



**Upper Tribunal  
(Immigration and Asylum Chamber)**  
UI-2021-001310

Appeal Number:  
PA/50260/2021; IA/00984/2021

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 28 June 2022**

**Decision & Reasons Promulgated  
On 13 September 2022**

**Before**

**UPPER TRIBUNAL JUDGE BLUM  
DEPUTY UPPER TRIBUNAL JUDGE LEWIS**

**Between**

**Florence Elizabeth Sithy Fazeela SAWALL  
(Anonymity Direction not made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms K Tobin of Counsel instructed by Polpitiya & Co.  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Background**

1. This is an appeal against a decision of First-tier Tribunal Judge Farmer promulgated on 23 September 2021 dismissing the appeal of Ms Florence Sawall against a decision of the Respondent dated 6 January 2021 on protection and human rights grounds.

2. The Appellant is a citizen of Sri Lanka born on 2 July 1946. She was born into a Catholic family. In 1966 she converted to Islam when she married her husband. She became a widow in 2002.
3. The Appellant's daughter came to the UK in 2001 following marriage; she is a naturalised British citizen. The Appellant's son came to the UK in 2006 after marriage and is also a naturalised British citizen.
4. Since 2010 the Appellant has held a number of family visit visas, and has made visits to the UK as follows: 26 June 2010 - 23 November 2010; 21 October 2011 - 20 April 2012; 8 February 2013 - 28 July 2013; 9 September 2015 - 3 March 2016; and 21 January 2017 - 7 July 2017.
5. The Appellant last entered the UK, pursuant to a family visit visa, on 15 January 2018. On 14 January 2019 the Appellant claimed asylum.
6. The Appellant's protection claim was based on a claimed fear of persecution for reasons of religion. In particular the Appellant claimed to fear persecution from Buddhist extremists, and the wider non-Muslim population in Sri Lanka.
7. The Respondent refused the Appellant's application for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 6 January 2021.
8. The Appellant appealed to the IAC.
9. The Appellant's appeal was refused by First-tier Tribunal Judge Farmer for the reasons set out in the 'Decision and Reasons' promulgated on 23 September 2021. The appeal was dismissed on protection grounds and human rights grounds - the latter including with reference to family and private life under Article 8 and the Immigration Rules in respect of 'adult dependent relatives'.

10. The Appellant sought permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Andrew on 25 November 2021. In material part the grant of permission to appeal states:

*"2. I am satisfied that there is an arguable error of law in the Decision both as to the Appellant's protection claim and under Paragraph 276ADE (vi) in that the Judge does not appear to have taken full note of the country information in relation to Muslims in Sri Lanka, and, in particular, the Respondent's own CPIN in this regard. The Judge does not appear to have taken note of the country information suggesting that matters have changed in Sri Lanka since the Appellant came to the United Kingdom. Further, this impacts of the Judge's findings in relation to sufficiency of protection and internal relocation.*

*3. The Grounds complain that the Judge has made no findings in relation to the Appellant being an Adult Dependant Relative but in fact those findings are at paragraph 45 of the decision and I find no arguable error of law in this regard."*

11. The Respondent has not made a Rule 24 response. However, Ms Everett confirmed that the Appellant's challenge to the decision of the First-tier Tribunal was resisted.

### **Consideration of 'Error of Law' challenge**

12. The Appellant's Grounds of Appeal are broken into sections with 5 headings: 'Irrational findings regarding persecution and risk on return'; 'Flawed assessment of sufficiency of protection'; 'Inadequate consideration of individual circumstances in assessing the reasonableness of internal relocation'; 'Flawed approach to reasonableness of return in light of Covid 19 pandemic'; and 'Failure to set out clear findings on E-ECDR 2.1-2.5 (Adult Dependent Relative)'. The latter of these may be disregarded in light of the terms of the grant of permission to appeal - and accordingly was not pursued before us. Ms Tobin also invited us to disregard the penultimate - relating to the Covid pandemic - and so did not develop or pursue any submissions in this regard before us. We note that submissions in respect of internal relocation are contingent upon a premise of there being a risk of persecution at all.
13. In her oral submissions Ms Tobin suggested that perhaps her Grounds of Appeal were "*not best organised*", and in the first instance sought to develop submissions primarily to the effect that the Judge had erred in respect of evaluating past persecution, with particular focus on paragraph 25 of the First-tier Decision. Thereafter she developed submissions in emphasis of the matter commented upon in the grant of permission to

appeal, in amplification of paragraph 10 and 11 of the Grounds: that the Judge had seemingly disregarded country information regarding government and police attitudes relevant to the availability of protection for Muslims in Sri Lanka. Ms Tobin also addressed us on Article 8/paragraph 276ADE(1).

14. We are not persuaded that there was any error of law in the Judge's approach to the Appellant's account of events before she left Sri Lanka.
15. In particular, we consider that the Judge made adequately clear findings for adequately clear reasons as to the Appellant's circumstances prior to her departure in January 2018, with reference in particular to paragraphs 25, 26, 27, 29, 30 and 31.
16. Ms Tobin directed our attention to the Appellant's account as set out in particular at paragraphs 10 and 11 of her witness statement of 8 April 2021. We note that the substance of this claim is set out at paragraph 23 of the Judge's decision and we see no basis to conclude anything other than that the Judge had it in the forefront of her mind when assessing the Appellant's case. Paragraph 23 is in these terms:

*"It is the appellants claim is that "in early 2018 people (Sinhalese extremists) came to my annex and told me to leave the area. Mt landlord too was worried thinking that the extremists will damage their house and wanted me to leave the annex". She also claims in her witness statement that she lives in a non-Muslim area and has had eggs thrown at her annex and has ben shouted at in the street for converting to Islam and she has heard the extremists saying that they should kill Muslims for invading the country. She also claims to have had death threats from Buddhist extremists. She claims to have been too frightened to go to the Mosque."*

17. In the following paragraphs, 24-27, the Judge considered matters relevant to the credibility of the Appellant's account in this regard. At paragraph 28 the Judge acknowledged the relevance of the 2019 Easter bombings (which occurred both after the Appellant's last departure from Sri Lanka, and after the Appellant made her claim for asylum). At paragraph 29 the Judge returned to matters relevant to credibility with particular reference to section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. The Judge drew this analysis together at paragraph 30.

*"24. The appellant said in her evidence that when she came to the UK she did intend to return to Sri Lanka at the end of her 6 month stay in*

*the UK. She said that although she no longer rented her annex she did plan to find somewhere else to live. I also note that she did not claim asylum for about 1 year after her arrival on her visit visa. She said that it was because she only found out about asylum about 3 weeks before her claim. I find that had she been fearful of her life and at real risk on return she would have taken advice earlier and she would also not have intended return to Sri Lanka as she claimed she did.*

*25. In addition, although I accept she gave up the rent on her annex, I find that it was not because she was fearful of living in the area and the landlord asked her to go. When she was asked about what she did with her belongings she said that she visited some local shops where she knew people and sold some of her belongings to them and the rest she left in the property. She was therefore able to leave her home and organise the sale of her belongings without fear of being attacked in the street. I therefore find that whilst she may have overheard people shouting and negative comments about Muslims, she has not been specifically targeted for threats and abuse. She does not claim to have been physically assaulted in any way.*

*26. The appellant has also been very non-specific about her threat to have been told to leave the area. She simply refers to "people" attending her home and gives no details about how many, what they looked like or how she identified them as extremists. Her account is therefore very vague and lacks particularity*

*27. I also find that the appellant converted in 1966 and was able to live without difficulty in Sri Lanka as a Muslim for over 50 years. She has lived in the same area and was familiar enough with the local shop owners to approach them to sell her belongings.*

*28. The appellant states that tensions in Sri Lanka since the 2019 Easter bombings have made the situation worse for Muslims. Whilst this has resulted in an increase in hostility I must assess each case on its facts. The appellant belongs to no political groups and has no political profile. She is not an activist and nor does she advertise herself as Muslim, except by her dress and attendance at the Mosque. She has not provided anything other than generic evidence about hostility to Muslims. She has not provided any credible evidence that she would be a target for extremists of any religion or political opinion.*

*29. When considering section 8(5) of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 I find that she came to the UK in January 2018 and did not claim asylum for a year. If she had a genuine fear in January 2018 I find that she would have taken advice at that point. The fact that she waited so long therefore engages section 8 and damages the credibility of her claim for international*

*protection, although this is not determinative of her claim and have considered all the evidence.*

*30. At para 14 [p. 22] of her witness statement she says that she has now used all the proceeds of sale from her house on her rent and day to day expenses and therefore has no savings left. She said in oral evidence that she had given some of the proceeds to her children on sale. Given that she came to the UK in 2018 aged 72 years, she was asked what her plan was for the future financially if she no longer had money to rent a property and no home to return to. She said she didn't have a plan but she thought she might ask her children for money. Her daughter, when asked, said that she had not discussed her mother's financial plan with her and didn't know what the position would be on her return. I find that it is more likely that the appellant gave up her rented property and sold all her belongings with no intention of returning to Sri Lanka in the hope that she might be able to remain permanently in the UK with her family here. She has no close family in Sri Lanka and both children and grandchildren are in the UK. Her immigration history shows that she spends about half her time in the UK on family visit visas and has had medical treatment in the UK. That is not to say that she was not verbally abused in Sri Lanka but I find that this was not the main contributing factor to her wanting to remain in the UK."*

18. We also note the following from paragraph 31:

*"Alternatively, even taking the appellant's case at its highest, she has not been physically attacked, she has only been spoken to once directly and the rest of the times she has overheard shouting in the street. I therefore find that the appellant is not either subjectively or objectively at a real risk of persecution on return due to her religion."*

19. Reading those paragraphs as a whole it is adequately clear that the Judge concluded that when the Appellant last left Sri Lanka she had no fear of persecution, but nonetheless had no intention of returning; she had given up her rented property and disposed of her belongings accordingly. The Judge found in terms that she did not believe "*she was fearful of living in the area*". The Judge noted that the Appellant had hitherto lived for over 50 years as a Muslim in Sri Lanka without difficulty - and it is to be observed that in more recent years she has regularly returned to such a life following visits to her children in the UK. The Judge was entitled to have regard to the vagueness of the Appellant's account of being threatened, and also was duty bound to conclude that the delay in claiming asylum damaged her credibility. At paragraph 30 the Judge in substance sustainably concluded that the Appellant's account of her plans and intentions was not credible.

20. In context the reference to subjective risk at paragraph 31 - "*I therefore find that the appellant is not either subjectively or objectively at a real risk of persecution on return due to her religion*" - indicates not only that the Judge did not consider there to be a well-founded fear, but that in fact the Appellant did not have even a subjective fear of persecution. This underscores the fact that the Judge rejected the Appellant's account of having been the subject of express threats.
21. It seems to us that Ms Tobin's criticisms of the Judge's findings are ultimately misplaced. The Grounds of Appeal focused upon paragraph 25 and argue that the Judge is in error in placing weight on the Appellant's ability to sell her belongings to local shop keepers, arguing in effect that this - and her ability to venture outside her home - was not indicative of the absence of threats and/or abuse. This is too narrow a focus and too narrow a challenge; it disregards the context of this being but one aspect of the overall evaluation. It seems to us that there is no suggestion that the Judge considered this one issue determinative, but rather considered it alongside numerous other factors *en route* to an 'in the round' conclusion. The Appellant's ability to engage with the local community - as no doubt she had done during the previous 50 years - was not an irrelevant consideration to whether she was at risk at that time.
22. In so far as Ms Tobin was otherwise critical of the Judge's references at paragraph 28 to the Appellant not being an activist, and otherwise not belonging to any political group and having no political profile, it seems to us that whilst such matters may be relevant to an assessment of risk, they were not matters that informed the evaluation of credibility of the Appellant's account of events prior to her last departure from Sri Lanka. Indeed, it seems to us no mere accident that such references come in the context of a paragraph considering tensions since Easter 2019.
23. In all such circumstances we reject the challenge to the Judge's assessment of the events prior to the Appellant's last departure from Sri Lanka. In particular, we consider it is adequately clear that the Judge did not accept the Appellant's account of having been the recipient of direct threats from Sinhalese extremists, or to have otherwise had any subjective fear of persecution. The Judge sustainably found that there was no history of persecutory treatment of the Appellant and no history of having been specifically targeted for any reason. The Judge concluded that the Appellant did not leave Sri Lanka to come to the UK fleeing persecution or otherwise either having a subjective fear of persecution, or being objectively at risk of persecution.

24. It follows, given such a history and absent the identification of any other characteristic that might put her at risk beyond the fact of her faith, that any claim that she would be at risk of persecutory treatment upon return was in substance a claim that Muslims were at risk of persecution in Sri Lanka *per se*.
25. It is not apparent that any such proposition was advanced before the First-tier Tribunal – and no such proposition has been articulated before us.
26. To that extent in our judgement it is ultimately immaterial that the Judge’s observation at paragraph 32 – *“I find that the appellant has failed to demonstrate that the authorities in Sri Lanka would be unable or unwilling to offer protection if she sought it”* – was in apparent disregard of the information in the Respondent’s CPIN of August 2021 on religious minorities.
27. We acknowledge that there was material before the First-tier Tribunal that indicated that perpetrators of anti-Muslim attacks were able to act with a degree of impunity particularly during a period following the 2019 Easter bombings. We also accept that the Judge did not engage with such evidence before offering the conclusion in respect of the willingness of the authorities to offer protection. However, on the Judge’s findings the Appellant had never been the recipient of specific threats and so did not need to seek protection for such matters. Otherwise, the only basis upon which the Appellant might need to avail herself of State protection was if it were the case that she were at risk on the sole basis of being a Muslim: the evidence – and arguments – did not purport to demonstrate such risk.
28. Nor, in our judgement, does this matter avail the Appellant in the context of *“very significant obstacles”* under paragraph 276ADE(1)(vi).
29. In the context of paragraph 276ADE(1)(vi) and Article 8, the relevance of the ‘slowness’ of the authorities to act against the perpetrators of anti-Muslim violence is not relevant to the Appellant’s case as a potential victim of such violence (having failed to demonstrate a reasonable likelihood of harm), but because of what it suggests about general levels of hostility and discrimination.



30. The Judge expressly acknowledged “*an increase in hostility*” (paragraph 28), but noted that the evidence was generic and did not suggest the Appellant would be a likely target.
  
31. The Appellant’s case before the First-tier Tribunal in respect of 276ADE(1) (vi) and/or Article 8 focused upon health issues (e.g. see paragraphs 39-42) and accommodation (e.g. see paragraphs 42, and 47-48). Ms Tobin was unable upon our invitation to identify any material that suggested a level of discrimination against Muslims in Sri Lanka that would prevent access to healthcare or access to rented accommodation. Ms Tobin acknowledged that there was no submission before the First-tier Tribunal to the effect that the Appellant could not access health care, accommodation, or other social support in Sri Lanka by reason of her faith.
  
32. In such circumstances in our judgement any disregard of the evidence relating to a lack of response to anti-Muslim violence following the Easter 2019 attacks is essentially immaterial to the Judge’s evaluation that the Appellant “*would be able to reintegrate into her community [where] she lived... for almost 20 years following the death of her husband and [where] it is reasonable to assume that she will have built up community ties*” (paragraph 44).
  
33. We therefore find that the Appellant has not identified any material error of law in the decision of the First-tier Tribunal.

### **Notice of Decision**

34. The decision of the First-tier Tribunal contained no material errors of law and stands.
  
35. The appeal of Ms Sawall remains dismissed.
  
36. No anonymity direction is sought or made.

Signed:

Date: **1 August 2022**

**Deputy Upper Tribunal Judge I A Lewis**