



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/03956/2017

THE IMMIGRATION ACTS

Heard at Field House  
On 6<sup>th</sup> March 2018

Decision & Reasons Promulgated  
On 18<sup>th</sup> April 2018

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MS NY  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms P Solanki (instructed by Biruntha Solicitors)  
For the Respondent: Mr L Tarlow (Senior Home Office Presenting Officer)

DECISION AND REASONS

1. This is an appeal to the Upper Tribunal by the Appellant Ms NY. She is a citizen of Sri Lanka who had made a protection claim to the Secretary of State which was refused and which she appealed to the First-tier Tribunal at a hearing on 5<sup>th</sup> October 2017 before Judge Farrelly. In a Decision and Reasons promulgated on 31<sup>st</sup> October 2017 Judge Farrelly dismissed the appeal on all grounds. Permission was granted by a Judge of the First-tier Tribunal essentially on one of the three grounds. I will turn to the three grounds when I set out the claim itself.
2. The Appellant was born in Sri Lanka. She says that her father was involved with the LTTE as a result of which the whole family left Sri Lanka for Thailand and from there to Malaysia where they stayed for a significant period of time. Whilst in Malaysia

they were under the protection of and had the assistance of UNHCR and there was evidence to that effect. The intention of the family had been to travel to the United States but there was a difficulty in the father gaining permission to do so because of his involvement with LTTE, a banned organisation. It transpires that the Appellant's mother and sister are now in the United States, having been granted permission. Her father is not yet there. She has a brother who is in the United Kingdom and he has been granted refugee status.

3. The Appellant was educated in Malaysia and indeed had a place at university. For reasons which are uncertain, she returned to Sri Lanka where she lived with an uncle. It is her claim that whilst she was there she was arrested, detained, beaten, abused and raped. Her uncle was able to secure her release and she was able to obtain a passport and a student visa and come to the UK. In the UK she stayed with another family, who were known to her family, and indeed she is now engaged to be married to the son of that family.
4. In her appeal before the First-tier Tribunal the Judge considered her reasoning for leaving Malaysia and returning to Sri Lanka and found it inexplicable. He also noted that she had been able to obtain both a passport and visa to come to the UK, without difficulty, despite the fact that there would have been scrutiny of her application by the High Commission. She also had an English language certificate. The Judge noted that with her student application she had satisfied the Entry Clearance Officer that the course fees of over £12,000 had been paid and that she had some £10,000 to support her. He concluded from that that she was a woman of substance.
5. However, throughout the Decision and Reasons, the Judge concentrated, I find, on the motives for the Appellant returning to Sri Lanka which, I agree do seem odd when the rest of the family were pursuing entry to the United States. Also he concentrated on the fact that it may well have been the case that she travelled to the UK and to stay with the family, the son of whom is now her fiancé, as part of the plan. However that is not the whole story and that was not everything that the Judge was tasked to decide.
6. The Appellant's claim details very significant and serious abuse. It is set out in detail at C20 and 21 of the Respondent's bundle which is the asylum interview. There she gave great detail as to what took place and further graphic detail is to be found in the Appellant's witness statement. It is fair to say that none of that is dealt with in the Judge's Decision and Reasons and indeed the Judge, in concentrating on the motivation of the Appellant, has not given any proper scrutiny to the actual protection claim. It is also the case that in her brother's protection application many of the background factors are the same. His claim has been accepted and he is a refugee. Proper scrutiny of that fact and the fact that the Appellant therefore has a family background of LTTE connection has not been given proper consideration either. For those reasons I would set the Decision and Reasons aside.
7. One of the other grounds upon which permission to appeal was sought criticised first of all a variety of grammatical errors and typing errors which appear in the Decision.

I do not find that they are in any way significant and certainly do not suggest that the Decision had been rushed, as suggested.

8. The second ground I am also unimpressed by. It contains phrases like “the Judge constructed an elaborate scenario”, “it was an elaborate conspiracy”, “wholesale deception and conspiracy”. It refers to “scathingly hostile conspiracies”, “a fundamentally unfair hearing”. Those accusations I find are unwarranted and have no place in a permission application. A Judge is entitled to reach conclusions based on the evidence that he hears. Neither of those grounds are made out and indeed were ill-advised in the first place.
9. However, the third ground in relation to the failure to make proper findings in relation to the risk is made out and, as I have already indicated, sufficient to mean that the Decision and Reasons has to be set aside in its entirety with no findings preserved. Because it is a protection claim and because there are a lot of findings of fact to be made, it is appropriate for the matter to be remitted to the First-tier Tribunal for a full rehearing on all matters. The appropriate hearing centre is Taylor House so to that extent the appeal to the Upper Tribunal by the Appellant is allowed.

### **Notice of Decision**

The appeal is allowed to the extent that it is remitted to the First-tier Tribunal at Taylor House for a full rehearing.

### **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 their 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.

Signed

Date 6<sup>th</sup> April 2018

Upper Tribunal Judge Martin