



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

Appeal Number: AA/10083/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 29 April 2015**

**Decision & Reasons
Promulgated
On 18 May 2015**

Before

UPPER TRIBUNAL JUDGE MCWILLIAM

Between

**MS GSH
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Aslam, Counsel instructed by Inayat Solicitors

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure
(Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of her family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

1. The appellant is a citizen of Sri Lanka and her date of birth is 18 August 1986. She made an application for asylum which was refused by the Secretary of State in a decision of 4 November 2014.
2. A decision was made to remove the appellant pursuant to Section 47 of the Immigration, Asylum and Nationality Act 2006. The appellant appealed against the decision of the Secretary of State and her appeal was dismissed by Judge of the First-tier Tribunal Landes in a decision that was promulgated on 22 January 2015.
3. The appellant appealed against the decision of Judge Landes and permission to appeal was granted by Judge of the First-tier Tribunal Cruthers in a decision of 23 February 2015. Thus the matter came before me.
4. The appellant's case is that she worked for the HSBC in Sri Lanka and in 2008 she was approached by her brother-in-law and asked to open bank accounts for some of his friends. She did what was requested of her but it developed that her brother-in-law was a member of the LTTE and that he had provided to her false documents in order to open the accounts. The appellant came to the UK on 19 February 2011 in order to study. Two weeks after her arrival her brother informed her that the CID had come to the house looking for her. She was also contacted by her sister, in India, who informed her that her husband (the appellant's brother-in-law) was a member of the LTTE and that he was wanted by the authorities which had led to them fleeing to India. The appellant was contacted by her sister two weeks after her arrival in the UK.
5. The appellant returned to Sri Lanka on 15 July 2012 when she was detained at the airport and subsequently questioned and ill-treated. She was released as a result of the payment of a bribe and fled Sri Lanka with the assistance of an agent using her own passport.

The Decision of the First-tier Tribunal

6. The Secretary of State did not accept the appellant's account and raised a number of credibility issues in the Reasons for Refusal Letter. The appellant gave oral evidence at the hearing before Judge Landes.
7. The Secretary of State accepted that the appellant was employed with HSBC. Judge Landes accepted the appellant's evidence in relation to her role at the bank and found that it was plausible that the appellant would be involved in opening bank accounts. At [39] the judge found that "the only inconsistency pointed to by the respondent in the Reasons for Refusal Letter I do not find to be of any real significance". The judge did not find it significant that there was a difference in the reported length of detention at the airport in the appellant's screening interview and her full asylum interview.

8. The judge agreed with the Secretary of State that the appellant's credibility was damaged because she failed to claim asylum for almost two years on return. The judge did not find the appellant's explanation for this to be reasonable.
9. At [46] the judge found that the appellant's claim that she was on two years' study leave from HSBC is inconsistent with the letters that the appellant submitted in support of her appeal, from the bank. The judge explained this at [46]. The appellant's own evidence was inconsistent with her claim to be on study leave. The evidence that she produced in the way of letters from the bank established that she had resigned in February 2011. The judge found that this was significant at [47] because the appellant explained that she had obtained a copy of her visa because the bank wanted to see it to approve her study leave and that was why her parents had a copy of it and therefore they were able to show it to CID officers in order to prove that the appellant was indeed in the UK.
10. The judge found at [48] that the appellant's oral evidence was inconsistent in a number of respects. First the appellant was not consistent in relation to the documentation given to her in order to open the accounts at the bank. In addition she was not consistent in relation to whether or not the CID officer who according to her had visited her parents had given reasons for making enquiries about her whereabouts.
11. The judge went on to find at [49] implausible features of the appellant's case. The judge found it implausible in the circumstances of the case that CID would not have questioned the appellant's brother who is a customs officer at the airport considering the brother-in-law's activities. The judge found it implausible that the appellant did not seek to find out from her brother-in-law through her sister in India the extent of his involvement with the LTTE and what exactly the CID were likely to have discovered about the accounts because this would have given her an indication of the likely extent of their interest in her. The judge noted that in oral evidence the appellant stated that an arrest warrant had been issued against her and she knew this because her father had told her. In her screening interview she indicated that she did not know if she was subject to an arrest warrant. The judge found that given that the appellant's evidence was that she is in regular contact with her parents it was implausible that the first mention of an arrest warrant would be two years after the appellant had been released from custody following a bribe.
12. The appellant in her asylum interview indicated that her brother works for Sri Lankan Airlines as a customs officer. In oral evidence she stated that her brother had lost the job because of enquiries as a result of her activities. She did not know, however, when he lost his job. Again, given the appellant's evidence that she was in regular contact with her family the judge found that it would be likely that the appellant would have been told of her brother losing his job relatively shortly after it happened and that it was implausible that if the appellant's brother's problems arose

from the appellant and it would lead to his dismissal some two years after the appellant's detention and flight from Sri Lanka.

13. The judge went on at [50] to consider general plausibility of the appellant's account against the country guidance case of GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319. She did not find it plausible that the authorities would be interested in the appellant.

The Grounds Seeking Permission to Appeal and Oral Submissions

14. The grounds are twofold. First, it is maintained that none of the inconsistencies raised by the judge in her determination were put to the appellant at the hearing, Second, it is asserted that the judge's findings of implausibility are speculative and the issues were not raised in the refusal letter. The appellant was not given the opportunity to respond to matters raised by the judge which resulted in procedural unfairness.
15. I heard oral submissions from both representatives. Mr Aslam made submissions in the context of the grounds of appeal. Mr Jarvis made submissions in the context of the Section 24 response of 11 March 2015. He submitted the case of Y v SSHD [2006] EWCA Civ 1223 and SSHD v Maheshwaran [2002] EWCA Civ 173.

Conclusions

16. There is no error of law established in the grounds seeking leave to appeal. Credibility was always in issue in this case. The Secretary of State did not accept the appellant's claim and found her to be lacking in credibility. The appellant gave oral evidence. Most of the matters on which the judge bases adverse credibility findings are grounded in the appellant's oral evidence. The inconsistencies raised by the judge are inconsistencies in the appellant's own evidence and documentation that she produced in support of her appeal. The appellant was represented at the hearing before the First-tier Tribunal. The issues identified by the judge are obvious and should have been contemplated by the representative on hearing the appellant's evidence unfold. They are not obscure issues and they are not minor or peripheral but go to the heart of the appellant's case.
17. It is a matter for a representative's professional judgment what evidence is given in-chief and whether or not an appellant should be re-examined. It is for the appellant (or her representative) to recognise inconsistencies and improbabilities in her account and to deal with them. It was not for the judge to enter the arena and cross-examine the appellant as the grounds seem to suggest. The points raised by Judge Landes are obvious ones and it is not made out that they are matters on which the appellant should have been cross-examined. It has not been shown that should the appellant have been afforded an opportunity to explain these points the answers that she would have given would have influenced the decision.

18. The assessment of credibility may legitimately involve an assessment of plausibility which is an aspect of credibility. The judge considers plausibility in the context of the country guidance case of GS and the situation generally in Sri Lanka. Her findings are not speculative.
19. The grounds of appeal amount to a disagreement with the findings of the First-tier Tribunal and an attempt to reargue the case.
20. There is no error of law and the decision of the First-tier Tribunal to dismiss the appeal on asylum grounds is maintained.

Notice of Decision

The appeal is dismissed.

Signed Joanna McWilliam
Upper Tribunal Judge McWilliam

Date 11May 2015