



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

Appeal Number: PA/04735/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 27 September 2017**

**Decision & Reasons
Promulgated
On 5 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE APLEYARD

Between

**MRS S G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Mannan, Counsel.

For the Respondent: Mr C Bramble, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka. She has family there and is married and her children were born in December 2011 and July 2014. She feared the authorities are looking for her and will arrest her and harm her on return to her country of origin. Her feared persecutor is the government of Sri Lanka. She made application for international protection which the

Respondent refused. She appealed that decision and following a hearing, and in a decision promulgated on 23 June 2017, Judge of the First-tier Tribunal Freer dismissed her appeal on all grounds.

2. The Appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Kelly on 21 July 2017. His reasons for so doing were:

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- “1. The appellant seeks permission to appeal, in time, against the decision of First-tier Tribunal Judge Freer, promulgated on 23rd June 2017, to dismiss her appeal against refusal of her Protection Claim.

2. The grounds plead that the Tribunal (a) failed to make findings upon a critical aspect of the Appellant’s asylum claim (that her uncle was detained for assisting her escape), (b) applied the country guidance case of **GJ** inappropriately given that the appellant is a Sinhalese female rather than a Tamil male, and (c) failed to consider the effect upon the welfare of the appellant’s children of her enforced removal. Those grounds are arguable and permission to appeal is accordingly granted.”

3. Thus, the appeal came before me today.

4. Mr Mannan relied upon the three grounds seeking permission to appeal. He firstly submitted that the Judge accepted that the Appellant was a Sinhalese woman who had had a relationship with a Tamil man who was committed to the break up of the Sri Lankan State, that she was arrested detained tortured, vaginally and anally raped and had to have an abortion consequently and that it was plausible that the authorities would make enquiries about the Appellant’s boyfriend thereby triggering intelligence gathering. Although the Judge went on to find that there would be no current risk to this Appellant it is clear that he failed to take account of the Appellant’s evidence in relation to an uncle who had been taken into custody because he had made arrangements for the Appellant’s escape, and that such evidence undermines the Judge’s finding that the Appellant faces no current risk. Secondly that had the Judge properly applied relevant Country Guidance the appeal would have been allowed. Albeit that **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)** concerns Tamil men who were former members of the LTTE this is an Appellant who is Sinhalese, and female and as such a more nuanced consideration was required. Finally, that there is a failure by the Judge to consider whether the Appellant’s children “are at risk of neglect of their mother’s mental health is damaged in the course of enforced removal”.

5. Mr Bramble’s submissions were that the Judge had made findings that were open to be made on the evidence including that the Appellant had formed a relationship with a Tamil person who is committed to the break up of the State resulting in detention and torture. The Judge has gone on

to weigh other factors before concluding that despite this background the Appellant would not be at risk upon return. The failure to deal with the evidence in relation to the Appellant's uncle, when looking at the totality of the issues considered by the Judge, does not constitute a material error of law. **GJ** is relevant and the Judge was entitled to take it into his consideration when dealing with the appeal. He has further found that this was an Appellant whose dependants were her husband and children and their interests have been set into the conclusion that they would be removed as a family unit.

6. I find that the Judge has materially erred. The totality of the evidence has not been considered and particularly in relation to the Appellant's uncle and his detention. Findings need to be made on this issue and then on the full facts a decision should be made as to whether the Appellant will be at risk if returned to her country of origin.
7. Neither party has challenged the rationality of the Judge's findings at paragraph 38 of his decision. It states: -

"38. What I am prepared to find it that, on the balance of probabilities, the Appellant had an unsuitable relationship with a Tamil person, who was committed to the break up of the State. That is enough without more to explain why she was detained twice and tortured, which I accept she was. It is reasonably likely that her parents would want to marry her off as she says. Leaving Sri Lanka would ensure she did not come into contact with him again."

Accordingly, the findings within paragraph 38 of the Judge's decision are to be preserved but beyond that there is to be a de novo hearing in relation to the balance of the appeal.

8. I am satisfied that the Judge has failed to take into account the totality of the evidence and given inadequate reasons for dismissing the appeal.
9. Having carefully considered whether I can go on to remake the decision in this appeal I conclude that that would not be possible. Further evidence is required and no Sinhalese interpreter was provided for today's hearing. In the circumstances, it is appropriate for this appeal to be heard again and for all the evidence to be reconsidered and all matters decided afresh by the First-tier Tribunal subject to the preservation of the findings within paragraph 38 of the Judge's decision.

Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside subject to the above mentioned preserved finding. The appeal is remitted to the First-tier Tribunal to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunals, Court and

Enforcement Act 2007 and Practice Statement 7.2(b), before any Judge aside from Judge Freer.

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 4 October 2017

Deputy Upper Tribunal Judge Appleyard