



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

Appeal Number: AA/05181/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 February 2016**

**Decision & Reasons Promulgated  
On 17 February 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**F N M A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms J Rothwell, Counsel, instructed by Biruntha Solicitors  
For the Respondent: Ms S Sreeraman, Senior Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Pirota (the judge), promulgated on 31 July 2015, in which she dismissed the Appellant's appeal. That appeal was against the Respondent's decision of 27 February 2015, to remove her from the United Kingdom as an illegal entrant.
2. The Appellant's protection claim was somewhat convoluted, but in essence concerned assertions that a family member had been a drug dealer in Sri

Lanka. This individual caused difficulties for the Appellant and her marriage to her husband. In 2012 these matter resulted in the Appellant being falsely suspected of assisting the LTTE. In fear of being arrested, the Appellant left Sri Lanka.

### **The judge's decision**

3. The first hearing of the appeal was adjourned part-heard because the Appellant was fasting for Ramadan and appeared not to have taken certain medication (paragraphs 7-9). There were initial problems at the resumed hearing on 10 July 2015 because different counsel was instructed and she had not been provided with notes of the previous hearing (paragraph 10-13). The hearing proceeded, and no issue has arisen from this.
4. The judge considers the Appellant's health and the evidence relating thereto at paragraphs 32-33 and 39-54. In summary, she found the following:
  - a) The Appellant had been fit and able to give evidence at the hearing;
  - b) There were inconsistencies in respect of her claimed ill-health in Sri Lanka and this country;
  - c) No application had been made to adjourn for a full medical report;
  - d) There were factual errors and discrepancies within the medical evidence;
  - e) Little weight was placed upon a preliminary diagnosis of PTSD;
  - f) There was as distinct contrast between the Appellant's ability to give detailed evidence to her solicitors and her inability to do so at interview or the hearing;
  - g) No problems with interpreters had been highlighted at any stage.
5. As a result of the above, the judge effectively found that vagueness, discrepancies and contradictions in the Appellant's evidence were unexplained by reason of ill-health. The judge therefore held these matters against the Appellant's credibility.
6. The substance of the Appellant's account is considered at paragraphs 55-75. The judge found that there were inherent implausibilities and inconsistencies in the evidence. In particular, the judge did not believe:
  - a) The Appellant's evidence on the claimed interest in her from the Sri Lankan authorities and their dealings with her (paragraphs 57-59 and 66);
  - b) Her account of leaving Sri Lanka and arriving in the United Kingdom (paragraph 62);
  - c) The claim that the Sri Lankan authorities would have any interest in the Appellant (paragraphs 65 and 69);
  - d) The evidence of a witness (paragraph 67);

- e) The claim that the Appellant was a threat to the alleged drug-dealing relative (paragraph 75).
- 7. In addition to the above, the judge placed little or no weight upon the country report of Dr C Smith (paragraphs 60-61). His opinions on questions posed were said to be too speculative and did not in any event go to address the inconsistencies in the Appellant's own evidence.
- 8. As a result of the negative credibility assessment, the judge concluded that there would be no risk on return. The appeal was duly dismissed.

### **The grounds of appeal and grant of permission**

- 9. The grounds are fairly lengthy but in essence seek to attack the judge's findings on the medical evidence, Dr Smith's report, the Appellant's own evidence, and the assessment of risk on return.
- 10. Permission was refused by the First-tier Tribunal. On renewal, Upper Tribunal Judge Bruce granted permission on all grounds, commenting that the judge may not have provided adequate reasons in support of her repeated use of the terms "vague", "evasive", and "discrepancies and contradictions" when referring to the Appellant's account.

### **The hearing before me**

- 11. Ms Rothwell (who did not appear before the First-tier Tribunal) relied on the grounds and candidly accepted that proceedings before the judge seemed to have been difficult. The Appellant's ill-health had not been adequately addressed by the judge. The Respondent had in fact recognised some difficulties at the asylum interview. Dr Smith's report had not been dealt with properly at all, and the witnesses' evidence had been rejected without any reasoning. It was said that at its highest the claim could succeed and so any errors were material.
- 12. Ms Sreeraman relied on the rule 24 response. She asked me to look at the judge's decision as a whole. There was insufficient evidence on the health issue and the judge was entitled to find as she did. There are in fact a number of findings in support of the phrases referred to in the grant of permission. Dr Smith's report had, in the context of this case, been dealt with adequately. In respect of the witnesses' evidence, if an error had occurred it was immaterial.

### **Decision on error of law**

- 13. Ms Rothwell has said all that could properly be said on the Appellant's behalf. She acknowledged that the evidence before the judge (particularly that relating to medical issues) might not have been all that it could have.
- 14. Having considered the judge's decision as a whole, as I must, and acknowledging that a different judge may have reached a different

conclusion, I find that there are no material errors of law in the decision under appeal.

15. I readily accept that repeating phrases such as those used by the judge in numerous paragraphs of her decision can be unhelpful and, without more, may well give rise to errors of law. However, in this case there is more.
16. With reference to the paragraphs referred to previously, the judge has made concrete findings on the health issue, all of which were in my view open to her on the evidence. It was open to her to find that the medical evidence (such as it was) was problematic and inadequate, and she properly took into account that fact that there had been no attempt to seek an adjournment to obtain better evidence. It was also open to the judge to find that inconsistencies within the Appellant's own evidence on this issue counted against her. Taken cumulatively, it was then open to the judge to conclude that the absence of reliable evidence on the health issue had an impact on the assessment of credibility as a whole, both in terms of explaining other inconsistencies and/or vagueness and whether claimed past traumatic events were more likely to have in fact occurred.
17. In respect of the substance of the Appellant's account, the adverse findings in paragraphs 57-59 and 66 were clearly open to the judge. They relate to very specific elements of the Appellant's claim and are not materially affected by what Dr Smith had to say in his report. Similarly, the finding in paragraph 66 is perfectly sound.
18. The two issues that have given me cause for concern are the treatment of Dr Smith's report and the evidence of the witness. In respect of the former, at first glance it appears as though the judge has failed to give proper consideration to the report. However, on further reflection I conclude that the judge was entitled to find that the aspects of the report relating to matters material to the Appellant's case were indeed highly speculative and in addition that his evidence did not go to explain particular inconsistencies within her account. This is not a criticism by me of Dr Smith, but simply my conclusion on the sustainability of the judge's findings.
19. Even there was an error in the consideration of the report, it was not material. The judge's core findings were not sufficiently dependent upon matters which Dr Smith had addressed in his evidence. In this regard I refer to the passages on the Appellant's health and the findings at paragraphs 55-59, 65-66 and 75.
20. Turning to the evidence of the witness. The judge does not give adequate reasons for finding that his evidence was untruthful. That is an error. Having considered the witnesses' statement (H1-H3 of the Appellant's bundle), I conclude that it is not material to the outcome of the appeal. The witness was not able to give direct evidence of claimed events in Sri Lanka. His evidence about contact with the Appellant and/or her family related in the main to travel to the United Kingdom and arrangements

thereafter. It cannot be properly said that this could have materially affected the judge's assessment of the Appellant's claim as a whole. He mentions that the Appellant's mother informed him that she (the Appellant) had divorced her husband and was "in trouble" (no detail is provided). However, I cannot see that this alone could have had a sufficient impact on the rest of the evidence so as to materially undermine the judge's overall findings. Finally, the point stated in paragraph 11 of the statement does not take matters any further. The Appellant did in fact tell someone else about her claimed problems, namely her solicitors. It was the ability to do so, when contrasted with the inability to answer questions at interview and the hearing, which led the judge to one of her adverse findings.

21. In light of the above and having regard to paragraphs 69-76 of her decision, there was no error in respect of the judge's assessment of risk on return.

22. The Appellant's appeal fails.

### **Anonymity**

23. I maintain the direction made by the First-tier Tribunal.

**Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. This direction has been made in order to protect the Appellant from serious harm, having regard to the interests of justice and the principle of proportionality.**

### **Decision**

**The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.**

**The decision of the First-tier Tribunal stands.**

Signed

Date: 12 February 2016

H B Norton-Taylor  
Deputy Judge of the Upper Tribunal

**TO THE RESPONDENT**

**FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed  
Judge H B Norton-Taylor  
Deputy Judge of the Upper Tribunal

Date: 12 February 2016