



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

Appeal Number: AA/12621/2015

THE IMMIGRATION ACTS

**Heard at Bradford
On 6th September 2017**

**Decision & Reasons Promulgated
On 14th September 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

PM

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Home Office Presenting Officer

For the Respondent: Mr B Williams of Counsel, instructed by Duncan Lewis & Co

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Rowlands made following a hearing at Hatton Cross on 16th February 2017.

Background

2. The claimant is a citizen of Sri Lanka born on [] 1983. He came to the UK in February 2011 as a dependant on his wife's student visa. On 24th February 2015 that visa was curtailed on deception grounds and the claimant made an asylum claim on 13th March 2015. He was refused on 18th September 2015 and his appeal against the refusal was dismissed on 29th April 2016. That decision was subsequently set aside and the matter came before Judge Rowlands on 16th February 2017.

3. He claimed that he and his wife had difficulties with a Mr T, a very rich man with political connections in Sri Lanka.

4. The judge assessed the evidence and wrote as follows:-

“The real difficulty in this case lies with the credibility of his evidence. He has told different stories about what has happened and given the impression of being someone prepared to say whatever is necessary to back up his claim. He has been inconsistent about whether he knew or had ever been warned about the behaviour of Mr T, he has been inconsistent about whether he even knew that Mr T existed, let alone the behaviour that he was exhibiting towards his wife's family.

His wife gave evidence in support of him and I was somewhat surprised bearing in mind the report of Dr Persaud in which it was suggested that she would not be fit to give evidence and would be too confused. Clearly that wasn't the case. However, there are issues over her evidence as well. She is after all somebody who has had her leave curtailed because of producing false documents. I note that that is something that has not been appealed against and there is no explanation as to why the Home Office would make this up if it weren't true. Her history in this respect raises grave doubts over her credibility as well.”

5. Having raised his concerns about the credibility of the oral evidence the Immigration Judge then concluded:-

“Notwithstanding all of this I am faced at the same time with a number of documents albeit provided mainly by family members which actually confirm the truth of what they have said. Despite my misgivings over their honesty faced with all these documents I have reached the conclusion that it is more likely than not that they are telling the truth about the behaviour of this man towards the appellant's wife and consequently towards him before and since their marriage.”

6. The judge found that the problems they faced from Mr T had nothing to do with any Convention reason and dismissed the appeal on asylum grounds.

7. He then turned to the question of the grant of humanitarian protection. He said:-

“Clearly it would appear that there has been concentrated effort by Mr T to harass and threaten the appellant’s wife, her family, him and his family and on the face of it there has been no assistance offered to them from the police. The question is is it safe for them to return or do they need protection? Could they reasonably be expected to relocate somewhere else and still be safe from Mr T. The question of it being reasonable for them to relocate is linked inextricably to the appellant’s wife’s mental health. So far as that is concerned I have considered the report of Dr Persaud and have looked at it not in isolation but in line with all her other medical notes. I have also considered the documents provided by her father including the record of her hospitalisation in the past. I am satisfied that in Sri Lanka she was admitted to hospital on the basis of having attempted suicide and that the diagnosis of Dr Persaud is correct in all the circumstances despite him having only a relatively short period of time to interview her. I am satisfied that there is a real risk that her removal to Sri Lanka, to the very place where the experiences which have probably led to her current mental state, raises a real risk of a deterioration in her mental state and the possibility of further suicidal thoughts and actions. For these reasons I consider it to be unreasonable to expect them to relocate in Sri Lanka and she is entitled to humanitarian protection in the United Kingdom. His wife is clearly a dependant on his claim.”

8. The judge also allowed the appeal on humanitarian protection grounds and on human rights grounds, for the same reasons.

The Grounds of Application

9. The Secretary of State sought permission to appeal on the grounds that the judge had erred in assessing credibility, failing to separate the assessment of the documents from the oral evidence and failing to consider the evidence in the round. She noted that the claimant’s wife was a dependant upon his claim and had not made a protection claim in her own right.
10. Second, there was no evidential foundation that there is a state of internal armed conflict or a level of violence capable in general of adversely affecting an ordinary citizen in Sri Lanka, and the judge had failed to explain how there would be any breach of Article 3 and or why the appellant would not be able to carry on his own private life in Sri Lanka.
11. The claimant served a skeleton argument. He argued that the judge had considered all of the evidence in the round. He had not rejected the oral evidence before turning to the documents, but simply identified his concerns as he was required to do. The judge found that Mr T’s harassment was also directed at the claimant.
12. There was no requirement in Article 15 of the Qualification Directive for there to be an internal armed conflict. The claimant could succeed if he

showed that there was a real risk of serious harm including torture or inhumane or degrading treatment or punishment of an applicant in the country of origin (Article 15(b)), and the mental health of his wife was plainly relevant to the issue of reasonableness of relocation.

13. It was not necessary for the judge to repeat his reasoning with respect to Article 3. So far as Article 8 was concerned it was plain that the judge allowed the appeal on the basis of the insurmountable obstacles to his family life continuing in Sri Lanka.

Submissions

14. Mrs Pettersen relied on her grounds and submitted that the judge did not treat the documentary evidence with the caution required. The documents were produced late and were not before the original judge who heard the appeal. So far as internal flight was concerned the judge had failed to consider whether there was psychiatric support available to the claimant's wife elsewhere in Sri Lanka.
15. Mr Williams relied upon his skeleton and submitted that the judge's credibility findings were open to him. He had considered the risk in relation to both the claimant and his wife. The determination of the previous judge had been set aside and therefore it could not properly be said that the documents had been provided late. The judge was entitled to rely on the supportive affidavit from the claimant's father-in-law and the other documents from Sri Lanka. There was no need for the judge to repeat his reasoning in respect to Articles 3 and 8.

Decision

16. I am satisfied that the judge erred in law.
17. The first ground challenges the judge's credibility findings. There were serious Section 8 issues in respect of both. There was a lengthy delay between the claimant's arrival in the UK and his claim to asylum, of some four years. His wife had employed deception in relation to her student visa. Moreover, the judge noted that there were inconsistencies in the oral evidence which he had not resolved.
18. The judge set aside these concerns on the basis of documentary evidence. He did not say what the documents were, nor why they were sufficiently weighty to offset the negative factors outlined above. He did not address the fact that they had not been produced at an earlier stage.
19. The judge was obliged to give proper reasons for his decision and has not done so.
20. The skeleton argument makes a justified criticism of the Secretary of State's Ground 4. It would have been possible to allow this appeal on humanitarian protection/Article 3 grounds if there had been a proper evidential basis for concluding that there was a real risk of serious harm in

the claimant's home area. However, the reasonableness of relocation was an integral part of his considerations and in that context the judge was obliged to consider whether the claimant's wife could obtain assistance for her mental health problems outside her home area. He did not do so.

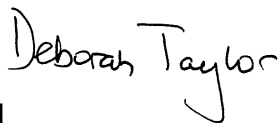
21. For the same reason, the decision in respect of Article 8 is insufficiently reasoned. It is not clear how the judge has reached the conclusion that there are insurmountable obstacles to the couple exercising family life together in Sri Lanka without a consideration of what help would be available to her there.

Notice of Decision

The judge erred in law. The decision is set aside and will have to be made afresh. It will be reheard at Bradford before a First-tier Judge other than Judge Rowlands. The claimant is directed to serve a consolidated bundle of documents to the First-tier Tribunal and to the Secretary of State seven days before the hearing.

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.



Signed
2017

Date 13 September

Deputy Upper Tribunal Judge Taylor