



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA069052016

THE IMMIGRATION ACTS

Heard at: Field House
On: 6 July 2017

Decision and Reasons Promulgated
On: 14 July 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

C N L A S A
ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms D Revill, counsel, instructed by MTC & Co Solicitors
For the Respondent: Mr P Singh, Senior Home Office Presenting Officer

DECISION AND REASONS

1. 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.

2. The appellant is a national of Sri Lanka, born on [] 1987. She appeals with permission against the decision of the First-tier Tribunal dismissing her asylum and human rights appeal in a decision promulgated on 19 April 2017.
3. In granting permission to appeal, First-tier Tribunal Judge Brunnen found that it was arguable that the Judge misapprehended the date of the psychiatric examination, and thus failed to appreciate that the resulting diagnosis was recent and accordingly failed to take into account her psychiatric condition when making his findings; by treating the appellant's mother as complicit in procuring a false arrest warrant and discounting her evidence without taking account of her evidence that she was ignorant of the fact that the warrant was false; by failing to consider the appellant's explanation for the delay in claiming asylum, and by treating her departure from Sri Lanka using her own passport as an indication that she was not of interest to the authorities there without considering the evidence that her departure was assisted by payment of a bribe.
4. Ms Revill, who represented the appellant at the hearing before the First-tier Tribunal, adopted her grounds seeking permission to appeal. She noted at the outset that the respondent in her Rule 24 notice accepted that the Judge misapprehended the date of the psychiatric report, and incorrectly found that the appellant was under no risk for leaving the airport. That is contrary to the Country Guidance. It was however not accepted as constituting a material error in the Rule 24 response.
5. She submitted that the Judge mistakenly believed that the psychiatric examination took place on 15 December 2015 and was followed by a report dated 31 October 2016. However, the examination in fact took place on 29 October 2016. The Judge confused the date when the examination took place with the date of the appellant's initial contact and screening interview with the respondent.
6. The Judge stated that he was willing to accept that she did exhibit symptoms of PTSD in 2015, but that there was no evidence that she is not recovering or that she is still exhibiting signs of PTSD now. However, had the Judge appreciated that the examination and report dated from late October 2016, and not a year earlier, he might have accepted that the appellant was displaying PTSD symptoms relatively recently, approximately four months before the hearing and that she may continue to do so. That in turn affected his assessment of her accounts during her interview and evidence, since he would have been obliged to consider whether any perceived vagueness or inconsistency might be explained by her mental health problems.
7. Moreover, the Judge failed to consider that the appellant and her mother had always acted in good faith in relation to the purported arrest warrant. She believed that she had paid for a copy of the genuine document and not a forgery. The Judge failed to consider this account or give reasons for rejecting it. He in fact assumed that the appellant's mother had knowingly obtained false documents to support the appeal. He stated that she had been obviously complicit in the production of the

documents and is willing and able to support the appellant even to the extent of obtaining false documents. Accordingly, he found that there is no credible evidence that she is wanted by the Sri Lankan authorities now.

8. This error as to the content of the appellant's evidence is material and it appears to be the basis upon which the Judge rejects the mother's written evidence that she had been told in 2011 of a warrant in the appellant's name and that the police had come in search of her every year since then. If, however, the appellant's mother was not complicit in supplying the false document there was then no reason to regard her evidence as tainted.
9. Ms Revill submitted that the Judge had failed to have regard to the country guidance when he stated at [28] that the appellant was able to leave Sri Lanka using her own passport. The Judge found that this is indicative that she was not on a stop list.
10. She referred to the decision in GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 0031 (IAC) where the Tribunal accepted the evidence of the expert that it was possible for wanted persons to pass safely through Colombo airport on payment of a bribe. In MM (Sri Lanka) v SSHD [2014] EWCA Civ 36 the respondent accepted, and the Court of Appeal found, that in the light of GJ, it was a material error of law for a Judge to conclude that the appellant would not have been able to depart from the airport unnoticed if the Sri Lankan authorities had an interest in him.
11. The evidence of the appellant's mother was that the man to whom she paid a bribe for the appellant's release had also helped them with an immigration officer for the appellant to leave Sri Lanka (respondent's bundle page G2). Accordingly that suggested that her passage to the airport had been facilitated through payment of a bribe. That affected the Judge's finding that the appellant having left Sri Lanka on her own passport would not be of adverse interest as she claimed.
12. Mr Singh on behalf of the respondent accepted with regard to Ground 3, that the Judge erred in finding that the appellant failed to give a reasonable explanation for her failure to claim asylum earlier in that he did not consider that she was a vulnerable witness. She had given an explanation for the failure to claim asylum earlier at the substantive interview. There she stated that she did not want anyone to know what she went through. She just wanted to come here and be safe. She never opened her mouth about it.
13. Moreover, the Judge had no regard to the evidence of Dr Obuaya that in his experience of working with survivors of sexual abuse, shame and embarrassment associated with the index trauma often serves as a barrier to full disclosure and the seeking of help. The Judge also failed to consider the content of the Istanbul Protocol and the judgement in R v SSHD ex parte Ejon [1998] INLR 195 as to the conduct of survivors of sexual violence which had been referred to in the appellant's skeleton argument.

14. Mr Singh also accepted that the Judge erred in finding that the appellant had been able to leave Sri Lanka using her own passport which was indicative that she was not on any stop list.
15. He initially contended that the question as to how material those errors were is a matter for the Tribunal, but eventually accepted that the findings were unsafe.

Assessment

16. I accept for the reasons referred to already that there have been errors of law. In particular, the conclusion that the appellant left Sri Lanka on her own passport which was indicative that she was not of adverse interest cannot be sustained in the light of the authorities. Moreover, the Judge did not have proper regard to the appellant's explanation at interview as to why she failed to claim asylum earlier than she did. Those matters had been dealt with in the psychiatric report, the Istanbul Protocol and the decision in Ejon.
17. I find that the errors are material. It cannot be confidently contended that but for the errors the Judge would have arrived at the same conclusion.
18. I accordingly set aside the decision. Mr Singh did not oppose Ms Reville's application that the appeal be referred to the First-tier Tribunal (Taylor House), for a de novo hearing.
19. I have had regard to the President's Practice Statement regarding the remittal of an appeal to the First-tier Tribunal for a fresh decision. I am satisfied that the effect of the errors has been to deprive the appellant of a fair and proper opportunity for her case to be properly put and considered by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and it is set aside.

The case is remitted to the First-tier Tribunal (Taylor House) for a fresh decision to be made by another Judge.

Anonymity direction continued.

Signed

Date: 13 July 2017

Deputy Upper Tribunal Judge C R Mailer