



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

Appeal Number: PA/09408/2018

THE IMMIGRATION ACTS

**Heard at Field House
on 21 March 2019**

**Decision & Reasons Promulgated
on 11 April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

KS

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Patry of Counsel instructed by Amirthan & Suresh, solicitors

For the Respondent: Mr N Bramble of the Specialist Appeals Team

Anonymity Direction

Unless and until a tribunal or court directs otherwise the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify the Appellant or any family member. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings

DECISION AND REASONS

The Appellant

1. The Appellant is a Sri Lankan Tamil born in 1979. On 19 September 2009 she entered with leave as a Tier 4 (General Migrant) student. Further leave in the same capacity was granted and then replaced by leave as the spouse of a settled person, expiring on 28 September 2015. She made an application for further leave in saying capacity which was rejected on 9 December 2015. A renewed application was made on 7 January 2016 and refused with an out of country right of appeal. The Appellant became an over stayer and on 15 February 2017 claimed subsidiary protection because she feared persecution on return because of her involvement with the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka and with the Tamil Youth Organisation (TYO) and the Transitional Government of Tamil Eelam (TGTE) in the United Kingdom.

The SSHD's decision

2. On 18 July 2018, the Respondent (the SSHD) accepted the Appellant in 2008 in Sri Lanka had been detained in 2008 by the Sri Lankan authorities who believed she was involved with the LTTE. The SSHD also accepted the Appellant had been involved in Tamil opposition to the Sri Lankan government in the United Kingdom.
3. The SSHD rejected the Appellant's account how she with her ex-husband's financial assistance had secured the release of a previous boyfriend of the Appellant who had been detained in Sri Lanka to fund his release. Similarly, her claim that, out of spite, her ex-husband had disclosed to the authorities in her home area in Sri Lanka her involvement in the ex-boyfriend's release. The SSHD also noted the apparent delay of the Appellant in making her claim for subsidiary protection.

Proceedings in the First-tier Tribunal

4. The Applicant appealed and by a decision promulgated on 6 December 2018 Judge of the First-tier Tribunal Oxlade found the Applicant's account not to be credible and therefore concluded she would not be at risk on return to Sri Lanka credible. She dismissed the appeal on all grounds.
5. The Appellant sought permission to appeal on the basis the Judge had:
 - (a) failed to consider whether, on the basis of her adverse credibility finding, the Appellant would or would not be at risk on return.
 - (b) Improperly made adverse inferences on the basis of:
 - (i) the replies the Appellant gave when screened by an immigration officer
 - (ii) the lack of reference to the Appellant's ex-boyfriend in Sri Lanka in the records of the Appellant's GP and not taken adequate account that the Appellant's mental health problems arose from the domestic violence she claimed she had suffered at the hands of her now ex-husband

- (iii) an inadequate or inaccurate consideration of the evidence contained in both a letter from a Sri Lankan attorney and a statement by the Appellant's father
 - (c) failed to take into account that the Respondent had accepted the Appellant had been involved with the LTTE in Sri Lanka
6. On 9 January 2019 Judge of the First-tier Tribunal Lever refused permission to appeal.

The Upper Tribunal Proceedings

7. The Appellant renewed her permission application and on 15 February 2019 Deputy Judge of the Upper Tribunal Miler granted permission on the grounds that the specific errors identified did not amount to no more than a disagreement with the Judge and because it was arguable her assessment of the risk on return did not include a consideration of the Appellant's involvement with the Tamil movement in the United Kingdom.
8. At the start Mr Bramble for the SSHD quite properly accepted that the Judge's decision contained a number of arguable errors which with others to which I shall refer such that the decision could not stand and should be set aside. In that light I indicated to Ms Patry for the Appellant that I did not need to hear her submissions.

Error of Law Consideration

9. At the end of the hearing I stated that I found there were errors of law in the decision of the First-tier Tribunal such that it should be set aside with no findings preserved. I now give my reasons.
10. A reading of paragraph 2 of the Judge's decision immediately discloses that ground (a) referred to above at paragraph 5 is made out and the Judge did not take into account the 2008 detention which the SSHD had accepted when she reached her conclusions towards the end of her decision.
11. I do not consider paragraph 18 of the Judge's decision to take into account the nature of a screening interview and more importantly to be a fair reflection of what the Appellant is recorded as saying when screened. A careful reading of sections 4.1 and 5.3 and 5.4 shows the Appellant mentioned her concerns that the Sri Lankan authorities were suspicious of her for helping her boyfriend and both sections also refer to her detention in 2008. The record of this screening interview is insufficient evidence to link the Appellant's fears exclusively to events which happened in 2008. Additionally, the Appellant at section 2.3 referred expressly to the domestic violence she had suffered at the hands of her ex-husband. The evidence is that the Appellant's financial assistance to secure the release of her ex-boyfriend was in 2012 but the issues with her now ex-husband's refusal to give her the papers she needed for her application for further leave dates from some three years later.

12. Paragraphs 43, 44 and the end of 46 do not reflect that the Appellant explained at interview replies 124-127 why she had not previously mentioned the matter of securing her ex-boyfriend's release from prison which at the time of her application for further leave as a spouse could not have been as relevant as her then husband's withholding of papers to enable her to complete her application, particularly as the evidence before the Judge was that the release of the ex-boyfriend had been secured in 2012, some three years before her application for further leave: see page 3 of the Record of Proceedings.
13. Paragraph 44 of the Judge's decision makes no reference to the explanation given for the delay in mentioning the marital abuse the Appellant claimed she had suffered given at interview replies 62-63 which appear to include a claim that the Appellant was sexually abused when detained by the Sri Lankan authorities in 2008. This does not appear to have been addressed.
14. The Judge, having rejected the Appellant's account of post-2014 events at paragraph 49 of her decision needed to explain why she considered that the Appellant's detention and claimed torture referred to in my preceding paragraph, could be discounted in any assessment of risk on return.
15. Taking these matters into account, I find the Judge's fact-finding exercise is unsafe which will have had a material impact on her consideration of the appeal. The decision is set aside in its entirety.
16. Having regard to the extensive fact-finding exercise which will have to be conducted as any re-hearing, I consider it appropriate to remit the appeal for a hearing afresh before a different judge in the First-tier Tribunal.

Anonymity

17. The First-tier Tribunal decision contains an anonymity direction although it gives no reason why it is proportionate to the need for transparency in the Tribunal's administration of justice. This is a subsidiary protection appeal and on that basis and because the matter was not addressed at the hearing before me I propose to continue the anonymity direction.

SUMMARY OF DECISION

The decision of the First-tier Tribunal contains an error of law and is set aside.

The appeal is remitted for hearing afresh.

Anonymity direction continued.

Signed/Official Crest

Date 09. iv. 2019

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal