



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

Appeal Numbers: PA/13431/2016  
PA/13432/2016  
PA/13433/2016

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 30 November 2017**

**Decision & Reasons  
Promulgated**

**On 18 December 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**KC  
SK  
KK**

**(ANONYMITY DIRECTION MADE)**

Appellants

**and**

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

Respondent

**Representation:**

For the Appellants: Ms P. Solanki, Counsel instructed by ASK Solicitors

For the Respondent: Mr. I. Richards, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal by the Appellants against the decision of First-tier Tribunal Judge Boylan Kemp, promulgated on 19 May 2017, in which she refused the Appellants' appeals against the Respondent's decision to

refuse to grant asylum.

2. As this is an asylum appeal I make an anonymity direction. References to the "Appellant" are to the first Appellant, the lead appellant in this appeal.
3. Permission to appeal was granted as follows:

"The first ground refers to paragraph 25 of the Judge's decision. At paragraph 7 of the affidavit of the Appellant's mother-in-law at page 72 of the Appellant's Bundle 2 (AB2) reference is made to the questioning of the Appellant's brother whilst he was staying at the Appellant's mother-in-law.

The second ground challenges the Judge's treatment at paragraph 28 of her decision of a 2014 letter from the Appellant's mother. The ground correctly asserts the Judge failed to take into account the explanation for the failure to produce that letter are given at paragraph 18 on page 5 of the Appellant's Bundle 1 (AB1).

The third ground complains the Judge failed to identify the inconsistencies upon which she relied at paragraph 29. These are generically referred to but not with any specific references to those parts of the evidence which the Judge found to display inconsistencies. The Judge cannot be criticised for adversely noting the lack of documents before the Tribunal if the Appellant who is well familiar with procedures in the Tribunal and is advised by experienced solicitors does not produce the relevant evidence and no reference is made to it in his mother-in-law's affidavit. However, there is at least one letter from the mother-in-law at page 29 of AB1.

The next ground refers to paragraph 30 of the Judge's decision. It complains the Judge failed to take account of paragraph 17 of the Appellant's statement at page 4 of AB1. The claims of the mother-in-law in her letter at page 29 of AB1 do not support the claims about association with the TGTE.

Finally, the grounds challenge the Judge's treatment of the medical evidence of suicide risk. The Judge considered at paragraph 36 of her decision the position at the date of the hearing but arguably erred in not considering what the position would subsequently be in the event the appeal was dismissed, the Appellant was detained and removed.

Looking at the grounds overall, I find they identify a number of arguable errors of law such that permission to appeal on all grounds is granted."

4. The Appellant attended the hearing. I heard submissions from both representatives following which I stated that I found the decision involved the making of material errors of law and that my full reasons would follow.

## **Error of Law**

### *Ground 1 - failure to consider relevant evidence and lack of reasoning*

5. In paragraph 25 the judge states:

“Dealing first with the evidence of Mr. S, I found his explanation of not wanting to tell the appellant of the incident for approximately three months due to fear despite having returned to the UK on the 3 May 2015 to not be a reasonable or plausible one as he was not in any danger himself, he is a French national who had no need to return to Sri Lanka, and the authorities there would not have been aware that the appellant had been informed of this fact by him. I also note that no mention of this encounter is set out in the mother-in-law’s affidavit dated 4 October 2015, which I find to be strange considering what an important event that would have been. Overall, I did not find the witness’ evidence on this matter to be credible and therefore I have given it little weight when reaching my decision.”

6. I find that the Appellant’s mother-in-law had specifically stated in her affidavit “CID and Police questioned Mr. S when he was staying at our house after having arrived in Sri Lanka to attend the funeral of his mother.” I find that the Judge has erred when she states that there is no mention of the encounter by the mother-in-law. I find that this is a significant omission. I further find, in relation to the explanation by Mr. S for the delay, that he had set out in his witness statement a detailed account, and to reject his account on the basis of the delay in informing the Appellant, given that his account was corroborated by the Appellant’s mother-in-law’s evidence, without giving further reasons, is an error. Taken together, they have led to the Judge dismissing Mr. S’s evidence without giving proper reasons, and she has made an error of fact in relation to the evidence before her.

7. At paragraph 29 the Judge states:

“I accept that there may have been a degree of misunderstanding initially as to whether the appellant was being questioned about his mother or mother-in-law. However, Mr Swaby endeavoured to clarify this in his questioning and overall I am satisfied that the appellant understood what was being asked of him, despite Miss Seehra’s half-hearted attempt to raise a query over his fitness to be a witness; a matter which in any event I did not find to be supported by the medical evidence provided. I do, however, find that there are insufficiently explained inconsistencies in his own evidence, and in the evidence of his wife and his mother-in-law as to how many times the authorities visited his mother-in-law’s home which undermines the credibility of the evidence on this point. I also find the fact that the appellant has failed to produced (sic) letters he has allegedly

received from his mother-in-law, and which would support his asylum claim, to undermine the credibility of his account on this matter, and in doing so I go further and find that these letters simply do not exist.”

8. I find that the Judge while giving general reasons for the inconsistencies, has not specified what evidence was inconsistent. Given that it concerns a matter as significant as the visits made by the authorities to his mother-in-law’s house, it is necessary to set out clear reasons for why the Judge rejected this evidence on the basis of these inconsistencies. This is especially the case given the Judge has recognised that there were some misunderstandings due to interpretation. I find that this failure to give reasons is an error of law.
9. Further, while stating that the medical evidence did not support a finding that the Appellant was not fit to give evidence, there is no consideration throughout the decision of the guidance in relation to vulnerable witnesses - Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. This guidance does not set the bar as high as fitness to give evidence, but relates to the treatment of the evidence of those who are vulnerable, and this vulnerability can be due to mental health issues. However, there is no consideration of the medical evidence with reference to this guidance. The summary of the medical evidence at [33] and [34] indicates that the Appellant suffers from depression, anxiety and PTSD, which is accepted by the Judge. In the face of this finding, to fail to consider the application of the guidance to the evidence before her is a material error of law.

*Ground 2 Failure to consider relevant country guidance and other evidence*

10. In relation to the failure to take into account the country guidance, the grounds correctly assert at [11] and [12] that the Judge failed to take into account the evidence relating to the ability to leave Sri Lanka, as addressed in GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319. The skeleton argument before the Judge referred to paragraphs [170] and [275] which state that “having left Sri Lanka without difficulty was not probative of a lack of interest in an individual”. This is not applied to the Judge’s findings in relation to the Appellant’s travel to and from Sri Lanka at [30] of the decision. I find that this is an error of law.
11. I find that these errors affect the credibility findings, which cannot stand, and therefore given that I have found that the decision involves these material errors of law, there is no need for me to consider the other grounds of appeal.
12. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party

before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. I have found that the credibility findings cannot stand, and therefore given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

### **Notice of Decision**

13. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside. No findings are preserved.
14. The appeal is remitted to the First-tier Tribunal for rehearing.

### **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

Date 15 December 2017

Deputy Upper Tribunal Judge Chamberlain