



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

Appeal Number: PA/03522/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 24 October 2018**

**Decision & Reasons
Promulgated
On 21 November 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

**S R
(ANONYMITY DIRECTION CONTINUED)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K Tobin of Counsel instructed by Tamil Welfare Association

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Obhi promulgated on 20 August 2018 dismissing the Appellant's appeal on protection grounds against a decision of the Respondent dated 9 March 2018 to refuse her asylum in the United Kingdom.

2. The Appellant is a citizen of Sri Lanka. Her personal details are a matter of record on file and are not reproduced here in keeping with the anonymity direction that has been made in these proceedings and which I continue.
3. In circumstances where ultimately I have determined that it is appropriate for this appeal to be returned to the First-tier Tribunal to remake the decision in the appeal with all issues at large, I do not propose to rehearse in full detail the Appellant's immigration history, or all of the claimed facts and circumstances relevant to her asylum claim. Suffice to say for present purposes: the Appellant claimed to have undergone LTTE training and to have provided help for injured soldiers and given them food in or about 2007 (First-tier Tribunal decision at paragraph 5); she claimed that in consequence of these activities she was the subject of adverse attention on the part of the authorities and was detained on two occasions.
4. These key matters are conveniently summarised at paragraphs 3 and 4 of the decision of the First-tier Tribunal:
 3. *During her interview the Appellant said that she feared returning to Sri Lanka because of the authorities who had arrested her on two occasions for supporting the Tamil Tigers. She said that the first arrest occurred on the 18 August 2009 and that she was detained for 6 months at that time and that she was taken to court on a charge of being a Member of the LTTE. The second arrest occurred on the 22 January 2016. She said that she was told to go to Killinochi police station, she was bailed and told that she would have to return whenever required, but she left the country and came to the UK.*
 4. *She claims that after she had left they visited her home address and spoke to her father who told them that she had left the country. Her father died shortly thereafter from a heart attack. She claims that following the first arrest she was released on bail but not the second occasion her father intervened and got an MP involved. The Appellant said that she has not spoken out against the government whilst she was in Sri Lanka. However she had actively shown support for the LTTE."*
5. The Appellant's application for asylum was refused by the Respondent for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 9 March 2018.
6. In turn her appeal to the IAC was dismissed for reasons set out in the Decision and Reasons of First-tier Tribunal Judge Obhi.

7. It is to be noted that it appears that the Respondent's representative before the First-tier Tribunal acknowledged that *"the case turned on credibility"* (see paragraph 37).
8. The First-tier Tribunal Judge, whilst accepting aspects of the Appellant's history, rejected her account of the nature and circumstances of the detention in 2009 and the detention in 2016:

"I do not believe that it is reasonably likely that the Appellant was arrested as she claims in 2009 and in 2016. I find that it is reasonably likely that she was involved in training with the LTTE and that she was caught up in the events which followed the defeat of the LTTE in 2009, and that she was detained at a camp by the Sri Lankan government, but the level of her involvement was of a very low level, there is no evidence that she is of any current interest to the authorities. She has not engaged in any anti-Sri Lankan activities outside of Sri Lanka. Whilst she has scarring on her body there are other explanations for it. Whilst I accept that as a vulnerable witness she was unlikely to have detailed her claims of physical and sexual abuse unless she needed to, it is significant that when she underwent her screening interview she did not mention any involvement with the LTTE. I accept that she has been the victim of domestic abuse and that her marriage has come to an end. The timing of that and the making of the asylum claim are significant." (paragraph 56).

9. I pause to note that although the Judge states therein that the Appellant did not refer to any *"involvement"* with the LTTE at the screening interview, she nonetheless asserted at 5.3 *"In Sri Lanka I was arrested and suspected of being an LTTE member"* and at 5.4 *"I was detained in Sri Lanka for being accused of being a member of the LTTE"*. Of course in stating that she was accused of involvement, the Appellant was not expressly stating that she was involved. However, the argument raised by the Respondent was not simply that she had not mentioned any involvement at the screening interview but that she had denied involvement – and therefore her claim made at the substantive interview to have been involved was subject to attack not on the basis of omission but on the basis of discrepancy: see RFRL at paragraph 40. The Respondent relied on the answer to section 5.5 of the screening interview where it is recorded that the Appellant had responded *"NO"* to the question:

"Have you ever been involved with, or accused of being involved with any

- *pro-government groups*
- *political organisation*

- *religious organisation*
- *armed or violent organisation, group or party?"*

10. It may readily be seen that the answer "No" to such a conglomerate question is not reconcilable with the immediately preceding answers that the Appellant had given on the screening interview at section 5.3 and 5.4 that she had been accused of being a member of the LTTE. This suggest a degree of misunderstanding. In the circumstances it seems to me that the answer recorded at section 5.5 is not a reliable foundation for concluding the Appellant denied involvement with the LTTE in the screening interview. In any event the Judge accepted that the Appellant had been involved in the LTTE, so it is difficult to see why the Judge thought it was adverse that there was no express mention of such involvement in the screening interview. Be that as it may, in overall consideration of the grounds of challenge before me, this is very much a subsidiary point.

11. The primary focus of challenge relates to the First-tier Tribunal Judge's treatment of certain items of supporting documentary evidence. Paragraphs 53 and 54 of the decision are in these terms:

"53. I have considered the additional evidence provided by the Appellant, in the form of a letter from the MP which appears at page 38 of the Appellant's bundle and is dated the 6 April 2018 (or the 4 June 2018 - it is not clear) in which he recites what he has been told by the Appellant's mother. He states that on the 5 March 2018 two CID members went to her house and accused the Appellant of 'reorganising the LTTE in the UK'. I have not been able to read the letter from the attorney as it is in Tamil nor the letter from the Appellant's mother.

54. I place limited weight on this letter as it is almost entirely a statement of what the MP has been told by the Appellant's mother."

12. The MP's letter does indeed in part set out matters that were seemingly reported to him by the Appellant's mother concerning an incident in March 2018. Having done so, the letter continues in these terms:

"It is worth mentioning here that Mrs [I]'s daughter, [the Appellant], was an ex-LTTE member and she was arrested, detained and tortured by the TID and the state forces on two occasions in 2009 and in 2016. In 2016 I was informed by late Mr [I] that her daughter was arrested and sought assistance from me in order to be released from the detention. I have attended Killinochi police station together with late Mr [I] and we paid a lump sum to the Chief Police and she was released".

The letter then goes on to relate the 2009 arrest, although nothing in the paragraph so doing identifies that the author of the letter had any direct involvement or knowledge in matters at that time.

13. It is absolutely clear that in part the MP's letter provides testimony purporting to place him at Killinochi Police Station with the Appellant's father at a time when the Appellant was detained, and describing his being instrumental in securing her release. This necessarily therefore is testimony that purports to corroborate directly from first-hand experience the account of the Appellant. It may be recalled from the recitation at paragraph 4 of the First-tier Tribunal's decision (set out above) that it was part of the Appellant's case that "*her father intervened and got an MP involved*" in the context of the second arrest.
14. Irrespective of the validity of the Judge's observation that part of the MP's letter was a recitation of what had been reported to him, such a circumstance does not in itself undermine the pertinent aspects of the letter that are based on the writer's claimed direct experience and observations. This key passage of the letter is not addressed at all by the First-tier Tribunal Judge, notwithstanding its pertinence and its potential to be directly corroborative of the Appellant's account of her arrest and detention in 2016. The failure to address this aspect of the letter is not justified by the observations made by the Judge at paragraph 54. In my judgement this is a critical material error of law.
15. As regards the other documents referenced at paragraph 53 - a letter from an attorney and a letter from the Appellant's mother - it transpires that translations were before the Judge in respect of both documents.
16. The materials from the attorney are particularly pertinent. They comprise two letters. The first, dated 22 January 2010, is from the attorney to the Registrar at the Chief Magistrates Court in Colombo, cites a case number and requests a certified copy of the complete record of proceedings in the case to be issued to the Appellant. The second is a document signed from Welikada Prison which refers to the subject of the letter having been released from remand custody following an order of the court on 22 January 2010, having been held in remand custody at the women's wing, Welikada Prison from 3 December 2009 to 22 January 2010. Both documents purport to support the Appellant's claim to have been arrested and detained in 2009.
17. Ms Isherwood in the course of her submissions identified some issues and concerns relating to these documents which might undermine their

probative value. I discuss these matters further below. However, notwithstanding Ms Isherwood's observations, it seems to me that it cannot be said that these documents were not material to an overall consideration of the Appellant's case. In the circumstances the Judge's apparent oversight in not identifying the translations that were before the Tribunal amounts to a fundamental error of fact constituting an error of law. This - both on its own and in combination with the error in respect of the MP's letter - further renders the decision of the First-tier Tribunal unsafe.

18. Accordingly I set aside the decision of the First-tier Tribunal for error of law.
19. I have had a helpful discussion with the representatives as to whether the decision in the appeal should be remade before the Upper Tribunal or before the First-tier Tribunal. It is to be noted that the proceedings before the First-tier Tribunal were by way of submissions only, a decision having been taken that the Appellant would not give live evidence because of her medical and mental health circumstances. In this regard it is to be noted that the First-tier Tribunal Judge acknowledged that the Appellant was a vulnerable individual. Had it not been for the identification of issues in relation to the materials from the attorney, I might have been minded to proceed to a consideration of remaking the appeal on the basis of submissions forthwith. However, issues have now been raised in relation to those documents and in all of the circumstances it seems to me that the Appellant should now be afforded an opportunity to provide some further evidence as to provenance, and/or possibly to clarify any confusion or discrepancy that might be apparent on their face. On balance I am persuaded that the most appropriate forum for reconsideration of the appeal is the First-tier Tribunal with all issues at large.
20. One of the issues raised in relation to the documents that are said to have been sourced via the Appellant's attorney is that the case reference number that appears on the attorney's enquiry letter does not match the case reference number that appears on the prison document. Ms Isherwood has also identified that the formulation of the Appellant's name is not identical as between the documents - the extent to which this may be down to legibility or the attempt to transcribe phonetically a Tamil script name into English is unclear. In this latter regard the scope for variation is perhaps undermined by the fact that it appears to be the same translator in both documents. Be that as it may, it seems to me that there may need to be some careful scrutiny of both of the originals with a view to clarifying this issue.

21. So far as the case number is concerned, this is a matter to which the Appellant and her advisors will need to give some consideration. Submissions before me proceeded on the apparent assumption that the second document was a response to the first document; however, on closer scrutiny it seems to me that that is not inevitably the case. As noted above, the first document is addressed to the Registrar at the Magistrates' Court and is asking for a record of proceedings, whereas the second document is simply a confirmation of detention from the prison issued upon request of the Appellant - it may not be a document that is a response to the enquiry raised by the lawyer. The extent to which this offers any explanation for the different case numbers may yet need to be explored.
22. It may also be noted that the specified period of detention is from 3 December 2009 to 22 January 2010 (approximately six weeks), whereas the Appellant claims to have been detained for six months. Again this may need careful consideration and explanation.
23. Ms Tobin indicated that it was presently likely that the Appellant would again not wish to give evidence before the First-tier Tribunal. In the circumstances the earlier requirement for an all-female Tribunal no longer pertains. If however circumstances change, whether by reference to the Appellant's wish to give evidence because of some improvement in her underlying mental health or her circumstances perhaps deteriorate such that she would not even be content to remain in the same hearing room as a Tribunal involving male members, it is open to the Appellant's representatives to seek to make an appropriate application to the Tribunal.

Notice of Decision

24. The decision of the First-tier Tribunal contained material errors of law and is set aside.
25. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Obhi with all issue at large.

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 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.

Signed:

Date: **19 November 2018**

Deputy Upper Tribunal Judge I A Lewis