



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09847/2015

THE IMMIGRATION ACTS

Heard at Field House
On 7 January 2019

Decision & Reasons Promulgated
On 23 January 2019

Before

UPPER TRIBUNAL JUDGE FINCH

Between

SS

(ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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Representation:

For the Appellant: Ms S. Jegarajah of counsel, instructed by Greater London Solicitors
Limited

For the Respondents: Mr. S. Kotas, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Sri Lanka and is a Tamil by origin. She was born in Pupungunduthivu and later moved with her parents to Jaffna and then to Kilonochi and later to Vavuniya. On 11 May 2001 the Appellant was sent to live in Chennai with her grandmother. Whilst she was living there, her older sister was an active supporter of the LTTE between 2004 and 2007 and she was subsequently granted asylum in the United Kingdom. Another of the Appellant's maternal aunts was also an LTTE supporter.
2. In 2007 she met and started a relationship with an Indian national who is also a Muslim and they married in secret on 24 April 2009. Her husband's family did not approve of his marriage and, when they found out about it in 2010, they would not let him live with the Appellant. However, the Appellant obtained a place at the London School of Business and Finance to study for an MBA in Project Management and she entered the United Kingdom on 14 November 2011 and her husband accompanied her as her dependent.
3. The Appellant travelled to Sri Lanka on 25 January 2013 in order to visit her mother who had had a stroke. She was detained for about four hours on her arrival at the airport and questioned for some of that time.
4. Her uncle collected her from the airport and took her to register in Omanthai, as she did not have a Sri Lankan identity card, and she gave them her mother's address. On 28 January 2014, members of the TID and some police officers arrived and detained the Appellant. She was then taken on a journey of about seven or eight hours and placed in a cell with other people. Both police and army officers were present at this location. The next day she was stripped to see if she had any scars on her body. She was then interrogated. She was shown photographs and asked further questions about her life in the United Kingdom and her family's involvement with the LTTE. In the evening of that day she was beaten, burnt with cigarettes and raped. Two days later she blindfolded, placed in a vehicle, driven some distance and then released into the care of her uncle who had after he had paid a bribe.
5. She travelled back to the United Kingdom on 8 February 2013 via Muscat and applied for asylum on 5 March 2013. Her application was refused on 19 June 2015. Her appeal against

this decision most recently came before First-tier Tribunal Judge Obhi on 14 February 2018. She dismissed the Appellant's appeal in a decision promulgated on 6 March 2018.

6. First-tier Tribunal Judge Adio refused her permission to appeal to the Upper Tribunal on 8 August 2018 but Upper Tribunal Judge Grubb granted her permission to appeal on 15 November 2018.

ERROR OF LAW HEARING

7. Both counsel for the Appellant and the Home Office Presenting Officer made oral submissions and I have taken them into account before reaching my decision below.

ERROR OF LAW DECISION

8. Upper Tribunal Judge Grubb gave the Appellant permission to appeal on all four grounds of appeal. The second ground submitted that First-tier Tribunal Judge Obhi had failed to take into account the fact that the Appellant was a vulnerable witness by virtue of the fact that the expert psychiatric evidence and her NHS records confirmed that she is suffering from post-traumatic stress disorder
9. The Joint Presidential Guidance Note No. 2 of 2010 issued by the Presidents of the Upper and First-tier Tribunals of the Immigration and Asylum Chamber, entitled *Child, vulnerable adult and sensitive appellant guidance* recommended that judges recognise that mental health problems, social or learning difficulties, religious beliefs and practices, sexual orientation, ethnic social and cultural background, domestic and employment circumstances and physical disability or impairment could all render an appellant vulnerable. In particular, paragraph 3 states that:

“The consequences of such vulnerability differ according to the degree to which an individual is affected. It is a matter for you to determine the extent of an identified vulnerability, the effect on the quality of the evidence and the weight to be placed on such vulnerability in assessing the evidence before you, taking into account the evidence as a whole”.

10. In paragraph 15 of the Guidance it is also said that:

“The decision should record whether the Tribunal has concluded the appellant (or a witness) is a child, vulnerable or sensitive, the effect the Tribunal considered the identified vulnerability had in assessing the evidence before it and thus whether the Tribunal was satisfied whether the appellant had established his or her case to the relevant standard of proof. In asylum appeals, weight should be given to objective indications of risk rather than necessarily to a state of mind”

11. It is clear from her decision, that First-tier Tribunal Judge Obhi did not follow this guidance. This is despite the views expressed by the Court of Appeal in *In AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123, where Sir Ernest Ryder, Senior President, gave guidance on the general approach to be adopted in law and practice by the First-tier and Upper Tribunals to ensure that fair determination of appeals from children, young people and other incapacitated or vulnerable persons whose ability to effectively participate in proceedings may be limited.

12. First-tier Tribunal Judge Obhi did take into account the medical evidence provided by the Appellant but, when assessing the weight that she could give to it, she concentrated on the fact that Dr. Halari had not been provided with the Appellant’s NHS medical records. The psychological report provided by Dr. Halari gave very full details of her qualifications and experience and no point was taken about her expertise. In addition, at paragraph 202 of her report she found that the Appellant fulfilled the World Health Organisation criteria for Post-traumatic Stress Disorder as she had the co-occurrence of the characteristic symptoms of avoidance, repeated reliving of the trauma in the form of flashbacks and nightmares and symptoms of autonomic hyperarousal as well as auditory and visual hallucinations. In paragraph 103 she also explained that “the evidence for this is in her account and the development of her symptoms following the traumatic events and the findings on psychological examination”. Therefore, it is clear that she did not merely rely on the narrative provided by the Appellant herself.

13. First-tier Tribunal Judge Obhi accepted that the Appellant had told her GP of the events she relied upon in March 2013 and that her GP had diagnosed that she was suffering from PTSD. But in my view, she did not give sufficient weight to the fact that the Appellant continued to

seek assistance from her GP. For example, on 4 September 2013 it was noted that she was also suffering from a depressive disorder and on 13 March 2015 it was noted that she was suffering from suicidal thoughts. Then on 1 April 2015 it was noted that she had attempted to cut her wrist and take an overdose in the past. None of this conflicted with the opinion reached by Dr. Halari. This lessened the importance that could be given to the fact that she had not been provided with the Appellant's NHS medical notes.

14. It was also not strictly accurate to find that the Appellant "was twice referred for psychological counselling and on both occasions failed to take it up". The entry in her NHS Medical Notes for 4 September 2013 states that she had had two counselling sessions and was then discharged. But it also states that she was still depressed and had started to self-harm. It is also clear that she was being prescribed with Setraline, an anti-depressant, and the dosage was increased on 1 April 2013. In addition, the letter from the Luton Wellbeing Service, dated 12 January 2016, explained that she had not continued her CBT sessions due to her fear of reliving her trauma and that she had been recommended for EMDR therapy.
15. In addition, I have noted that, as submitted in ground one of the grounds of appeal, the factors which First-tier Judge Obhi referred to were not raised in the Refusal letter, contained in submissions made by the Home Office Presenting Officer or raised in cross-examination or any questions asked by First-tier Tribunal Judge Obhi. Therefore, the Appellant was not offered a proper opportunity to respond to the Judge's concerns before she reached her decision.
16. In relation to ground three of the grounds of appeal, First-tier Tribunal Judge Obhi also failed to make any findings in relation to aspects of the Appellant's case which were central to whether she has a well-founded fear of persecution in Sri Lanka. She did not address the possible consequences of the fact that the Respondent had accepted that the Appellant's older sister had been active with the LTTE and was entitled to refugee status. Neither did she make any findings in relation to this sister's oral evidence at the hearing in which she confirmed that she had been told that the Appellant had been detained and tortured in Sri Lanka. In addition, she did not take into account the fact that Dr. Arnold had found that the two of the scars on which the Appellant relied were typical of cigarette burns. It was also the case that he did discuss the causation of each of the scars on the body map, explain that she did not

attribute any other scars to her experience of torture and that he also discounted the possibility of any scars being self-inflicted.

17. In paragraphs 40 and 41 of her decision, First-tier Tribunal Judge Obhi doubted whether the Appellant had returned to Sri Lanka to visit her mother who was ill. When considering whether she had First-tier Tribunal Judge Obhi failed to take into account the letter from Dr. Vaasuthevaa, dated 21 January 2013, which confirmed that her mother had been ill as claimed. Neither did she take into account the email written by the Appellant to her college on 22 January 2013 explaining that she needed an extension of time to complete her course work as she had to visit her mother in Sri Lanka. This evidence pre-dated the Appellant's visit to Sri Lanka.
18. The evidence from the Gowri Clinic also supported her account of being sexually assaulted; albeit that it was not conclusive.
19. In relation to ground four and the weight that should have been given to the findings in *GJ and Others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC). It is clear from this case, that it is more likely that, where a person is not on a watch list but is of interest to the authorities, they will be detained after and not on arrival. The account given by the Appellant is consistent with this. She had to register her address and was detained from that address. It was the Appellant's account that the authorities' suspicion arose from the fact that she had previously left Sri Lanka to live in India during the period of the civil war and the fact that her sister had been active in the LTTE. Neither of these facts was challenged by the Respondent.
20. In addition, in paragraph 39 of her decision First-tier Tribunal Judge Obhi did not take into account the manner in which many people had been able to evade the attention of the Sri Lankan authorities when leaving the country.
21. As a consequence, there were errors of law in First-tier Tribunal Judge Obhi's decision, which undermined her overall decision.

Decision

- (1) The appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Obhi is set aside.
- (3) The appeal is remitted to be heard *de novo* by a salaried first-tier judge at Taylor House and, in any event, the appeal should not be re-listed before First-tier Tribunal Judges Adio, Broe, Grant, Grubb, Obhi or Parkes.

Nadine Finch

Signed

Date 11 January 2019

Upper Tribunal Judge Finch