



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

Appeal Number: PA/13657/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4 February 2019**

**Decision & Reasons Promulgated
On 18th March 2019**

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MISS G A
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Seehra, Counsel instructed by Nag Law Solicitors
For the Respondent: Ms S Jones, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 13 August 2018 Judge Shore of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a national of Sri Lanka, against the decision made by the respondent on 30 November 2016 refusing her protection claim.
2. The appellant's grounds contend that the judge erred in law in:

- (1) failing to give adequate reasons;
 - (2) relying unduly on matters of (im)plausibility; and
 - (3) in failing to deal with the appellant's health problems in the context of Article 8.
3. I am grateful to both representatives for their well-presented arguments.
 4. I am persuaded that the judge materially erred in law. If one looks at the judge's reasons as given in paras 79-96, it is first of all striking that very little of it addresses the appellant's asylum claim. That claim was based on an alleged series of incidents said to have taken place in Sri Lanka in 2010 leading to her receiving threats and police visits to her home for regarding her efforts to report an abduction she had witnessed carried out by people dressed in military uniform.
 5. Paragraphs 79-90 are confined to the judge's treatment of the appellant's health problems (she has a Factor XI deficiency causing cystic fibrosis). Paragraph 94 simply lists the risks categories set out in **GJ and Others** [2013] UKUT 00319 (IAC). Thus there are really only four short paragraphs (90-93) where the judge seeks to assess the appellant's asylum claim. In paragraphs 91-92 the judge stated:
 - "91. Further, I find it implausible that she could get no evidence whatsoever from Sri Lanka from her mother, who apparently was threatened, or her sister or the family of the neighbour who was abducted.
 92. The Appellant's appeal is damaged and her credibility is undermined by the events after she states she reported the abduction and gave evidence to the LLRC and circumstances of her arrival in the United Kingdom. She says she was ignored by police and warned off by a mysterious man after trying to report the crime. Yet she came to no harm and received no threats personally from January 2010 to her exit from Sri Lanka in July 2011. I find it implausible that someone who was so frightened by threats that she left Sri Lanka would make a statement to the LLRC when the police had ignored her. I also find the appellant's account of how she was able to leave Sri Lanka to be implausible. I find the assertion that an arrest warrant was issued for the Appellant three years after she went to the police station to be implausible."
 6. As regards paragraph 91, the judge makes no reference to the evidence of the appellant which he recorded at paragraphs 40 and 42 that she was unable to obtain such evidence due to her mother's and her own ill-health. It would have been open to the judge to reject those explanations, but

they should have been considered; see paragraph 339L(ii) of the Immigration Rules.

7. As regards paragraph 92, it is difficult to follow why the judge concluded it implausible that “someone ... so frightened by threats that she left Sri Lanka would make a statement to the LLRC when the police had ignored her”. The (Lessons Learned and Reconciliation Commission) LLRC is at least formally speaking an independent commission tasked inter alia, with investigating extrajudicial kidnappings. Whilst it is within my judicial knowledge that it has been criticised by international human rights groups for failure to meet minimum international standards or to offer protection to witnesses, there is nothing to suggest that the judge’s assessment drew on such sources. The judge did not refer to any background information to support his view that persons threatened by the police would not approach this body. Further on, in paragraph 92, the judge simply applied the label “implausible” to the appellant’s account of how she was able to leave Sri Lanka, although that account was consistent with the view reached in **GJ & Others**. Again, no reasons were given.
8. Ms Jones submits that a judge cannot be expected to give reasons for each and every adverse finding. That is correct as a matter of general principle, but on the facts of this case, paragraph 92 was very much the centrepiece of the judge’s reasons for finding the appellant not credible. Paragraph 93 relies on her later application for asylum. Neither para 93 nor paragraph 91 were capable of providing the weight of reasons necessary for me to overlook the deficiencies of reasoning set out in paragraphs 91-92.
9. As I have found the appellant’s first ground made out, it is unnecessary for me to rule on ground (2), but since it may assist the judge next dealing with the case I would observe that the guidance set out in the case law cited therein on the dangers of undue reliance on (im)plausibility is pertinent in this case, since more than one of the judge’s (im)plausibility findings had no evident basis in fact.
10. As regards ground (3), however, whilst I would agree with Ms Seehra that the judge’s treatment of paragraph 276ADE and Article 8 was deficient because it failed to weigh in the balance the appellant’s health difficulties, I do not consider such deficiency resulted in material error since on **GS [2015]EWCA Civ 40** principles it was clear she could not meet the high Article 3 or the high Article 8 thresholds.
11. For the above reasons I conclude that the judge materially erred in law and his decision should be set aside. I see no alternative to the case being remitted to the FtT (not before Judge Shore).
12. To conclude:

The decision of the FtT judge is set aside for material error of law.

The case is remitted to the FtT.

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: 12 March 2019

A handwritten signature in black ink that reads "H H Storey". The signature is written in a cursive style with a large, looped 'S' at the end.

Dr H H Storey
Judge of the Upper Tribunal