



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/07986/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 12 February 2018**

**Decision & Reasons  
Promulgated  
On 16 February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE PEART**

**Between**

**S Y  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms Harris of Counsel  
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka. She was born on 15 January 1986. She appealed against the respondent's decision to refuse her asylum, humanitarian protection and on human rights grounds dated 1 February 2017. There was a supplemental decision dated 9 August 2017.
2. Judge I D Boyes (the judge) dismissed the appellant's appeal in a decision promulgated on 6 November 2017. The judge did not find the appellant to be a credible witness. He found she would not be at risk on return and that the respondent's decision was proportionate in terms of Article 8.

3. The grounds claim the judge:
  - (a) failed to properly assess the appellant's risk given that the respondent had alerted the persecutors of her asylum claim;
  - (b) incorrectly considered the documentation provided from the court and three Sri Lankan lawyers;
  - (c) failed to consider the documentation from the LLRC; and
  - (d) did not consider the appellant's Article 8 claim.
4. Judge Pullig granted permission on 7 December 2017. He found no error with regard to grounds (a) and (b). Nevertheless, Judge Pullig found that the judge made no mention of considering the LLRC documents and that failure to do so and the judge's failure to deal with Article 8 was arguably an error of law such that he granted permission on those grounds.
5. There was no Rule 24 response.

### **Preliminary Issue**

6. Ms Harris sought permission for me to consider all the grounds of appeal notwithstanding that Judge Pullig had granted permission only with regard to grounds (c) and (d). I considered the same in accordance with the Tribunal Procedure (Upper Tribunal) Rules 2008 and **Ferrer [2012] UKUT 00304**. There had been no renewed application by those instructing Ms Harris nor any explanation for failure to do so in time. I considered the application with regard to [24]-[27] of **Ferrer**. I bore in mind as per [27] of **Ferrer** that neither the Tribunal's Courts and Enforcement Act 2007 read with the Upper Tribunal Rules was such as to excuse a party from the requirement to seek and obtain the permission of the Upper Tribunal in order to raise grounds not already before the Upper Tribunal. There was no explanation for the failure to apply or the fact that the application was out of time. In such circumstances, I refused the application.

### **Submissions on Error of Law**

7. Ms Harris relied upon grounds (c) and (d) that the judge failed to consider the documentation from the LLRC and did not consider the appellant's Article 8 claim. Ms Harris submitted that the judge made no findings with regard to the documentation from the LLRC and it was incumbent upon him to do so in terms of **MK (duty to give reasons) Pakistan [2013] UKUT 641 (IAC)**. The fact that the appellant gave evidence to the LLRC placed her in a different risk category pursuant to the country guidance case of **GJ (post-civil war: returnees) [2013] UKUT 319**; in particular at [356](c):

*"356. (7)(c) Individuals who have given evidence to the lessons learned and reconciliation commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those*

*who may have witnessed war crimes during the conflict, particularly in the no-fire zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses.”*

8. The appellant provided two letters from the LLRC at pages 23-26 of her bundle which Ms Harris submitted the judge failed to properly consider. It was a material error of law to fail to conduct such analysis of the documents and determine what weight should be ascribed to them.
9. As regards Article 8, it was the appellant’s claim that removal would disproportionately breach her Article 8 rights. The appellant suffered from depression, polycystic ovaries and her moral and physical integrity would be disproportionately affected by removal. The judge entirely failed to conduct a proportionality exercise outside of the Rules.
10. Mr Mills asked me to consider the context. As regards ground (c) that had to be viewed in line with the judge’s adverse credibility findings regarding the other documentation. The judge had found the appellant not to be credible. She had produced false documentation. Whilst there was no specific finding that the LLRC documentation was not genuine, there was an inference in that regard and particularly so bearing in mind the judge’s findings with regard to **GJ** at [38]. As regards the claimed failure to engage with Article 8, it is true that the judge was brief, however, it was clear at [43] that he had immediately jumped to a proportionality exercise such that he did not err.

### **Conclusion on Error of Law**

11. The appellant’s claim was founded upon her witnessing a white van abduction in January 2010. She said she subsequently gave evidence to the LLRC. At [36] of the reasons for refusal dated 9 August 2017, the respondent said that there was no evidence to suggest the appellant had given evidence to the LLRC. To counter the same, the appellant produced correspondence at pages 24 and 26 of her bundle claiming that she had produced a statement for the LLRC and had been subsequently invited to interview, which I understand she failed to attend. I do accept that the two letters I have referred to at [8] above were not referred to in the decision. Nevertheless, there was a wholesale rejection as fraudulent, the documents the appellant had produced:

*“27. It is perhaps most appropriate that I start the discussion and my findings in relation to the documents produced. The appellant maintains that the Tribunal can accept the documents as genuine for a number of reasons; there is a clear paper trail from the obtaining of them to the arrival of them in the UK, the appellant’s mother and the lawyer were able to obtain them after they became aware of the existence of the same, three separate*

*lawyers have checked and independently verified the validity of the documents and their appearance in the records of the court.*

30. *I am satisfied that the documents produced by the appellant are not genuine. I reach this conclusion for the following reasons; none of the persons who attended to verify the documents on behalf of the appellant took the liberty of either taking a copy of that which was within the court file, obtaining a witness statement from the registrar or similar official or even taking a copy themselves from that contained within the file .....*"

12. The judge placed no weight upon the appellant's documentation. There was no mention of the LLRC documentation although Mr Mills' submission is that was implicit in the judge's adverse findings. The judge went on to consider the appellant's credibility at [36]. For the reasons he expressed, he did not find her a credible witness.

13. He considered her risk on return in terms of **GJ** at [38]. He was not in error in what he said at the end of [38] in his finding that there was no evidence before the Tribunal as to what the appellant had said to the LLRC. That was because there was no copy of the statement the appellant made to the LLRC, only the two letters acknowledging her statement and inviting her to be interviewed. See pages 24 and 26 of the appellant's bundle. I do find that in failing to specifically make findings with regard to that documentation, the judge erred but I do not find such error to be material bearing in mind the overall adverse credibility findings, in particular with regard to the documentation which formed the foundation of the appellant's claim, rejected as fraudulent in a document verification report and which the judge considered and made findings at [27]-[35]. I find in such circumstances, that what the judge said at [38] was by way of supplemental comment with regard to the specific risk categories in **GJ** and why it was that the appellant failed to satisfy the same.

14. I do accept that the judge's Article 8 analysis in [43] was brief, but I do not accept as a result that he erred materially. It is clear at [43] that the judge engaged with the issues presented and whilst he did not say so, I find it is clear from what he said that he engaged with [29] of the skeleton which was equally sparse:

*"29. The Tribunal is also asked to consider the appellant's Article 8 rights "outside the Rules". The appellant suffers from depression for which she takes medication; her moral and physical integrity would be disproportionately affected by removal."*

15. The judge engaged with the Article 8 claim in the terms it was put to him:

*"43. In regard to Article 8 there is nothing exceptional about the appellant's case to justify a grant of leave outside the Rules. That the appellant has gynaecological problems does not mean she cannot obtain treatment for that in Sri Lanka. The appellant has depression. She is not taking medication for it. Depression, even untreated, cannot be said to amount to a good argument*

*that removing her from the UK will lead to the disturbing of her moral and physical integrity."*

16. I conclude that the decision does not contain a material error of law such that the decision of the First-tier Tribunal should be set aside.

**Notice of Decision**

17. The decision of the First-tier Tribunal contains no error of law and shall stand.

Anonymity direction continued.

**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 12 February 2018

Deputy Upper Tribunal Judge Peart