



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

Appeal Numbers: PA/09695/2016  
PA/09697/2016

**THE IMMIGRATION ACTS**

**Heard at Birmingham  
On 8<sup>th</sup> September 2017**

**Decision & Reasons Promulgated  
On 19<sup>th</sup> September 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**[T J]**

**[J K]**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms S Jegarajam (Counsel)

For the Respondent: Mr A McVeety (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge M Robertson, promulgated on 18<sup>th</sup> April 2017, following a hearing at Sheldon Court Birmingham on 28<sup>th</sup> March 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant

subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

2. The Appellants are husband and wife. The principal Appellant, is the wife, born on [-] 1990, and her dependent husband was born on [-] 1986. Both are citizens of Sri Lanka. The principal Appellant appealed against the decision of the Respondent dated 31<sup>st</sup> August 2016, refusing her application for asylum and for humanitarian protection under paragraph 339C of HC 395.

### **The Appellants' Claim**

3. The essence of the Appellant's claim was that her father was involved in the Liberation Tiger Tamils of Eelam (LTTE) from 1991 to 2003. He was arrested during the war. There were round ups. He was then released after a day. She states that in 2009 her father told her that he was going away and to tell the police that he had gone missing. He had a death certificate made out and it was sent to show that the police came looking for her (see paragraph 14).

### **The Judge's Findings**

4. The judge held that the Appellant did not succeed in her claim. Her principal findings are set out at paragraph 35 where the judge refers to the country guidance case of **GJ (Sri Lanka) [2013] UKUT 00319** and the judge makes the following findings. First that the Appellant's husband confirmed that during the hearing that they were not involved in any political activities in the UK and had not joined any political organisations and had not raised any money for any political organisations during the time in this country.
5. Second, that the Appellant's husband also confirmed that he had no fear of return to Sri Lanka.
6. Third, that there was no reliable evidence before the judge that either the Appellant or her husband fell within any of the risk categories set out in **GJ**. The judge then went on to consider the Appellant's human rights claims (paragraphs 38 to 39), and went on to dismiss the appeal.

### **The Grant of Permission**

7. The Upper Tribunal granted permission on 5<sup>th</sup> July 2017 expressly on the basis that the judge failed properly to consider the Appellant's case that the first Appellant would be placed at risk as a result of enquiries and in any event arguably failed to have regard to the lawyer's letter.
8. On 20<sup>th</sup> July 2017 a Rule 24 response was entered to the effect that having rejected her account, it was not incumbent upon the judge to speculate as to what did in fact cause the Appellant's mental health issues, and nor was it for the judge to speculate on the statement of the Sri Lankan lawyer.

## **The Hearing**

9. At the hearing before me Ms S Jegarajam made the following submissions. First, that notwithstanding a very detailed and comprehensive determination by the judge, the reference to the lawyer, and his correspondence with the lawyer in the UK, had simply been overlooked. She submitted that there was a letter from the Appellant's solicitors (see page 117 of the Appellant's bundle) to the effect that they had written to the Appellant's Sri Lankan lawyer, who had actually appeared on behalf of the principal Appellant in proceedings in Sri Lanka (see page 157). The lawyer in this case is by the name of TK Dharmasena. The letter by e-mail is dated 20<sup>th</sup> April 2016. What is significant about this, submitted Ms Jegarajam, is that it is a lawyer-to-lawyer exchange, which confirmed that the Appellant had actually been produced in court. Mr T K Dharmasena obtained a certified copy of the court documents in order to establish the issue of the arrest warrant that then followed. It is clear from page 159 that there is information put before the Magistrates' Court. At page 161 there is confirmation that "the suspect should report to the Wellawatte Police Station on second and fourth Sundays of each and every month at 10 a.m., which is clear evidence, submitted Ms Jegarajam, that bail proceedings were carried out with respect to the Appellant, who had been previously detained. Moreover, at page 162 there is no warrant of arrest itself. All these documents, submitted Ms Jegarajam, are internally consistent with each other. No reference has been made by the judge to any of these documents.
10. Second, there is nothing on the face of these documents that actually remotely suggested that they were fraudulent or all contrived for the purposes of the claims that the Appellant now made. Not only is there contact between the lawyer in the UK and the lawyer in Sri Lanka, but the letter actually produces exhibited documents to back up every claim that he makes. The absence of a reference by the judge to these documents led the judge into error.
11. For his part, Mr McVeety submitted that this was a case where he would have to concede that the failure to refer to these documents led the judge to overlook significant evidence that should have been referred to.

## **Error of Law**

12. I am satisfied that the making of the decision by the judge, in what is otherwise a clear and comprehensive determination, was an error that was material to the ultimate decision made, such that it amounts to an error on a point of law (see Section 12(1) of TCEA 2007), and that the only appropriate course of action is to remit this matter back to the First-tier Tribunal to be determined by a judge other Judge Robertson.

13. It would have been otherwise, if the judge in coming to her conclusions at paragraph 35, where the evidence is rejected, and the finding made that there is no risk of harm to the Appellant and the husband, if a reference had also been made earlier to the documents that have now been highlighted by Ms Jegarajam before this Tribunal.
14. The documents on the face of it are internally consistent with each other and there is no suggestion that they are fraudulent at this stage of the proceedings, and it is a matter therefore, for a fact-finding Tribunal below to reach clear findings of fact in relation to these documents, before a decision can be made either way, whether or not to allow the appeal or not.

### **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is allowed. This matter is remitted back to the First-tier Tribunal under Practice Statement 7.2(a).

An anonymity order is made.

### **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

Deputy Upper Tribunal Judge Juss

18th September 2017