



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/05201/2018

THE IMMIGRATION ACTS

Heard at Field House
On 5th September 2018

Decision & Reasons Promulgated
On 24 September 2018

Before

UPPER TRIBUNAL JUDGE KING TD

Between

N M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jagarajah, Counsel, instructed by MMTC & Co, Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The applicant is a citizen of Sri Lanka born on 12th August 1956. She claimed asylum on 20th April 2017 having been served with notice of removal as an illegal overstayer.
2. The claim for asylum was refused on 10th April 2018.
3. The applicant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Broe on 23rd May 2018.
4. The appeal was dismissed.

5. Subsequently permission was granted to appeal to the Upper Tribunal primarily on the basis of a lack of findings as to whether the appellant was in the risk category identified in **PP [2017] UKUT 117 (IAC)**. Thus the matter comes before me to determine that issue.
6. It was the case as advanced on behalf of the appellant that although she had not been a member of the LTTE the authorities had and would continue to have adverse interest in her because of the profile which other family members did have or were perceived to have had with the LTTE.
7. In particular it is said that her daughter who died in 1997 was a fighter for the LTTE. The appellant lived by herself in Jaffna and that in 2003 she was detained by the authorities and ill-treated because they wanted to know about her children's involvement with the LTTE, in particular with the circumstances leading to the death of her daughter.
8. The appellant contended that her son who lived in Sri Lanka also disappeared in 2006 in mysterious circumstances. Also her son-in-law had been detained as a political prisoner in Welikada Prison, became ill and was taken to hospital but died in 2015. It seems to be suggested he may have taken cyanide. Newspapers on the matter were presented.
9. In essence the Tribunal Judge did not accept that the Government forces would be interested in the appellant some six years following the death of her daughter, and consequently did not accept as credible the experiences of the appellant as described in 2003.
10. The Judge considered that the appellant did not have a profile such as to fall within the risk factors as set out in **MP (Sri Lanka) [2014] EWCA Civ 829** and the country guidance case of **CJ**.
11. Standing alone it may be difficult to find fault with that reasoning. However, a further consideration was required in relation to the appellant by reason of the decision of **PP (female headed household; expert duties) Sri Lanka [2017] UKUT 0017 (IAC)**.
12. It would not seem to be in dispute that the appellant prior to coming to the United Kingdom was living in the former conflict zone of northern and north-eastern Sri Lanka. In her asylum interview she indicated that she had some sisters living in Vavuniya but she did not live with them.
13. The decision of the Upper Tribunal in PP was focused upon two expert reports which had been received concerning the continued treatment of Tamil women, notwithstanding that the conflict ended in May 2009. Although some criticism was attached to the methodology of those reports, the Tribunal nevertheless adopted them for the purpose of the guidance which then followed. The first report by Eva Buzo

dealt with the harassment and unwanted visits by the security forces upon those households where there was no male member. The risk factors were identified as gender, ethnicity and region, the ethnicity of the soldiers and the absence of a husband or male relative and security forces knowledge of and alertness to the individual. The report had been based upon a fairly limited section of the community. Dr Gowrinathan conducted some 50 interviews examining the impact of six years of militarisation on Tamil women in northern Sri Lanka and generally concluded that women in that capacity were at risk.

14. The conclusions of the Tribunal are set out at paragraph 39. In general it was considered that a Tamil female single in a household residing in the former conflict zone of northern and north-eastern Sri Lanka may be at risk of sexual abuse and exploitation perpetrated by members of police, military and paramilitary state organisations. Whether the risk exists is an intensively fact-sensitive question informed by the presence or absence of positive risk factors and decreasing risk factors.
15. Positive risk factors are living in isolation from others, low socio-economic status, dependence upon the distribution of Government aid or the provision of other services by the security services and a perception of former LTTE membership links or sympathies.
16. Countervailing factors being higher socio-economic status, little dependence on Government aid or services and the support of male relatives or neighbours. The individual context of the particular case will dictate the force and weight of each of those factors individually or cumulatively in any given case. Criticism is directed to the Tribunal Judge for lack of application of **PP** and indeed a marked lack of reasoning as to why the appellant would or would not be at risk as a female head of household upon return to Sri Lanka. It was a finding of the Judge without more "she has relatives in Sri Lanka and I do not accept that she has no contact with them".
17. It is unfortunate that the Judge does not spend more time on the positive and negative factors and indeed spend time in identifying who those relatives are. Undoubtedly she has sisters living in that region, as was made clear by her in the interview. She had not lived with them whilst in Sri Lanka. It is not clear what their circumstances were and if married with a husband why the appellant could not live with them.
18. The findings by the Judge that the appellant lacked credibility generally did not extend to any clear findings being made as to whether or not the daughter did in fact die in 1997, whether the son-in-law did in fact die in 2015.
19. All that is said in paragraph 29 is:-

"She did not claim asylum on arrival in this country or when making applications for further leave to remain as a visitor on 6 September and 13 October 2004. Neither her son's disappearance in 2006 or her son in law's death in 2015 prompted her to make a claim".

There is however no clear finding as to whether the Judge accepts the reality of that disappearance and of the two deaths. That of course is very relevant to the issue as to who remains in the United Kingdom who could lend support to the appellant were she to return.

20. She has a brother in Switzerland and indeed a sister also. Clearly the focus of **PP** is a return to Sri Lanka.
21. It is clearly envisaged in **PP** that one factor that may cause continuing interest is past LTTE involvement, but that is by no means the only factor which was of concern to the Tribunal.
22. There has clearly been no fact-specific analysis of her situation and circumstances as required by **PP**.
23. Ms Jagarajah has invited my attention to the fact that the appellant has lived alone in the United Kingdom and indeed has been dependent upon the support of the church, she has chosen to live alone and it may be that upon return to Sri Lanka the situation will continue, particularly if her son is missing and her daughter is dead.
24. It seems to me that this is a significant omission by the Judge in considering all relevant matters in terms of the documents submitted relating to the daughter and to the brother-in-law. The Judge indicates that limited weight is given to such documents which is perhaps an unhelpful non-finding in the circumstances.
25. It seems to me that it is appropriate therefore for the issue of **PP** to be considered.
26. To some extent any findings as to weight or credibility on the documents as produced relating to the presence or absence of family members in Sri Lanka is relevant to the wider issue of **PP**. In those circumstances I do not seek to preserve any findings by the Tribunal in setting aside the decision to be remade as I do.
27. It is of course open to a subsequent decision maker to place such reliance upon some or all of the findings in the decision as a starting point should that be deemed appropriate.
28. Counsel also indicated that there is a history of mental problems and that a medical report may in due course be presented. She says that that is potentially relevant to the issue of Article 8.
29. Given the nature of the issues to be determined it seems to me appropriate in accordance with the Senior President's Practice Direction that this matter be remitted to the First-tier Tribunal for a rehearing on all issues. As indicated I do not specifically reserve any particular finding, though of course it is always open to a decision maker to adopt a particular line of reasoning from the previous decision if that seems to be appropriate.

Notice of Decision

30. The appeal before the Upper Tribunal succeeds to the extent that the decision of the First-tier Tribunal is set aside to be remade by a de novo hearing in the First-tier Tribunal.

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 her 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.

Signed

A handwritten signature in black ink, appearing to read "P. L. King", is enclosed in a thin black rectangular box. The signature is written in a cursive style.

Date 24 September 2018

Upper Tribunal Judge King TD