



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

Appeal Number: PA/06325/2019

THE IMMIGRATION ACTS

**Heard at: Field House
On: 2 March 2020**

**Decision & Reasons Promulgated
On: 17 March 2020**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

**MT
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms U Miszkiel, instructed by Aask Solicitors

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

DECISION AND REASONS

1. The appellant is a national of Sri Lanka born on 2 January 1985. She arrived in the United Kingdom on 1 October 2009 with leave to enter as a Tier 4 student valid until 20 October 2010 and was granted further periods of leave to remain as a points-based migrant until 8 July 2013. She was refused further leave to remain as a Tier 1 Entrepreneur Migrant on 11 February 2014 and unsuccessfully appealed that decision to the First-tier Tribunal, becoming appeal rights exhausted on 12 August 2015. She then claimed asylum on 10 March 2016. Her claim was refused on 21 June 2019 and she appealed that decision to the First-tier Tribunal.

2. The appellant's claim was based upon her fear of the Sri Lankan authorities as a result of her work as a journalist and their belief that she supported the LTTE. She claimed to have volunteered for the Tamil Rehabilitation Organisation (TMO) in 2005 and to have written for a Tamil magazine in 2007-2008. She claimed that she was arrested on 10 March 2008 after other journalists from the magazine were arrested and that she was detained for two days. She claimed to have been arrested again on 28 November 2008 on martyr's day after having a picture of her friend and lighting a candle for her and to have been detained for 20 days on suspicion of involvement with the LTTE during which time she was beaten, burned with cigarettes and sexually abused. She was released upon payment of a bribe. On 30 September 2009 she was arrested again when going to the airport and was released the same day and she then left the country on 1 October 2009. She returned to Sri Lanka on three occasions, in 2011, 2012 and 2013, for her father's funeral and to visit her mother when she was ill. She paid for an agent to assist her in travelling in and out of the country on all three occasions. The appellant claims to have been involved in activities for the TGTE in the UK, including attending meetings and protests, and that the Sri Lankan authorities have visited her family home as a result and required her mother to report to them. She has also given evidence to the International Centre for Prevention and Prosecution of Genocide.

3. The respondent, in refusing the appellant's claim, did not accept that she was involved in journalism in Sri Lanka and did not accept her account of being arrested and detained. The respondent did not accept that the appellant was at risk on return to Sri Lanka. It was accepted that she had spoken to the International Centre for Prevention and Prosecution of Genocide but it was not considered that she would be at risk on that basis since such evidence would have been given anonymously and there was no evidence that she would have come to the attention of the Sri Lankan authorities.

4. The appellant appealed against that decision and her appeal was heard by First-tier Tribunal Judge Moffatt on 8 November 2019. The appellant did not give evidence before the judge and was told by her legal representative to leave the Tribunal, in light of a psychiatric report from Dr S Dhumad which concluded that she was not fit to give evidence. Aside from the psychiatric report the judge had before her a medical (scarring) report from Dr A Martin, the appellant's GP notes and letters from Changing Minds IAPT Services in regard to the appellant's mental health. The judge also had evidence of the appellant's sur place activities in the UK with the Transnational Government of Tamil Eelam (TGTE) including photographs of her attending demonstrations in the UK.

5. The judge did not find that the appellant was a credible witness and noted various inconsistencies in her evidence. Taken together with the fact that the appellant had returned to Sri Lanka on three occasions, the judge did not accept that the appellant was at any risk on return to Sri Lanka. The judge did not accept that the appellant was at risk of harm as a result of her low-level

involvement with the TGTE and did not consider that she would experience problems on the basis of returning to a female-led household. The judge dismissed the appeal on all grounds.

6. Permission to appeal was sought by the appellant on five grounds: firstly, the judge had erred by failing to apply the joint Presidential Guidance Note No.2 of 2010 when assessing the appellant's credibility and had failed to treat her as a vulnerable adult; secondly that the judge had failed to assess the scarring report with anxious scrutiny; thirdly that the judge had failed to assess the risk of persecution to the appellant as part of a female headed household in line with PP (female headed household; expert duties) Sri Lanka [2017] UKUT 117; fourthly that the judge had failed properly to assess the risk of persecution to the appellant on account of her activities with the TGTE in line with UB (Sri Lanka) v Secretary of State for the Home Department [2017] EWCA Civ 85; and fifthly that the judge had made further unreasonable findings when assessing the risk of future persecution.

7. Permission was granted on all grounds.

8. In response to Ms Miszkziel's submission on the first ground, Ms Isherwood agreed that the judge had not referred in the decision to the appellant being treated as a vulnerable witness. However she relied upon the acknowledgement by the appellant's representative, at the hearing before the First-tier Tribunal, that the weight to be afforded to the appellant's witness statement may be affected by the fact that the respondent could not challenge any aspect of it owing to her absence. I have to agree with Ms Miszkziel that that did not mean, however, that the judge was not required to look at all the evidence and take account of the medical evidence in assessing the appellant's credibility.

9. I am in agreement with Ms Miszkziel that the judge did not properly engage with the medical evidence when assessing the appellant's credibility and did not appear to assess credibility in the context of her being a vulnerable person. The judge focussed on what she found to be inconsistencies in the accounts given by the appellant to the medical experts, and noted a lack of consistency in the appellant's references to her injuries in the medical evidence, but she did not consider the impact of her vulnerability on her credibility and did not assess the inconsistencies in her evidence in light of her mental health condition. Indeed the judge did not actually assess, in any part of her decision, the nature and cause of the injuries described by the medical experts and did not make any findings on those injuries in the context of the appellant's account of being detained and ill-treated. There was limited engagement with Dr Martin's report and no consideration of his conclusions as to the appellant's scars being typical of injuries caused by torture. I agree with Ms Miszkziel that, on that basis alone, the judge's decision is not sustainable.

10. I would add, however, that I also find merit in the fourth ground of appeal, in which a challenge is made to the judge's findings on the appellant's sur place activities in the UK. The judge's assessment of the risks arising as a

result of the appellant's activities, at [50], is brief, and lacks a proper engagement with all the evidence. At [45] the judge appears to dismiss the photographic evidence because she had not seen the appellant herself, but as Ms Miszkiel submitted, she had the benefit of a photograph of the appellant's face annexed to Dr Martin's report, at page 180 of the appeal bundle.

11. I accept that the judge may have had good reason to have concerns about the appellant's claim to be at risk on return to Sri Lanka in light of her trips back to Sri Lanka, as she found at [48]. However, I agree with Ms Miszkiel that that was not sufficient in itself to conclude that there was an absence of any risk, when there was evidence before the judge that she had not properly considered. In the absence of a proper assessment of the appellant's sur place activities and the risks arising from that, and in the absence of a proper credibility assessment in regard to past and future interest in the appellant, the judge's conclusion, that there was no risk on return, was simply not sustainable.

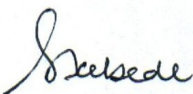
12. In the circumstances, and in light of the errors I have identified in the judge's assessment of the appellant's credibility, the judge's decision as a whole must be set aside. Ms Isherwood agreed that if the 'vulnerability' ground of challenge was made out, it would be difficult to uphold anything else in the judge's decision. Accordingly, I set aside the decision in its entirety, with no findings preserved. The appropriate course in such circumstances is for the matter to be remitted to the First-tier Tribunal to be heard afresh.

DECISION

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, with no findings preserved, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Moffatt.

Anonymity

The First-tier Tribunal made an order for anonymity. I continue the order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed 
Upper Tribunal Judge Kebede
2020

Dated: 3 March