



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

Appeal Number: AA/06098/2015

THE IMMIGRATION ACTS

Heard at Birmingham
On 5th February 2018

Decision and Reasons Promulgated
On 21 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

FRMR
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Authi (Solicitor, Aman Solicitors)
For the Respondent: Ms A Aboni (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sri Lanka who claimed asylum in August 2013. The Appellant's claim was rejected and the Appellant appealed to the First-tier Tribunal. Her appeal was heard by First-tier Tribunal Judge Graham at Birmingham on the 6th of April 2017 and dismissed in a decision promulgated on the 15th of May 2017.
2. The Appellant's asylum claim was made on the basis of her support for the LTTE, the Appellant claimed to have purchased SIM cards for the group, housed LTTE members and obtained medicines, this started in 2005. The Appellant said she was detained in 2010 during which she

was tortured and released on payment of a bribe after which she left the country. In 2014 her family were attacked, her brother shot and the family home burnt down.

3. The decision summarised the Appellant's claim and the reasons given in the Refusal Letter for rejecting the claim. The evidence in the hearing was set out at paragraphs 35 to 43 followed by paragraphs 44 to 68 in which the Judge's reasoning and findings were set out. The Judge did not accept the Appellant's account of her detention and release or that there was any interest in her by the authorities. The psychiatric evidence was considered in paragraphs 61 and 62 and in the Judge's view it attracted little weight.
4. The grounds of application after citing a number of different cases submitted in that the Judge's findings that on the link between the LTTE and Muslims was not based on any material in the hearing bundles. The Judge had erred in the approach to the medical report and the age of the scars. It is also argued that the Judge erred in the consideration of the psychiatric report and the diagnosis of PTSD. Regarding the Appellant's departure from Sri Lanka there was evidence of pervasive bribery at the airport and there was relevant evidence on the Appellant's sur place activities for the TGTE. Permission was granted on the grounds that it was arguable that not all the points in GJ and UB had been addressed.
5. At the hearing Mr Authi relied on the grounds of application and paragraphs 8 to 12 in particular and at that stage had nothing to add. For the Home Office reliance was placed on the rule 24 response. It was submitted that the Judge had directed herself properly and there were good reasons for finding that the Appellant was not credible at paragraphs 45 and 46. The Judge had given reasons for the weight given to the reports and her sur place activities and there would be no risk to the Appellant on return.
6. In response it was said that the medical evidence had not been dealt with adequately. This was particularly so with regard to the report from Dr Al-Wakeel with clear findings that the scars were from torture. The psychiatric report showed that the Appellant had PTSD, he had interviewed the Appellant directly. Bribery was rife as was shown in GJ.
7. There is no set order in which a Judge has to approach consideration of an Appellant's credibility. What is important is that all matters have been addressed. The fact that an Appellant may have PTSD which may explain issues of memory and recall does not itself mean that the account has to be accepted, it may be rejected by reference to other evidence or that there are features that are inherently incredible in any event leading to its being questioned.
8. I also bear in mind the guidance in the case of Re M-W (Care proceedings: Expert Evidence) [2010] EWCA Civ 12 in paragraph 39 Wall LJ stated:

“I regard the following as trite propositions of law: (1) Experts do not decide cases Judges do. The expert's function is to advise the Judge; (2) The Judge is fully entitled to accept or reject expert opinion; (3) If the Judge decides to reject an expert's advice, he or she: a. Must have a sound basis on which to do so; and b. Must explain why that advice is being rejected; (4) Similar considerations arise when a Judge prefers one expert's evidence to that of another. Judges must explain why they prefer the evidence of A to that of B.”
9. The complaint about the Judge's findings on the relationship between the LTTE and Muslims is without foundation. The Judge gave clear references for the evidence being relied on in paragraphs 46 and 47.

10. The Judge considered other aspects of the Appellant's case including the delay in the claim being made, paragraph 45, her lack of detail and knowledge compared to that of the agent, paragraph 49, and the failure of the police to look for her when she failed to report, paragraph 50.
11. The Judge considered the evidence of the Appellant's claim to have left through the airport. The fact that individuals have left through the airport and that bribery exists there is clearly reported and commented on the case law. It does not follow that because a person left in that manner they must have done so, most people must leave Colombo in a routine fashion and that was an issue for the Judge to consider. Leaving without incident could be explained by the payment of a bribe but would also be explained by an Appellant being of no interest to the authorities.
12. The claimed bombing of the Appellant's parents' home was considered, that could be contrasted with the apparent lack of interest in the Appellant when she failed to report. The Judge considered that and discussed the claimed visits in paragraphs 52 to 54 and the supporting letter from Mr Bandera was rejected as unreliable and no issue is taken with the findings made or the reasoning applied.
13. Although as noted above there is no set order for the consideration of the facts and discussion it might have been better if the medical evidence had been considered at the start of the discussion and not towards the end. To have gone about it in the order of the decision is not an error. The question is whether it was considered appropriately or not and whether sufficient reasons were given for the findings made.
14. With regard to the Appellant's injuries these were addressed in paragraphs 58 and 59. In doing so the Judge had regard to the guidance for the consideration of such material in JL (medical reports) China [2013] UKUT 145 (IAC). The Dr was not an expert in torture but in trauma and in assessing the cause of the injuries the Judge had regard to more information that the Dr had been privy to. The age of the scars, being "many years of age" in the Judge's view took it no further as they were not linked to the Appellant's account. Given the other reasons in the decision and the objective evidence that the Judge referred to about the position with regard to Muslims and the LTTE the decision was open to her.
15. The Judge cited the case of HE (DRC-credibility and psychiatric reports) [2004] UKAIT 321 at paragraph 60. The reasons for attaching less weight to the report appear in paragraph 62. In the light of the observations in HE the Judge was entitled to treat the report with caution. It may well be that a witness considers an Appellant to be credible but that is exclusively the province of the Judge and the advice that the report amounted to was not accepted.
16. The grounds do not show that the Judge erred. The decision shows that all relevant aspects of the Appellant's case were considered and addressed. The reasons given by the Judge for rejecting the claim were open to the Judge. The decision has to be read as a whole and without taking matters out of context and bearing in mind the advantage that the Judge has in the access to a wide range of materials.

CONCLUSIONS

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

I do not set aside the decision.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I continue that order (pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.)

Fee Award

In dismissing this appeal I make no fee award.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 13th February 2018