent's reasons for refusal letter.
3. In the application for permission to appeal, the Secretary of State, asserted that the First-tier Tribunal Judge failed to provide adequate reasons as to why the appellant would be unable to internally relocate within Sri Lanka and why the appellant would not be afforded a sufficiency of protection on return.
4. The Immigration Judge failed to provide any adequate reason as to how the appellant's husband would be able to trace the appellant and it was noted that the judge failed to make any findings in relation to the appellant's husband's sphere of influence and therefore it was unclear as to how the appellant could trace her.
5. The judge records, at paragraph 49, that the appellant's husband may locate her through registering for schools and hospitals and through mutual contacts and relatives but the judge failed to provide adequate reasons as to why the appellant would be required to disclose her location to mutual relatives or friends in order that her husband would locate her. This would defeat the object of relocation and the judge had failed to provide adequate reasons.
6. The judge had failed to provide an evidence based finding as to why the appellant's husband would be interested in pursuing the appellant noting there had been no contact from her husband or his family. There was no adequate reasoning as to why the appellant's husband would seek the appellant out when the evidence appeared to point that there was no further interest in her from the husband since he left prison and returned to Sri Lanka.
7. A second ground raised in the application for permission, was that the judge had made perverse or irrational findings on matters that were

material to the outcome. The judge had made speculative findings; for example, at paragraph 45 of the determination the judge stated:

"I took account of the appellant's evidence that she had not heard directly from her husband or his family since he returned to Sri Lanka. However I was prepared to accept that there was a reasonable degree of likelihood that when she was returned to Sri Lanka, the husband would seek her out in order to inflict harm on her with a view to restoring his honour."

8. The Judge accepted, at paragraph 47 of the determination, there had been no contact or threatening behaviour from the husband towards the appellant or her family in any way despite the fact that the husband was aware of her location. The judge, however, at paragraph 49 found that the husband would seek to harm her as soon as she returned to Sri Lanka and would seek the children if registered at school or hospital. Therefore, the judge had made findings which were contradictory and not supported by the evidence of the appellant and therefore materially erred. That the appellant's husband would locate her through mutual contacts or family members was speculative. The whole purpose of internal relocation was to ensure the appellant's whereabouts were not known to her husband.
9. Further the judge had failed to take into account or resolve conflicts of fact on material matters such as the appellant's husband's sphere of influence and therefore her ability to relocate on her return to Sri Lanka.
10. At the hearing before me Ms Sreeraman confirmed that it was not in dispute that the appellant was a victim of domestic violence but the central issue was whether internal flight was open to her. The judge had accepted that there was no direct contact between the appellant and her husband. Ms Sreeraman relied on the written grounds for permission to appeal.
11. Mr Aslam submitted that there was no material error when reading the decision as a whole. The two issues which were accepted, were that the appellant was a victim of domestic violence and there was not sufficiency of protection from the state authorities. The judge had accepted the appellant had already received threats by text and letter on 7th April 2015 and 29th July 2015. There may have been no *direct* contact but there was still a threat. The judge has set out his findings at paragraph 45 to 51 and I was invited to read paragraph 20 together with paragraphs 49 and 50 and conclude that it was open to the judge to find it was reasonably likely that through the family and friends in Sri Lanka that the husband was likely to track her down. Even if the husband did not use his contacts because of the insufficiency of protection that the appellant would be at risk.
12. In conclusion, I am not persuaded that the judge made perverse or irrational findings. It was accepted by the respondent that the appellant had been a victim of domestic violence whilst in the UK and it was

accepted that her husband had been imprisoned in the United Kingdom as a result, and, on his release, had returned to Sri Lanka as recently as 2014. It was the appellant's evidence, as recorded in the reasons for refusal letter, that the husband had many relatives in the police and also in the CID police and that one of her husband's maternal uncles was a politician with the United National Party. The judge at paragraph 44 found both the appellant and her daughter to be credible witnesses and noted that the respondent accepted that the appellant's subjective fear was genuine given the incidents of domestic violence. The judge had regard, as indicated at paragraph 45, that the respondent's position was that there was no objective rationale for fear given that she had not heard from him directly. To assert, however, that because she had not heard from him directly whilst she was in the UK and the appellant was in Sri Lanka is not surprising. The judge had found the appellant credible and she had given evidence of indirect threats. The judge gave reasons as to why her husband was capable of violence towards her by the very virtue of the fact of the criminal conviction and it is not speculative to surmise that it would be "surprising if the husband was not harbouring anger or resentment towards her given that she has reported him to the authorities and he has served a jail term as a result".

13. As Mr Aslam pointed out the judge records the appellant's claims, at paragraph 21, that she had already received a large number of threats from her husband by way of text messages and there appeared to be no challenge to this. That the judge at [44] surmised that the husband would seek her out in order to inflict harm on her for 'tarnishing his honour' should she return to Sri Lanka was a plausible finding of fact particularly on the lower standard of proof. This is not speculation but part of the assessment of risk and it is incumbent upon the judge to undertake that assessment of the facts. That indeed was the appellant's case and which the judge accepted. Motive will be an element of that assessment of credibility.
14. It may be the case that the judge did not specifically resolve the issue relating to the appellant's husband's sphere of influence but, as I have stated, and the respondent sets out in the reasons for refusal letter, the appellant's evidence was consistent that the husband was possessed of relatives in the police, [question 53 AIR to 56 AIR]. The judge did record at paragraph 23 that she knew that her husband was in Sri Lanka because he had been to her father's house to threaten him and she confirmed that she had "no documents to support her assertion that her husband or his girlfriend had connections in the CID and in the police or with politicians" but the judge nonetheless at paragraph 44 found her to be a credible witness and thus by implication accepts her evidence.
15. Even if that were not the case, the judge has set out, in response to the Home Office submission that in a country of 21 million people the husband would not easily locate her, in a finding open to him, that it was a relatively small country and that the children were able to register for schools and hospitals then he would be able to find them. This is the

judge's reasoning and, to my mind, is adequate. The threshold for the finding of facts in relation to an asylum claim is to the lower standard of proof. Assessment of risk is required and is not the same as speculation. The particular point raised by the judge at paragraph 49 and as submitted by the appellant's representative at the First-tier Tribunal, is that the appellant would not be expected to go into hiding or disguise herself. As the judge identified she will be relocating with children and it is not speculation but assessment of risk that it "seems inevitable that, if he had a mind, to he would find out from mutual friends, relatives or contacts that she had returned and where she was living". The judge would appear to conclude that there was a strong chance that she would be identified whether or not the husband sought her out. The risk does not have to be inevitable merely a 'reasonable likelihood' to the lower standard. At paragraph 49 I find that the judge, and it was open to him, reasonably found that there was a possibility which is sufficient in terms of the standard of proof in relation to asylum claims that the appellant might be found.

16. With regard sufficiency of protection, the judge did make a finding at paragraph 50 that:

"The appellant made much in her evidence of the fact that her husband has contacts with politicians and that his girlfriend is rich and influential and therefore could use those contacts to help locate them and to ensure the authorities would not take steps to protect her".

17. Having accepted the appellant's evidence he found that as a woman, and even without the additional issue of the husband's links in Sri Lanka, she would not easily find protection from the authorities [paragraph 51]. The judge set out at paragraphs 51 and 52 that:

"research shows that less than 1% of women who experience domestic violence will seek protection as it is viewed as a remedy of last resort. This is because:

'dominant social and cultural norms in Sri Lanka which tend to privilege the family unit over a women's right to bodily integrity clearly discourages women from seeking legal recourse for violence ... Violence is to be endured silently and not to be disclosed to the public'".

18. Under paragraph 53:

"The 1% who do seek the protection of the courts, 'are confronted with the fact that familial ideology manifests itself in ... the trivialising and minimising of violence, the dismissal of violence as a private matter to be dealt with within the family unit and not to be resolved in a court of law'".

19. As such the judge had explained and given reasons why the appellant would not be able to relocate and why she would not be given sufficiency of protection on return, not least by citing relevant background material in the form of the Home Office Country of Origin Information Report for Sri Lanka dated 7th March 2012. As such I find that the grounds in the application for permission to appeal are merely a disagreement with the findings of the judge.
20. The decision of Judge Robison discloses no material legal error of law and the decision shall stand.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 10th March 2016

Deputy Upper Tribunal Judge Rimington