Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/10556/2015

THE IMMIGRATION ACTS

Heard at Field House

On 20 June 2017

Decision & Reasons Promulgated
On 22 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

S M
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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 his 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.

Representation:

For the Appellant: Mr N Paramjorthy, Counsel, instructed by Genga & Co Solicitors

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For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Parkes ("the judge"), promulgated on 1 March 2017, in which he dismissed the Appellant's appeal on all grounds. The Appellant, a national of Sri Lanka, had come to the United Kingdom in 2013. Her claim was based upon her familial connections to the LTTE as well as specific problems encountered by her in the past. The Respondent rejected her protection claim on 13 July 2015.

2. The Appellant's initial appeal to the First-tier Tribunal was dismissed by a decision promulgated on 4 May 2016. This decision was successfully challenged to the Upper Tribunal and the First-tier Tribunal's decision was set aside on 16 August 2016. The matter was remitted for a complete rehearing before another judge.

The judge's decision

3. In a relatively brief decision the judge considers a number of items of documentary evidence provided by the Appellant in support of her case. He sets out a number of criticisms of this evidence and also notes the absence of other evidence which might potentially have been provided by the Appellant. The judge concludes that the country guidance decision in GJ (post-civil war: returnees: risk) Sri Lanka CG [2013] UKUT 00319 (IAC) remained binding upon him. At paragraph 30 he concludes that the Appellant had not shown that she had been detained in Sri Lanka or that her family had ever been of adverse interest to the Sri Lankan authorities. He finds that the Appellant's mental health had significantly improved over the course of time.

The grounds of appeal and grant of permission

4. There are seven grounds of appeal relating to the Appellant's mental health, the documentary evidence that was submitted, the issue of a lack of certain evidence, and a failure by the judge to consider country information which post-dated the decision in GJ.

5. Permission to appeal was granted by Upper Tribunal Judge McGeachy on 20 April 2017.

The hearing before me

6. At the outset of the hearing I asked both representatives whether they had with them a copy of a letter from Dr Okhari, a Consultant Psychiatrist, who had been involved in the Appellant’s care over the course of time. Although this letter is included in the index to the Appellant’s initial appeal bundle, it does not in fact appear within that bundle and I could not find it on my file. In the event, neither representative could locate the letter. Mr Paramjorthy acknowledged that the absence of this letter undermined his ability to rely on the first ground of appeal. However, he submitted that there was enough in the remaining challenges for material errors of law to be found.

7. Mr Paramjorthy relied in particular on what the judge said in paragraphs 18 to 20 and 28 of the decision. He submitted that in certain respects the judge had required corroborative evidence and had failed to make clear findings on other members of the Appellant’s family. In respect of paragraph 28 the judge had failed to have any regard to the country information set out in the Respondent’s own Country Information Guidance on Tamil Separatism.

8. Mr Whitwell relied on the Rule 24 response. He acknowledged that there was some force in the Appellant’s challenge to the judge’s decision, but he was not conceding the appeal. In respect of the MP’s letter the judge was entitled to say what he did in paragraphs 21 and 22 of the decision.

9. In response Mr Paramjorthy confirmed that he was unable to locate Dr Okhari’s letter but emphasised that the other grounds were sufficient for me to set aside the judge’s decision.

Decision on error of law

10. As I announced to the parties at the hearing, I conclude that there are material errors of law in the judge’s decision. My reasons for this conclusion are as follows.

11. First, there is a general sense of unease arising from the judge’s findings that in certain respects corroborative evidence was effectively being expected or required. An example of this is contained within paragraph 19, wherein the judge holds the absence of photographs showing her on active LTTE service counted against her claim. I have concerns as to whether any such photographs would ever exist, but in any event, an absence of photographs in this context could not in my view be an adequate reason for undermining the credibility of a claim. In respect of paragraph 20 the judge has held the absence of what he describes as “supporting evidence” relating to the curtailed nature of her claimed LTTE training against the Appellant’s credibility. It is not clear what is meant by “supporting evidence”, but although an absence of, for example, country information on a particular point may be relevant, it does not necessarily mean, of course, that a person’s own evidence is worthy of little or no

weight. In my view the judge has either required corroborative evidence when, as a matter of law, this would be an erroneous approach, or has failed to make a finding on the Appellant's *own* evidence in relation to her claimed training, notwithstanding the absence of corroborative evidence.

12. Second, in my view the judge's approach to the MP's letter is materially flawed in two respects. First, while it appears to be correct that the contents of the MP's letter are based upon what was told to him by other people and was not from his own direct knowledge, this does not *in and of itself* render the evidence to be untrue or otherwise unreliable. It is an item of evidence to be considered in the round and caution must be applied when rejecting evidence simply on the basis that the source of the evidence emanates from persons known to the Appellant. I cannot see any reasoning as to why the contents are unreliable, save for the mere fact that the information came from family members. The second error in approach relates to what is said in paragraph 22. The judge is critical of the MP's letter because it was over a year old and had not been updated. What is said in the letter appears to be connected by the judge to other untranslated items of evidence to which he was not prepared to attach any weight. He was entitled to disregard untranslated evidence, of course, but the import of the MP's letter was that it went (at least on its face and in the context of the Appellant's case as a whole) to corroborate material past events which went to the core of her claim. This was quite separate from the untranslated documents. The fact that the letter was over a year old at the time of the hearing before the judge seems to me to be rather beside the point. It does not represent an adequate reason for placing little or no weight upon this item of evidence. In this regard I agree with what is said in ground 3 of the grounds of appeal.

13. Third, there is an error of approach in paragraph 28. Within this paragraph the judge states:

> "The country guidance of GJ remains binding and can be departed from if there is evidence to justify doing so but there is nothing in the applicable case law that would show that the celebrations that the Appellant spoke of would be a source of danger."

The difficulty here is that this element of the Appellant's case was based upon country information post-dating GJ. It had nothing to do with other case law.

14. Having regard to the Record of Proceedings and the grounds of appeal I am satisfied that the relevant country information (which was included in the Respondent's Country Information Guidance document on Tamil Separatism) was before the judge, and that particular paragraphs were cited to her in submissions. However, the judge has failed to engage with this country information. The country information went to material issues in the Appellant's case, including involvement with celebrations of heroes and/or martyrs. It might be that the judge, having assessed all of the relevant current country information, would have deemed it insufficient to

depart from the guidance in GJ or, that in any event, it simply did not give rise to any potential risk on return. The error lies in failing to engage with this evidence in the first place and failing to reach any findings thereon.

15. In respect of the Appellant's mental health, as mentioned previously, I do not have Dr Okhari's letter before me. Having read the psychiatric report from Dr Persaud, it is clear that he was aware of Dr Okhari's letter and indeed I see mention of it in the Record of Proceedings. It is a pity that I have not had sight of this item of evidence and it makes it difficult to reach a firm conclusion in respect of the challenge made against the judge's approach to the Appellant's health in general. I must say that I have some concerns about the judge's conclusion that the Appellant had of her own volition, declined relevant treatment (see paragraph 30). It was the clear opinion of Dr Persaud that the Appellant remained significantly unwell. However, my decision on error of law is not based upon the mental health issue. I also have concerns about the apparent failure of the judge to make clear findings on the Appellant's family members. Nowhere is it clearly set out as to what their role may have been in relation to the LTTE. All there is, is a conclusion stated in paragraph 30 that it is not accepted that her family members had ever been of interest to the security forces in Sri Lanka. I do not base my decision on error of law on this point either as it was not expressly raised in the grounds of appeal.

16. In light of the above I set aside the judge's decision.

Disposal

17. Both representatives were agreed that this matter should be remitted to the First-tier Tribunal. Having regard to the core issues in this case, namely that of credibility and profile on return, and paragraph 7.2 of the Practice Statement, I have concluded that remittal is the appropriate course of action. I bear in mind of course that this appeal has already been remitted once, and so I take this step with some hesitation. However, credibility is very much a live issue and there needs to be a complete rehearing of the case with appropriate findings of fact before any proper assessment of risk can be undertaken. I would add an observation.

18. It might be thought that upon remittal the appeal could be heard by a panel of the First-tier Tribunal, given the history of this case. That would be a matter for the First-tier Tribunal to decide for itself.

Notice of Decision

I find that the decision of the First-tier Tribunal does contain material errors of law.

I set aside the decision of the First-tier Tribunal.

I remit this appeal to the First-tier Tribunal.

Signed Date: 22 June 2017

Deputy Upper Tribunal Judge Norton-Taylor

Directions to the First-tier Tribunal

1. **This appeal is remitted for a complete rehearing with no findings of fact preserved.**

Directions to the Parties

1. **The Appellant shall produce a consolidated bundle of all relevant evidence relied upon;**
2. **The Appellant shall also provide a skeleton argument setting out the nature of her case and with references to evidence contained in the consolidated bundle;**
3. **The bundle and skeleton argument shall be served on the Respondent and filed with the First-tier Tribunal no later than 21 days before the next hearing.**
4. **Both parties shall comply with any further directions issued by the First-tier Tribunal.**