



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002707

First-tier Tribunal Nos: PA/55535/2022
LP/00443/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 16 September 2024**

Before

UPPER TRIBUNAL JUDGE KEITH

Between

**'YA' (SRI LANKA)
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel, instructed by MTC Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 21st August 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity. This is because the subject matter of this appeal is a claimed fear of persecution. 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. These written reasons reflect the oral decision which I gave to the parties at the end of the hearing.

Background

2. In a decision dated 20th April 2024, a Judge of the First-tier Tribunal, Judge Chana had dismissed the appellant's appeal. The appellant had claimed to fear persecution in her country of origin, Sri Lanka, on the basis of imputed political loyalty to the LTTE, or, as they were known, the 'Tamil Tigers'.
3. In its refusal decision, the respondent had referred to taking issue with the vagueness of the appellant's evidence and not believing her. It is important to note that whilst the appellant was later represented at the FtT hearing, the respondent was not.

The appellant's appeal against the Judge's decision

4. One of the grounds of permission, the first ground, was of procedural fairness. The appellant said that the Judge had reached conclusions on issues of which the appellant had no notice and which had never been raised in the respondent's refusal decision or indeed by the Judge herself in the hearing. Specifically these were credibility issues in relation to having worked for the Electricity Board in Colombo for four to five months, whereas a friend and cohabitee, said to have been involved with the LTTE, had lived with her in Colombo for a year. It was also said that there were inconsistencies in the timeline of events because the appellant worked from 2008 to 2011 but had married in 2009 and lived with her husband. The grounds point out that there is no obvious inconsistency in those comments but in any event they were not points put. It was also said that the Judge had, in her decision, relied on a failure to provide corroborative evidence of renting an apartment in Colombo, which was also a new issue.
5. It was also said that the Judge had misdirected herself on the law, although it is unnecessary for me to repeat this ground, in light of the Respondent's concession at the hearing before me.
6. Judge Saffer of the First-tier Tribunal granted permission on all grounds on 6th June 2024.

The hearing before me and the respondent's concession

7. Although I was not provided with a copy of a supplementary bundle before the hearing, Ms Cunha, with my thanks, was able to review within it a witness statement of the appellant's counsel who appeared below, Ms Kim Renfrew. As a member of the Bar, she is (obviously) obliged to assist this Tribunal and to make a full and candid witness statement and there is no imputation on her honesty or integrity. What she says in her witness statement is that the issues which I have recited in relation to the first ground were never raised by the Judge in the hearing and to that end, she also attached a copy of her note, which she made contemporaneously.
8. Based on Ms Renfrew's note, Ms Cunha made a formal concession, that the Judge erred in relying on matters in her judgment had not been raised by the respondent in its refusal decision and not raised in the hearing before the Judge. Ms Cunha accepted that this was a procedural unfairness which went to the heart of the assessment of the appellant's credibility, such that the Judge's decision was not safe and cannot stand.

9. In my view, Ms Cunha properly conceded that there was a material error. The Judge's decision is not safe and cannot stand. It is unnecessary for me to deal with the remaining grounds, as the appeal stood or fell on the appellant's credibility.
10. I separately sought the views of the respective parties on whether I should retain re-making or remit the matters to the First-tier Tribunal but I expressed my preliminary view that in light of the procedural unfairness the consequence of that had been to deprive the appellant of a fair hearing. Ms Cunha and Mr Raza both agreed and also agreed that I should remit the matter to the First-tier Tribunal for remaking.

Notice of decision

11. **Judge Chana's decision of 20th April 2024 is unsafe and cannot stand. I set it aside, without preserved findings.**
12. **Remaking is remitted to the First-tier Tribunal, to Hatton Cross, to a Judge other than Judge Chana. There is no need for an interpreter.**

J Keith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

5th September 2024