



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003779

First-tier Tribunal No: PA/51729/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

3rd January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE LEWIS

Between

S.S.M.
(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Iqbal of Counsel, instructed by Nag Lae Solicitors
For the Respondent: Ms S McKenzie, Senior Home Office Presenting Officer

Heard at Field House on 20 October 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the Appellant herein is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the Appellant, likely to lead members of the public to identify the Appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against a decision of First Tier Tribunal Judge Traynor signed on 25 July 2023 dismissing on protection and human rights grounds

an appeal against a decision dated 25 April 2022 refusing leave to remain in the UK.

2. The Appellant is a citizen of Sri Lanka. His personal details are a matter of record on file and are known to the parties: I do not repeat them here in keeping with the anonymity direction that has been made in these proceedings.
3. Although the Respondent has filed a Rule 24 response in these proceedings, dated 19 September 2023, the position adopted by the Respondent before me was that the challenge to the Decision of the First-tier Tribunal was not resisted. It had become common ground between the parties that the Decision of the First-tier Tribunal should be set aside for error of law and that the decision in the appeal should be re-made before the First-tier Tribunal, by a different Judge, with all issues at large.
4. Given the common position of the parties I do not propose to set out in any great detail the background to the case: again, it is known to the parties and is a matter of record on file. Rather I merely set out here sufficient to indicate the nature of the concessions made by the Respondent, and why, in all the circumstances, I accept the concessions and the consequent proposal that the matter be returned to the First-tier Tribunal for the decision in the appeal to be re-made. Additionally I have set out some further observations about potential issues in the appeal which were discussed briefly at the hearing before me.
5. Permission to appeal to the Upper Tribunal was granted with particular reference to Ground 1 of the Appellant's challenge to the Decision of the First-tier Tribunal. Ground 1 is focused on the circumstances in which the Appellant claimed to have provided evidence to the Lessons Learned and Reconciliation Commission ('LLRC') in Sri Lanka in respect of the circumstances in which his wife had gone missing.
6. In his screening interview when setting out the basis of claim the Appellant referred to a formal complaint being made to the LLRC by his brother-in-law. Similar testimony was offered in the Appellant's witness statement - e.g. see paragraph 30. The Appellant provided a witness statement to the LLRC in support of his brother-in-law's complaint (witness statement at paragraph 31).
7. However, at paragraph 82 of the Decision of the First-tier Tribunal, the Judge appears to have placed adverse reliance upon an erroneous characterisation of the Appellant's claim: "... *the Appellant seeks to promote himself as a formal complainant to the LLRC whereas, in fact, that is not the case*". This comment - wrongly suggesting that the Appellant had sought to promote himself as a formal complainant whereas he had consistently indicated that he had provided a witness statement in

support of another person who had made a formal complaint - is made further to these comments that appear at paragraph 81: *"It transpired, however, during the course of his oral evidence, that he was not the person who had made the complaint..."*. As may be seen, this was not something that only emerged in the course of oral evidence, but had been the Appellant's stated position as early as the screening interview.

8. In my judgement it is manifest that the Judge wrongly thought that the Appellant had changed the nature of his evidence in respect of his role in the complaint that was said to have been made to the LLRC. Moreover, it is adequately clear that the Judge relied upon this perceived variation in the Appellant's testimony in reaching an adverse conclusion in respect of the credibility of the Appellant's narrative.
9. I have noted that the Judge has otherwise offered further reasoning in respect of the unsatisfactory nature of the Appellant's evidence in this regard and generally. However, bearing in mind the fact of the Respondent's concession that the error was material, and more particularly because the Judge's adverse reliance upon the erroneous perception of a change of story is further emphasised at paragraph 85 - *"As he has now admitted, he made no complaint to the LLRC"* - it seems to me unrealistic for me to conclude that the Judge's error was not material to the overall assessment of credibility, and therefore material to the disposal of the appeal.
10. In this context it is to be recalled that the Judge's error is in respect of a core element of the Appellant's claim - both in terms of his narrative, but also in terms of the identification of a risk factor pursuant to 'country guidance'.
11. I note that the Rule 24 response did not so much dispute that there had been an error on the part of the First-tier Tribunal as submit that the error was not material. Before me Ms McKenzie, helpfully and realistically, acknowledged the materiality of the error.
12. Further to this, and necessarily compounding the materiality of any error, Ms McKenzie also conceded that there was substance to Ground 2 of the Appellant's challenge.
13. Ground 2 focuses on the Judge's approach to the supporting evidence provided by the Appellant in respect of his claimed detention in Sri Lanka.
14. At paragraph 87 the Judge accepted a submission made by the Home Office Presenting Officer that a letter provided by a Sri Lanka based attorney contained errors. Two such errors were identified by the Judge.

15. In contrast to what is stated in the Decision, the attorney's letter does not misstate the date of the Appellant's claimed marriage: the reference to April 2008 in the letter is not a reference to the date of marriage but to a date on which the Appellant visited the attorney.
16. The Judge otherwise identifies that the attorney's letter refers to the Appellant having made a complaint to the LLRC - and the Judge contrasts this with what he perceived as the late emergence of evidence from the Appellant that he was not the principal complainant. There is perhaps more substance to this point. However - in circumstances where the Judge has himself misunderstood the Appellant in this regard, it is not beyond the realms of possibility that the attorney similarly misunderstood, or was otherwise casual in using the term 'complaint' - I do not accept that the better cogency of this second point negates the error of fact in respect of the first point with regard to the Judge's confusion between the date of marriage and the date of visit.
17. The conceded material errors require the setting aside of the Decision of the First-tier Tribunal. Moreover the consequence is that the appeal must be reheard in its entirety, and the decision re-made with all issues at large. The appropriate forum for this is the First-tier Tribunal - as was common ground between the parties.
18. The errors identified above mar what in many respects is otherwise a well written and thorough examination of the Appellant's case. No doubt both parties will review again the other aspects of the Judge's reasons and consider how such matters might require to be addressed in evidence and/or submissions upon re-hearing.
19. More particularly, with the scrutiny that has come with reviewing the materials in the context of an 'error of law' consideration, it seems to me appropriate that I make the following observations which may further inform either or both the parties as to issues in the appeal that may require addressing.
20. In his substantive asylum interview the Appellant stated that his wife had no family apart from a brother in Australia, and it was specifically stated that she had no family in Sri Lanka (question 55). For a substantial part of the interview the Appellant referred to his wife's landlord as being involved in the complaint to the LLRC. It was only after the refusal, and seemingly in an attempt to explain an apparent discrepancy in his evidence identified at paragraph 22 of the 'reasons for refusal' letter, that the Appellant in his appeal witness statement mentioned his wife's sister and husband: the husband is said to be the person who was previously referred to as the Appellant's wife's landlord, and is said to be the Appellant's brother-in-law who made the complaint to the LLRC. (See witness statement at paragraphs 10 and 11.)

21. So far it is entirely unexplained why the Appellant during the course of the interview would have repeatedly referred to his and his wife's brother-in-law as his wife's landlord without mentioning the family relationship. There is in any event an apparent discrepancy in the notion that his wife was in effect living with her sister, and the Appellant's answers in the interview to the effect that she had no family in Sri Lanka.
22. These matters are potentially important because they go to the coherency of the Appellant's narrative and the coherency of his identification of the person who purportedly lodged a complaint with the LLRC - such complaint being, for all the reasons already identified, a core element of his protection claim.
23. I do not propose to make any specific Directions in respect of these matters: it is likely that they will be covered by standard directions issued by the First-tier Tribunal in due course; alternatively the First-tier Tribunal can choose to issue specific Directions as it sees fit.

Notice of Decision

24. The decision of the First-tier Tribunal contained material errors of law and is set aside.
25. The decision in the appeal is to be remade by the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Traynor, with all issues at large.

Ian Lewis

Deputy Judge of the Upper Tribunal
(Immigration and Asylum Chamber)

21 December 2023