



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

Appeal Numbers: AA/06192/2013  
AA/06193/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 3 January 2014**

**Determination**

**Promulgated**

**On 13 January 2014**

**Before**

**UPPER TRIBUNAL JUDGE MCGEACHY**

**Between**

**MRS LOURDES JERIA STEPHEN MERVYN ANTHONY  
MISS AMANDA TRINITY STEPHEN MERVYN ANTHONY**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Miss M Knorr, Counsel, instructed by Southwark Law Centre

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**Decision and Directions**

1. The appellants, citizens of Sri Lanka, born on 4 December 1962 and 12 March 1995 appeal, with permission, against a determination of Judge of the First-tier Tribunal Wellesley-Cole who, in a determination dated 9 August 2013, dismissed their appeals against decisions of the Secretary of State to refuse to grant asylum under the provisions of paragraph 336 of

HC 395 (as amended). The appellants have been granted discretionary leave to remain until 21 June 2015.

2. The basis of the appellant's claim was that the first appellant and her husband had faced some difficulties in Jaffna where the first appellant's husband was working in 1990. In 2004 her husband had travelled to Dubai and two years later she and the second appellant had moved to live in Colombo. In December 2008 the first appellant's husband had told her that he was returning to Sri Lanka that month but he had disappeared. In January and again in March the following year both appellants were detained and ill-treated. The appellants travelled to Britain in April 2009 where the first appellant claimed asylum.
3. The first appellant made an application for asylum which was submitted with that of her sister. Those applications were refused and their appeals were dismissed by Judge Grant in the First-tier. The first appellant's sister was removed to Sri Lanka. It has been claimed that she was ill-treated on return and an application has been made on her behalf in the European Court of Human Rights under reference 16458/12 (**N and Others v UK**). Both appellants then made further applications. Although those applications were refused they were given rights of appeal and it was in those circumstances that their appeals came before Judge Wellesley-Cole.
4. Judge Wellesley-Cole heard evidence from the first appellant but not from the second appellant. She had before her documentary evidence from Sri Lanka as well as medical and psychiatric reports. She did not find that the appellants' claims were credible and dismissed the appeals.
5. Detailed grounds were submitted which included an allegation that Judge Wellesley-Cole had appeared to fall asleep during submissions. In that regard the grounds relied on the ratio of the determination in **KD (Inattentive judges) [2010] UKUT 261**. That determination indicated that where a judge might have given the appearance of not giving the appeal full attention there might be grounds for setting aside the determination on the basis that there had not been a fair hearing.
6. When the appeal first came before me I did not consider it appropriate to merely accept the allegation made by the appellant's representative and therefore requested that the Presenting Officer at the hearing be contacted by the Presenting Officer before me for her understanding of what had happened. The Presenting Officer indicated that she accepted that there might be some merit in the allegation made by the appellant's representatives.
7. The further grounds of appeal allege that Judge Wellesley-Cole had erred in respect of her assessment of the evidence. For example, it was argued that there had been accounts of two separate periods of detention and torture but that these had been elided by the judge in paragraph 8 of the determination and that therefore she had made no finding on the second

period of detention. Secondly, it was argued that the judge had misunderstood the evidence regarding the return of the first appellant's husband to Sri Lanka in 2008 and had incorrectly recorded the evidence thereon. It was also argued that she had placed weight on the fact that at the screening interview the first appellant, when asked, had confirmed that she had been ill-treated but that she had not amplified that to state that she had been raped when detained when she had not been asked to amplify what had happened to her.

8. It was argued moreover that the judge had not taken into account the statement of facts in the case of **N and Others v UK** and had been somewhat cavalier in her approach to the evidence from four mental health professionals.
9. Mr Nath accepted that there were concerns regarding the judge's assessment of the evidence and that the impression might have been given that she had not applied anxious scrutiny to the determination of the appeal.
10. I consider that there are material errors of law in the determination in that there is a lack of clarity in the assessment of the evidence by the judge who has not clearly stated what her assessment of the evidence of the appellants on each element of their claim was, nor has she clearly indicated her reasons for rejecting the appellants' evidence. This, together with the fact that she may have given the impression that she was not focusing on the submissions made, does give the impression that the judge might not have applied anxious scrutiny to the appeals of these appellants and in all I consider that this amounts to a material error of law.
11. I therefore set aside the determination of the judge.
12. I consider that this is an appeal in which the requirements of the Senior President's Practice Statement in paragraph 7.2(a) are met. I therefore allow the appeal before the Upper Tribunal to the limited extent it is remitted to the First-tier Tribunal to be heard afresh on all issues.

### **Directions**

These appeals are remitted to the First-tier Tribunal to be heard at Taylor House on 22 April 2014.

Time estimate: 1 day.

Tamil interpreter.

Signed

Date

Upper Tribunal Judge McGeachy