



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No.: UI-2023-004941

First-tier Tribunal No: PA/51320/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

12<sup>th</sup> January 2024

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**CPFR (SRI LANKA)**  
**ANONYMITY DIRECTION MADE**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Humza Malik, Counsel instructed by Indra Sebastian Solicitors

For the Respondent: Mr Steve Walker, Senior Home Office Presenting Officer

**Heard at Field House on 21 December 2023**

**Order Regarding Anonymity**

**Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant 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. The appellant has been granted permission to appeal against the decision of First-tier Tribunal Judge Suffield-Thompson promulgated on 11 October 2023 ("the Decision"). By the Decision, Judge Suffield-Thompson dismissed the appellant's appeal against the refusal of her fresh protection claim.

### **Relevant Background**

2. The appellant is a national of Sri Lanka, who came to the UK as a student and later on claimed asylum on 25 September 2017. When she was asked to explain in outline her reasons for her claim, she said in her screening interview that she received threats from her ex-boyfriend because she had separated from him. They had started since 2009. He warned her that if she went back to Sri Lanka she would be killed. Both of her parents had been threatened by him.
3. The appellant's protection and human rights claim were refused by the respondent, and eventually her appeal was determined by Upper Tribunal Judge Perkins in a decision promulgated on 3 June 2021, following a hearing at Field House on 7 December 2020.
4. Judge Perkins found that the appellant was credible in some aspects of her account, but not credible in other aspects. However, he dismissed her appeal primarily on the ground that, while he accepted that she had a genuine fear of suffering serious harm at the hands of her former boyfriend, her fear was not well-founded. He accepted that the boyfriend might at the time have wanted to frighten the appellant to protect himself from her complaint of rape (which he accepted had happened), but he held that her returning to Sri Lanka would not be a reason to frighten her but a reason to keep her out of the way: *"It is not a case of him pestering her after the attack until she had to leave the country."*
5. He did not accept the Secretary of State's version, which was that the appellant was a dishonest woman in every respect and that her story must be swept aside as self-serving nonsense. He found that she had had a very traumatic experience in life and that had damaged her, and that she remained damaged and she wanted to settle with her brother in the United Kingdom who had long been her friend and supporter.
6. But he did not accept that she was at risk now of serious ill-treatment even if she thought she was, and he did not accept that she needed international protection of any kind.
7. The appellant became appeal rights-exhausted in respect of her original protection and human rights claims on 16 June 2021.
8. The appellant subsequently made further submissions to the effect that her fear of her former boyfriend was well-founded, as shown by the fact that he had murdered her aunt. In addition, as is recorded in para [5] of the Decision of Judge Suffield-Thompson, she expressed a fear of her

cousin (her aunt's son) as she said he blamed her for the murder of his mother and said that he intended to kill her on her return to Sri Lanka.

### **The Decision of the First-Tier Tribunal**

9. The appellant's appeal against the refusal of her further submission came before Judge Suffield-Thompson sitting at Hatton Cross on 9 October 2023. Both parties were legally represented.

10. In the Decision at [38], the Judge observed that the only issue that was not before the Upper Tribunal was the claim that the appellant now made, which was that her ex-partner had killed her aunt - so she was still at risk from him - and also that her cousin was now threatening her life.

11. At [39], the Judge said that she had before her photographs of the body of an elderly lady and a death certificate. There were also newspaper articles about the murder of this lady:

"However, I have no evidence to show that this lady is the aunt of the appellant. Mr Martin says that the surnames are similar so that shows the relationship. This is speculation, and even people with the same surname are not necessarily related. There was no DNA to support this. Even if the victim was her aunt, I have no evidence to show that her ex-partner had anything to do with it."

12. At [40], the Judge said:

"I do not accept the appellant's aunt was murdered by her ex-partner as I find that she would have raised this before the UT by submitting an amended WS, as she had been represented throughout, or she could have made a fresh appeal. I had a newspaper article regarding the alleged murder of the "aunt" (RB page 99). Again, there is nothing to show that this relates to a relative of the appellant. There are no other official papers to suggest that her death, if it is the aunt, has anything to do with the ex-partner of the appellant."

13. The Judge went on to dismiss the appeal on asylum, humanitarian protection and human rights grounds.

### **The Reasons for the Grant of Permission to Appeal**

14. On 20 November 2023 First-tier Tribunal Judge Athwal granted permission to appeal for the following reasons:

1. The application is in time.
2. The first ground asserts that the Judge fundamentally misunderstood the chronology of events and made incorrect adverse findings. It is clear from the documents that the murder of the woman, who the appellant claims is her aunt, took place after the conclusion of the appellant's Upper Tribunal appeal hearing. The Judge's assertion that the appellant's failure to

mention her aunt's murder at that hearing undermines her credibility is factually wrong.

3. The second ground asserts that the Judge erred in law by requiring DNA evidence to prove the appellant's relationship to the murdered woman, and by finding that no other evidence had been provided to establish it. The grounds assert that the burden of proof is set too high, and that there is supporting evidence of the relationship from the appellant's mother. This ground also raises an arguable error of law.

### **The Hearing in the Upper Tribunal**

15. At the hearing before me to determine whether an error of law was made out, Mr Walker conceded that the Judge had materially erred in law, as stated in the grounds of appeal.
16. While his position was not determinative of the issue which I had to decide, I was satisfied that his concession was appropriate with respect to Ground 1, and that this was sufficient to render the Judge's credibility assessment unsafe, with the consequence that the decision as a whole could not stand.
17. The representatives were in agreement that the appropriate course was for the appeal to be remitted to the First-tier Tribunal for a fresh hearing, with none of the Judge's findings of fact being preserved.

### **Reasons for Finding an Error of Law**

18. According to the death certificate and the newspaper reports, the murder of the appellant's claimed aunt took place on 31 December 2020, whereas the hearing in the Upper Tribunal before Judge Perkins took place on 7 December 2020. Accordingly, it was not possible for the appellant to raise the claimed murder of her aunt by her ex-partner as a matter which fortified her protection claim at or before the hearing on 7 December 2020.
19. The Judge observed that the appellant could have raised it as a new matter by way of a fresh appeal, but essentially that is what the appellant has done by relying on the new claim by way of further submissions, and then appealing the refusal of the further submissions.
20. The upshot is that the Judge was clearly wrong to draw an adverse credibility inference from the appellant's failure to rely in her original appeal on the alleged murder of her aunt by her ex-partner.
21. As to Ground 2, I consider that the position is more nuanced. It is tolerably clear that the Judge was not stating that there was no evidence whatsoever, but was holding that there was no independent evidence that the appellant was related to the murdered female victim as claimed. It is clear that the Judge had in mind independent evidence, rather than subjective evidence, of the relationship, as the Judge went on in the same paragraph to address the submission by Mr Martin (Counsel for the

appellant) that the relationship was shown by the similarity of the surnames. It was not clearly wrong for the Judge to respond to this submission with the observation that even people with the same surname are not necessarily related.

22. Nonetheless, I am persuaded that an error of law is made out because the Judge went on to observe that there was no DNA evidence to support the relationship. Aside from the fact that it was unrealistic to expect the appellant to produce DNA evidence to show that she was related to her aunt as claimed, given that her aunt could not provide a sample of her DNA for comparison with a sample provided by the appellant, the Judge was requiring too high a standard of proof.
23. The consequence of the two material errors made by the Judge is that her overall credibility assessment is unsafe, and therefore the decision must be set aside and remade.

### **Remaking**

24. This is not an appropriate case for retention by the Upper Tribunal. In view of the extent of the fact-finding that will be required to remake the decision, the appropriate course is for the appeal to be remitted to Hatton Cross for a fresh hearing, with none of the findings of fact made by Judge Suffield-Thompson being preserved.

### **Notice of Decision**

**The decision of the First-tier Tribunal is vitiated by a material error of law, such that the decision must be set aside in its entirety and remade.**

### **Directions**

This appeal will be remitted to the First-tier Tribunal at Hatton Cross for a fresh hearing before any Judge apart from Judge Suffield-Thompson, with none of the findings of fact being preserved.

### **Anonymity**

The First-tier Tribunal made an anonymity order in favour of the appellant, and I consider that it is appropriate that the appellant continues to be protected by anonymity for the purposes of these proceedings in the Upper Tribunal.

Andrew Monson  
Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
January 2024

