



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11151/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 12<sup>th</sup> April 2018

Decision & Reasons Promulgated  
On 17<sup>th</sup> May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS M G K  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms J Elliott-Kelly (Counsel), MTC & Co Solicitors  
For the Respondent: Mr I Jarvis (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Jerromes, promulgated on 14<sup>th</sup> December 2017, following a hearing at Taylor House on 29<sup>th</sup> November 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a female, a citizen of Sri Lanka, and was born on 14<sup>th</sup> November 1938. She is 80 years of age. She appealed against the decision of the Respondent dated 24<sup>th</sup>

October 2017, refusing her claim to asylum, on grounds of imputed political opinion, and in the alternative, that she would be returning back to Sri Lanka as a lone woman, as well as raising a claim under Article 8 on the basis of private and family life rights pursuant to Article 8 ECHR.

### **The Appellant's Claim**

3. The basis of the Appellant's claim is that in 2002, she rented a room in her home to a man of Tamil ethnicity, although she herself is a Sinhalese, following which she was subsequently accused of being a member of the LTTE. She claims to have been taken to the police station on three occasions and questioned about this man's involvement with the LTTE. She now fears that on return to Sri Lanka, the police and the authorities will detain her and subject her to mistreatment.
4. The Respondent, however, rejected the Appellant's claim on the basis that despite living with this alleged man of Tamil ethnicity, who she claimed to be a member of the LTTE, she was unable to give any specific details of his name or profession. She claims that she did not know whether he was a student or a worker. When asked whether she had been charged she had said, "no, because they could not find anything against me, how can they take me to court" (AIR 41). She also stated that the police came in the daytime just before dark and because she cried and pleaded for them they let her go (AIR 43). Moreover, during her screening interview, she was asked if she had ever been detained and she said that she had not (SCR 5.4).

### **The Judge's Findings**

5. The judge held that the Appellant is not, and never has been, a member or supporter of the LTTE, or any other pro-Tamil organisation, and has not been involved in any political groups, including in the UK (paragraph 36.5). The judge also concluded that the Appellant lacked credibility in her claim that he had mistreated or exposed to risk of ill-treatment because she had rented her room to a Tamil LTTE supporter because she did not know the name of the man, did not know whether he was a student, and was not subsequently arrested or detained, and had been inconsistent as to whether she had been detained (see paragraph 40).
6. However, the judge accepted that the Appellant had various health problems, including high blood pressure, high cholesterol, hearing problems and asthma (see paragraph 42.1).
7. In relation to the Appellant's daughter in the UK, a Mrs A, the judge did not accept that she had an emotional bond which was greater than that normally between a parent and an adult child, because they had not lived in the same household since 2010, the judge was not satisfied in relation to Mrs A's care plan and their lack of knowledge of each other's lives was not consistent with a close relationship, and the Appellant did not know if her daughter married in Sri Lanka or in the UK, and neither did she know whether her son-in-law had relatives or property in Sri Lanka (see paragraph 43). This was simply the case of an Appellant who had come to the UK in October 2002 as a visitor and had then claimed asylum in October 2016, where her daughter, son-in-law and two grandchildren also lived, but separately from her (see

paragraph 46). The decision of the Secretary of State was not disproportionate to the Article 8 rights of the Appellant.

8. The appeal was dismissed.

### **The Grounds of Application**

9. The grounds of application were to the effect that the judge erred in his approach to the Appellant's interview transcript when considering her credibility; failed to apply anxious scrutiny when considering her asylum appeal; applied the incorrect test when considering whether the Appellant enjoyed family life under Article 8(1); and did not properly take into account her grandchild, S's best interests under Section 55 of the BCIA.
10. On 17<sup>th</sup> January 2018 permission to appeal was granted by the First-tier Tribunal.
11. On 16<sup>th</sup> February 2018 a Rule 24 response was entered by the Respondent Secretary of State. This was to the effect that, the Appellant having entered as a visitor, then waited fifteen years to lodge a claim for asylum which severely undermined her credibility. She was not a Tamil sympathiser. She had played no part in supporting separatism at any time whether in Sri Lanka or in the UK. The country guidance case of **GJ (Sri Lanka) [2013] UKUT 00319** meant that there would be no risk of ill-treatment to the Appellant upon return. As far as her Article 8 rights were concerned, although she and her daughter were both in the UK, the Appellant was living independently of her daughter with someone else, so that it was open to the judge to conclude that the requisite level of dependency had not been established, particularly as the Appellant lived away from her daughter as she did not attend medical appointments, if there was occasional financial support from the daughter. The judge was right to conclude that the bond between the Appellant and her grandchild is no more than a normal emotional tie and the best interests of the child are not jeopardised or infringed in any way.

### **Submissions**

12. At the hearing before me on 12<sup>th</sup> April 2018, Ms Elliott-Kelly of Counsel, appearing on behalf of the Appellant, relied upon the grounds of application. She also relied upon the cases of **Dasgupta [2016] UKUT 00028**, which established the principle that the question of whether there is family life in a child/grandchild context requires a finding of something over and above normal emotional ties and will invariably be intensely fact-sensitive. She further relied upon the case of **Rai [2017] EWCA Civ 320** which affirmed the principle that dependency has to be read down as meaning "support" in the personal sense and has to be "real" or "committed" or "effective", with close attention being paid to who the near relatives of the Appellant are and the nature of the links between them. Ms Elliott-Kelly, also placed reliance upon the case of **YH [2010] EWCA Civ 116** to emphasise the principle of the test in a human rights case of applying the "anxious scrutiny principle" so that "in practice the benefit of any realistic doubt will be given to the Claimant" (paragraph 12).

13. Ms Elliott-Kelly criticised the judge (at paragraph 47) for the finding that “the Appellant is unlikely (even to the lower standard of proof) to be considered a security risk by the Sri Lankan authorities as I have not accepted her claim and she does not fall within one of the categories identified in **GJ** as being at real risk of persecution or serious harm on return to Sri Lanka ...”. She also criticised the judge’s finding that it was not credible that a person who had lived with the Appellant for three or four months in her house, would not be known by name to the Appellant.
14. Ms Elliott-Kelly submitted that if one looks at the interview notes it is clear that what the Appellant was saying, at her advanced years of age, was that she could not at that moment recollect his name. She did not say that she never knew his name (see question 26). The same applies about the criticism of the Appellant not knowing whether this man, living in her property, was a student or a worker, because when questioned what the Appellant said was that she and had been told he was a student (see question 37) but had no idea whether this was true or not (see question 34).
15. Furthermore, there was no additional inconsistency in the Appellant’s answers and yet the judge wrongly suggested that there was (see questions 41 to 42). In relation to the Appellant’s fear of the authorities, she had credibly stated that she had begged them, by promising that she would come back, but she had never said that she had been detained overnight.
16. As for the claim that she had been sexually abused, this had wrongly been inserted in her witness statement, but she had made it quite clear (see question 50) that she had not been sexually abused. In fact, she had stated that this was a mistake in the witness statement and she had corrected it. Against this background, the judge had made no finding as to past persecution and future risk. Finally, as far as Article 8 ECHR was concerned, she had an adult daughter with whom she was in a relationship.
17. It was well-established that a good many adult children may still have a family life with parents who are settled in the UK, not by leave or by force of circumstance, but by long delayed right, and this was the case here (see paragraph 17 of **Rai**). The case of **Dasgupta** (at paragraph 10) accepted a relationship between a grandparent and a grandchild in circumstances that were similar to the present one. The fact that the Appellant did not live with her daughter did not mean that there was no family relationship. The Appellant had for the last fifteen years provided support for her daughter’s children and this had been overlooked. Ms Elliott-Kelly asked me to allow the appeal.
18. For his part, Mr Jarvis submitted that this was nothing more than a disagreement with the findings of the judge. The matter had been looked at in the round. In particular, the daughter’s evidence had been taken into consideration, and it was clear that she lived separately from her mother, and so the relationship could not be anything more than what ordinarily exists between an adult child and their parent. The evidence that had been given was riddled with inconsistencies, as the judge found. Moreover, there was nothing in the statement that “anxious scrutiny” had to be exercised because the case of **YH [2010] EWCA Civ 116** made it clear that “anxious scrutiny may work both ways. The cause of genuine asylum seekers will not be helped by undue credulity

toward those advancing stories which are manifestly contrived or riddled with inconsistencies" (paragraph 24).

19. The judge here was particularly critical of the plausibility of the credibility of the Appellant, pointing out that the Appellant had arrived on her own passport and visa, she did not tell her own daughter, Mrs A, about what happened to her in Sri Lanka, and when asked in cross-examination at the hearing why she had delayed so long in matters, "she said she thought she did not need a passport, the days have gone by quickly and she just stayed" (paragraph 25). The Appellant goes to see her daughter "at least twice a week; her friends there are middle-aged with children; she has lunch and dinner with them but does not stay the night" (paragraph 28).
20. The judge found an inconsistency in the Appellant's account that she no longer had any contact with friends in Sri Lanka because in the asylum interview she had said that they were "all over the country" (see paragraph 30). The Appellant did state in her witness statement that she had been sexually harassed, even if that was subsequently removed. She did not know the name of the lodger (see paragraph 40.1 of the determination), and there is no medical evidence going to a state of mind and recollection, and she was not able to come up with the correct name any time soon thereafter either.
21. The Appellant claimed to have lived with her daughter for fifteen years but the evidence shows that she was living with another man for the last seven years in another property, and the judge found that "they have not lived in the same house since 2010" (paragraph 43.1). The asylum claim was clearly untenable and no criticism could be made of the judge in concluding that the Appellant "waited almost fifteen years to take steps to make a claim for asylum despite her assertion that she left Sri Lanka in 2002 fearing persecution by the authorities and fearing return to Sri Lanka from the outset" (paragraph 37.1).
22. Nor could any criticism be made by the judge in concluding that "even to the lower standard of proof" the Appellant did not let a room to a young Tamil man" (paragraph 40.1). As for the Article 8 claim, the Appellant lied about living with her daughter when she did not. The judge was not wrong to have concluded that the Appellant did not meet the Immigration Rules, and specifically did not meet Appendix FM (family life) and paragraph 276ADE (private life), and did not have a partner or child (under 18 years of age) in the UK and cannot meet the requirements for indefinite leave to remain as an adult dependent relative (see paragraph 53.2).
23. In reply, Ms Elliott-Kelly submitted that once the judge's findings at paragraph 40 are taken away, where the judge simply does not believe that the Appellant let out a room to a young Tamil man, which is a matter which can be explained simply because the Appellant was unable at that point in time to recollect the name of this young man, the objections of the Secretary of State and the findings of the judge simply fall away. Secondly, apart from the letting out of the room in the house to a young Tamil man, there is nothing else which works against the Appellant in terms of her credibility. She asked me to allow the appeal.

**No Error of Law**

24. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA (2007) such that I should set aside the decision. My reasons are as follows.
25. First, it is not the case, as Ms Elliott-Kelly submits, that provided one takes away the failure of the Appellant to recollect the name of the young Tamil man to whom she had let out the house, that there is nothing that can be said against the Appellant by way of credibility. This is a case where, as the judge found, the Appellant did not claim asylum for almost fifteen years despite her assertion that she left Sri Lanka in 2002 fearing persecution by the authorities from the outset. The Appellant did not demonstrate a good reason for claiming asylum at the outset.
26. Second, in relation to the young Tamil man, to whom she had let her property for some three to four months, it was not just his name that she could not recollect, but she was inconsistent also as to whether he was a student or a worker and “had no idea” (AIR 34 and 35). As far as the asylum claim is concerned, the plain fact is that **GJ [2013] UKUT 319** has to be applied, and on that basis, the judge was entirely correct to conclude that,
- “The Appellant is unlikely (even to the lower standard or proof) to be considered as a security risk by the Sri Lankan authorities as I have not accepted her claim and she does not fall within one of the categories identified in **GJ** as being at real risk of persecution ...” (paragraph 47).
27. Third, insofar as her Article 8 claim is concerned, the Appellant has not been truthful in saying that she had been living with her daughter, Mrs A, and the judge was correct in coming to the conclusion that “the Appellant lived separately and independently from her daughter Mrs A.” Yet, despite that, the judge nevertheless went on to “assume that family life is affected and also that after fifteen years in the UK, the Appellant has established a degree of private life” (paragraph 51).
28. The judge then went on properly to apply the considerations of proportionality and legitimacy in the context of the public interest in immigration control (see paragraph 53) and the decision reached cannot be criticised from this point of view either.

**Notice of Decision**

There is no material error of law in the original judge’s decision. The determination shall stand.

An anonymity direction is made.

**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

Deputy Upper Tribunal Judge Juss

14<sup>th</sup> May 2018