



**Upper Tribunal
(Immigration and Asylum Chamber)
PA041912016**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Glasgow
On 22 May 2017**

**Decision Promulgated
On 30 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

**NIRUJA VIGNARAJA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E MacKay of McGlashan Mackay, solicitors
For the Respondent: Mr M Matthews, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Fox promulgated on 23 February 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 11 June 1982 and is a national of Sri Lanka. On 14 April 2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Fox ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 25 April 2017 Judge Nightingale gave permission to appeal stating inter alia

2. The grounds argue that the Judge failed to make findings on the appellant's claim and failed to consider the evidence in the round. The Judge gave undue weight to peripheral matters and failed to engage with the facts of the claim.

3. It is arguable that the Judge failed to make findings on the central aspect of the claim; namely that her husband was an LTTE operative in India. It is also arguable that the Judge erred in finding that exit from Sri Lanka through the airport indicated a lack of risk in view of the country guidance. These grounds are arguable.

4. It is also arguable that the Judge gave undue weight to the appellant's immigration history and failed to make clear findings on the substance of the claim.

5. Permission is granted on all grounds pleaded.

The Hearing

5. (a) For the appellant, Mr Mackay moved the grounds of appeal. He told me that the Judge had failed to make findings on submissions and evidence about the approach the Sri Lankan authorities take to diaspora activities. He told me that the appellant's time in India with her late husband was of relevance, and that evidence been placed before the Judge of the interest Sri Lankan authorities had in Tamil communities in India. He told me that the Judge took as his starting point the appellant's immigration history and (despite the fact that this is an asylum claim) at [13] rehearses section 117 of the 2002 Act, finding that immigration control is in the public interest.

(b) Mr Mackay told me that the Judge did not make findings about the plausibility of the appellant's claim. He took me to [22] of the decision and told me that there the Judge engages in speculation rather than making evidence-based findings of fact. He referred me to [29] of the decision and told me that although the Judge declares that the appellant does not fall within a risk category, the Judge fails to set out adequate reasons for reaching that conclusion, particularly in the face of the large amount to background materials placed before him.

(c) Mr Mackay relied on SS v SSHD [2017] UKUT 164 (IAC). He referred to paragraph 33 of that decision and told me that the Judge failed to take account of the finding there that the state machine of Sri Lanka is extremely paranoid. He urged me to allow the appeal and set the decision aside.

6. (a) For the respondent, Mr Matthews told me that the decision does not contain errors, material or otherwise. He told me that the decision contains findings which are directly relevant to the substance of the appellant's claim. He told me that the Judge carried out a careful assessment of every aspect of the appellant's claim and finds between [20] and [23] that the appellant has no LTTE profile, and neither she nor her family have any involvement with the LTTE. Mr Matthews told me that after correctly considering each aspect of the appellant's claim, the Judge finds at [35] of the decision that the appellant's claim is just a fabrication.

(b) Mr Matthews told me that there is no merit in the second ground of appeal, which amounts to a disagreement with the Judge's findings of fact. He reminded me that at both [3] and [31] of the decision the Judge considers the background materials. Turning to the third ground of appeal, Mr Matthews told me that it was just an attempt to re-argue the merits of the case and a disagreement with the facts as the Judge found them to be. Mr Matthews told me that the grounds of appeal amount to nothing more than a disagreement with the Judge's overall rejection of a claim which has been found to be incredible. He argued that no matters of law have been raised in the grounds of appeal. He urged me to dismiss the appeal and allow the decision to stand.

Analysis

7. The thrust of this appeal is that the Judge has not engaged with the central aspect of the appellant's claim and has not made clear findings on the substance of the claim. Between [1] and [4] of the decision, the Judge sets out the background to the appeal. At [5] the Judge correctly sets out the burden and standard of proof and then between [6] and [8] the Judge summarises the appellant's case, before summarising the respondent's case at [10].

8. The core issues of the appellant's claim are that in March 2000 she moved to India with her husband and remained there till 2008. She claims that her husband helped LTTE by sending them money, acting as their agent in the purchase of land and smuggling medicines to Sri Lanka from India. The appellant's husband died in 2007. The appellant returned to Sri Lanka in 2008. In August 2009, the appellant claims that she learned that the Sri Lankan authorities were searching for her and her husband, she avoided them by coming to the UK in March 2010 as a student. The appellant claims that if returned to Sri Lanka she would face persecution because of her imputed political opinion and her ethnicity.

9. The Judge summarises the appellant's claim at [6], [7] and [8] of the decision. At [20] the Judge records that the appellant did not work for LTTE, and knew nothing of her husband's activities for that group. At [23] the Judge takes the appellant's claim at its highest. After analysing each source of evidence between [11] and [28] of the decision, the Judge finds that the appellant's name will not appear on a stop list. A fair reading of the decision makes it clear that the Judge made clear findings on the core aspects of the appellant's claim before coming to his conclusion that the appellant will not feature on a stop list.

10. At [31] the Judge makes it clear that he has considered the background materials and taken account of what is disclosed there. He considers whether or not the appellant would come to the adverse attention of the Sri Lankan authorities. At [35] the Judge specifically records that he has considered the core of the appellant's account and found that it lacks credibility and is a fabrication.

11. It is clear from a fair reading of the Judge's decision that the Judge has engaged with the core elements of the appellant's claim. He has considered each source of evidence and, after taking a balanced look at each source of evidence, has reached conclusions which were well within the range of reasonable conclusions open to the Judge.

12. In GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) the Tribunal held that the current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are: (a) Individuals who are, or are perceived to be, a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have a significant role in relation to post-conflict Tamil separatism within the diaspora and/or a renewal of hostilities within Sri Lanka. (b) Journalists whether in print or other media) or human rights activists, who, in either case, have criticised the Sri Lankan government, in particular its human rights record, or who are associated with publications critical of the Sri Lankan government. (c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes. Among those who may have witnessed war crimes during the conflict, particularly in the No-Fire Zones in May 2009, only those who have already identified themselves by giving such evidence would be known to the Sri Lankan authorities and therefore only they are at real risk of adverse attention or persecution on return as potential or actual war crimes witnesses. (d) A person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant.

13. Although [27] and [29] of the decision both contain a typographical error, it is obvious that the Judge took guidance from the case of GJ. On the facts as he found them to be, the appellant did not fall within a risk category. There is nothing wrong with the Judge's fact-finding exercise.

14. In Shizad (sufficiency of reasons: set aside) [2013] UKUT 85 (IAC) the Tribunal held that (i) Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge; (ii) Although a decision may contain an error of law where the requirements to give adequate reasons are not met, the Upper Tribunal would not normally set aside a decision of the First-tier Tribunal where there has been no misdirection of law, the fact-finding process cannot be criticised and the relevant Country Guidance has been taken into account, unless the conclusions the judge draws from the primary data were not reasonably open to him or her.

15. The decision does not contain an error of law. It is for the Judge to decide what weight to place on the evidence. There is no justifiable criticism of the fact-finding exercise. The Judge directed himself correctly in law. The Judge sets out adequate reasons for reaching the conclusion that he reaches. The decision reached by the Judge is well within the range of reasonable conclusions available to the Judge.

16. In this case, there is no misdirection in law & the fact-finding exercise is beyond criticism. The decision is not tainted by a material error of law. The Judge's decision, when read as a whole, sets out findings that are sustainable and sufficiently detailed.

CONCLUSION

17. No errors of law have been established. The Judge's decision stands.

DECISION

18. The appeal is dismissed. The decision of the First-tier Tribunal stands.

Signed
2017

Paul Doyle

Date 25 May

Deputy Upper Tribunal Judge Doyle