



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

Appeal Number: AA/06216/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 14th July, 2017**

**Decision & Reasons Promulgated
On 16 August 2017**

Before

Upper Tribunal Judge Chalkley

Between

**MRS KK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

*For the Appellant: Miss Sane of Counsel instructed by Ison Harrison Ltd, Solicitors
For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer*

REASONS FOR FINDING AN ERROR OF LAW

1. This is the appeal of KK, a national of Sri Lanka, who was born on [] 1959, and who arrived in the United Kingdom illegally on 26th February 2011. She appealed against the decision of the respondent taken on 19th March

2015, to refuse her claim for asylum and humanitarian protection and her human rights claim under Articles 2, 3 and 8 of the European Convention. Her appeal was heard by First-tier Tribunal Judge Chapman at Bradford on 27th February 2017.

2. The appellant claimed asylum on 22nd March 2011, and her son, who is now an adult was dependent on her claim. Initially, the appellant appealed the respondent's decision and First-tier Tribunal Judge Phillips QC heard her appeal on 16th February, 2012, and dismissed it on 18th April 2012, finding, *inter alia*, that the appellant was not credible and that she had been dishonest, either about her late husband's or her own, association with the LTTE. The appellant sought to appeal that decision, but permission to appeal was refused by the Upper Tribunal on 7th August 2012, and she became appeal rights exhausted on 13th August 2012. Subsequently, further submissions have been raised, the most recent on 13th August 2013, but the respondent again rejected the appellant's claims in a decision letter dated 19th May, 2015. The appellant appealed that decision and the appeal was then heard by First-tier Tribunal Judge Batiste on 15th June 2015.
3. The appellant, dissatisfied with that decision appealed to the Upper Tribunal and the Upper Tribunal found that there had been errors of law in the determination, such that Judge Batiste's decision could not stand. The matter was remitted for hearing de novo and thus it came before Judge Chapman.
4. The appellant has, unfortunately, suffered mental health issues, initially quite seriously. More recently her mental health has improved and before the judge there was a report updating the appellant's medical condition from Professor Jenny Shaw, a Consultant Psychiatrist, who saw the appellant and her son on 28th September 2016, and prepared a report on each of them dated 6th October 2016. The judge found the appellant not to be credible and dismissed her appeal on asylum, humanitarian protection and human rights grounds. The appellant challenges that decision asserting, amongst other things, that the judge erred by refusing to apply the Joint Presidential Guidance Note No 2 of 2010 relating to vulnerable appellants, when being asked to find that the appellant was a vulnerable and sensitive witness, such as to engage that guidance.
5. At the hearing before me today both representatives agreed that there had been errors of law in the determination, such that it could not stand. Miss Pettersen accepted that in the light of the contents of the Professor's report, more was required by the judge before refusing to accept that the appellant was a vulnerable witness. There were allegations of other errors in the grounds, but it is not necessary for me to deal with them.
6. I have concluded that this appeal must be remitted again to the First-tier Tribunal. I set aside the decision of First-tier Tribunal Judge Chapman, but of course, on a rehearing of the appeal the initial decision of Judge Phillips

QC will be the starting point in applying *Devaseelan (Second Appeals - ECHR - Extra-Territorial Effect) Sri Lanka* [2002]* UKIAT 00702. The appeal should be heard by a judge other than Judge Phillips QC, Judge Batiste and Judge Chapman. A Tamil interpreter will be required and three hours should be allowed for the hearing of the appeal.

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 her or any member of her 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.

Richard Chalkley
Upper Tribunal Judge Chalkley