



(IMMIGRATION AND ASYLUM CHAMBER)

UPPER TRIBUNAL

APPEAL NUMBER: PA/09157/2018

THE IMMIGRATION ACTS

Heard at: Field House
On: 4 January 2019

Decision and Reasons Promulgated
On: 21 January 2019

Before

Deputy Upper Tribunal Judge Mailer

Between

MRS M P R
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Shahzad, Selva & Co Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

DECISION AND REASONS

Direction Regarding Anonymity – Unless and until a tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify them 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.

1. The appellant is a national of Sri Lanka, born on 10 December 1965. She appeals with permission against the decision of First-tier Tribunal Judge

I A Ross, who in a decision promulgated on 23 October 2018, dismissed her asylum, humanitarian protection and human rights appeals.

The background to the appeal

2. The appellant claimed that her husband was a village official who was forced to work for the LTTE from 1992–1995. Her case was that he was given the responsibility of looking after finances in the LTTE and had to write down accounts and submit them. Notwithstanding his official position, he never reported to the government that he was being forced to work for the LTTE as he was being monitored by the LTTE [5].
3. The appellant claimed that someone in the village reported her husband's LTTE involvement to the army. She claimed that her husband was arrested and detained on three occasions by the LTTE authorities, first in December 2013, then in March 2014 and finally in February 2015.
4. On the first occasion, he was warned and was asked about his involvement with the LTTE. On the second occasion, the army had gathered information about him. He was however released without charge. On the third occasion, the appellant was not in Sri Lanka. Her husband had travelled to the UK in 2014.
5. The appellant visited her husband in a hospital in Colombo when she returned there. However, he died on 10 March 2015. She claimed that this was as a result of being tortured during his third detention [6].
6. She claimed that on 20 December 2016 and in February 2017 she was detained and questioned by the army about her husband's activities. She told the army that she had no knowledge or involvement and was released. On 27 April 2017 she was arrested and detained for three days. She claimed that she was questioned about her husband's LTTE membership again and was tortured. She was hit on the head and collapsed. When she woke up she was released and told not to tell anyone about the arrest and detention. She was not to leave the area. She was not charged with any offence as a result of any arrest and detention [7].
7. She left Sri Lanka on 12 December 2017 with an agent using her own passport. She travelled to an unknown European country via an unknown Arab country [8].
8. The respondent accepted her identity and nationality. However, her account of the events in Sri Lanka was not accepted. It was also not accepted that she would be at risk on return to Sri Lanka. The respondent concluded that

she would not fall into any of the risk categories set out in the country guidance decision in GJ and others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 319 (IAC) [10].

9. First-tier Tribunal Judge Ross stated at [23] that there is no evidential requirement for a person claiming asylum to provide corroborative evidence and that a lower standard of proof is applicable [23].
10. He heard oral evidence from the appellant, her daughter and son in law in accordance with their witness statements. The appellant accepted that she had previously travelled to the UK in 2008 and in 2013 as a visitor and had returned to Sri Lanka on both occasions. When asked why she had come to the UK, she replied that she was frightened to stay on her own and wanted to live with her daughter for a little while to build up the courage to stay on her own - [14].
11. She was referred to her screening interview conducted on 20 January 2018 where she was asked to explain all the reasons why she could not return to Sri Lanka. The Judge noted at [15] that she stated during the screening interview that she was being searched for in Sri Lanka and when she was kept by them she was beaten on her head. They wanted to know some details of her husband when he was helping the LTTE, so she is in fear of being approached by them, the army.
12. She further stated in her screening interview that on 20 December 2016 she was not taken but then they came home and asked her a few questions. On another occasion in February 2017, they came home and asked her the same questions again. In April 2017 she was taken by them for inquiries and kept for three days and beaten up. She was not bailed but her husband and herself were beaten and as a result of the beatings, her husband was admitted to hospital and died - [15].
13. When asked why she claimed that she and her husband were beaten in April 2017 she claimed that this had been recorded wrongly. She also confirmed that she had only been arrested and detained on one occasion in April 2017 and had been released after three days. Her father and siblings are still in Sri Lanka. She has one sister and three brothers in Sri Lanka - [16].
14. In re-examination she stated that she would help her husband with his work by writing accounts. She had not applied for another UK visa as she had done so twice before. Her brother told her that if she applied for a visa she would be arrested and therefore arranged for an agent to take her out of Sri Lanka [17].

15. She stated that she is alone in Sri Lanka now that her husband has died. She did not get any help from her children who are in the UK and Switzerland. She was in depression. She cannot sleep and has no appetite. She now lives with her daughter in the UK and her daughter helps her. [18]
16. The evidence of her daughter was that on 17 December 2017 she received a call from her mother who had arrived at Victoria Train Station. The appellant then came by taxi to her house. Since then she has lived with her and she provides for her mother. She travelled herself to Sri Lanka in 2015 when her father died and was there in 2016 [19]. The appellant's son in law stated that the appellant arrived in 2017 and said that she came with an "agency". She arrived by taxi. He is not aware where she travelled from, having only received a telephone call that she was on her way [20].
17. First-tier Tribunal Judge Ross found that there were significant credibility issues regarding the asylum claim. He had been provided at the hearing with a refusal decision dated 18 June 2015 in relation to a visit visa application made by the appellant. That application was made after the appellant's husband died in March 2015. It recorded that she stated that she wished to visit her daughter, son in law and grandchildren in the UK and wanted a visa for six months. She stated in the application that her husband had passed away in March 2015 and that her father and daughter suggested that she stay with her daughter in the UK [24].
18. In that visa application in 2015, she declared that she had a monthly income from family support in the amount of £130 and that her expenditure was £75, leaving her with a balance of £55 a month. However, her bank account had a closing balance of £5,327.85 with £4,880.43 having been deposited on 26 May 2015. There was no explanation as to the origin of that large deposit. That visa application was refused and the decision was not appealed against.
19. Judge Ross noted that the visit visa application made in 2015 after her husband died was not mentioned by the appellant during her asylum interview. Its existence was only made apparent as a result of its production by the Home Office Presenting Officer at the hearing: It is accepted that the Judge erred in respect of that finding. He had failed to check the asylum screening interview at paragraph 3.2 where she had stated that she applied for a visa in 2015 after her husband passed away, but the visa was refused.

20. Judge Ross also noted that the death certificate produced stated that the appellant's husband died of liver disease and did not mention any physical assault or trauma. He was satisfied that following her husband's death, the appellant 'desperately and understandably' wanted to live with her daughter and family in the UK. He noted however that he was not deciding an appeal relating to entry clearance application under the Immigration Rules but was concerned with an appeal against the refusal of her asylum claim [27].
21. She made her asylum claim three weeks after she alleged she came to the UK on 17 December 2017. He found that there was no record of her entry into the UK at the date she claimed to have entered. He did not believe that she was not aware of the countries which she travelled through to get to the UK, given that she was a frequent traveller, having previously visited the UK on two occasions and Switzerland, where her daughter lives. She also has relatives in France. It was "just not credible" as claimed by her daughter and son in law, that she arrived unexpectedly by taxi on 17 December 2017. There was an absence of documentary evidence to support that fact. There were no telephone records showing that her son in law received a call on 17 December 2017, nor a taxi receipt. The evidence was that she had arrived at Victoria Train Station, presumably from Gatwick. However, no train ticket was produced [28].
22. He found that her daughter and son in law must have been aware that she was coming to the UK. It is likely that they were involved in encouraging her to come here illegally after her visit visa was refused in 2015. The appellant herself had stated in that visa application that it was her father and daughter who suggested that she come to live with her daughter in the UK [29].
23. He further found that the appellant gave a vague account of her husband's activities in helping the LTTE. She claimed to have assisted her husband in his work for the LTTE and yet the only detail she has given is that she would help her husband with his work by writing accounts. Given that her husband was a village official, it is likely that he would have had to keep accounts and that the appellant may have helped him. The only evidence that her husband assisted the LTTE, however, comes from the appellant and her daughter, both of whom he found were not credible witnesses [30].
24. He found moreover that there is no reason for the appellant to have been arrested and detained in April 2017 given that her husband died in March 2015 and on her own account she had already been questioned by the army

- twice and nothing happened to her as a result. He found that the appellant was not arrested in April 2017, some two years after her husband's death – [31].
25. He had regard to a psychiatric report prepared by Dr Hussain who saw the appellant on one occasion on 12 August 2018. His diagnosis of PTSD is as a result of the account given to him by the appellant which he has accepted.
 26. First-tier Tribunal Judge Ross found that it is likely that the appellant's general anxiety is as a result of the prospect of her being returned to Sri Lanka and not because of what had happened to her there. He noted that the appellant has not required any inpatient treatment. Dr Hussain had recommended a light treatment plan of 20mg fluoxetine per day and cognitive behavioural therapy if needed [32].
 27. He found that the appellant failed to substantiate her asylum claim, even to the lower standard of proof – [33].
 28. With regard to her human rights claim, he noted that she is 52 years old and has lived in Sri Lanka all her life. Whilst accepting that her husband had died, there is no evidence that she requires constant care in relation to her physical and emotional needs. Nor is there any evidence that personal care is not available or affordable in Sri Lanka. For Article 8 to be engaged in this case, there needed to be more than mere emotional dependency' in a normal relationship between a parent and adult child. The appellant in this case had not reached that threshold [34].
 29. Mr Shahzad, who represented the appellant before the First-tier Tribunal referred to his grounds seeking permission. He submitted that the Judge wrongly put the burden on the appellant to substantiate her asylum claim. He erred in his conclusion at [24–26] that the appellant is not credible since she failed to mention the visit visa refusal application made in 2015. He failed to properly check the asylum screening interview and made an incorrect finding relating to the appellant's account: She had mentioned in her screening interview that her application was refused in 2015.
 30. He further submitted that the Judge himself raised the issue of the appellant's entry into the UK at the hearing. The respondent did not raise that issue in the refusal letter. In her screening interview she outlined her journey to the UK. There she stated that she left Sri Lanka on 12 December 2017 and travelled to an unknown European country via an unknown Arab country. It was from this country that she was travelling with the

agent, posing as his wife, and she travelled by vehicle as a passenger. She arrived in the UK by car as a passenger on 17 December 2017.

31. The respondent did not dispute her account of her journey to the UK. She does not speak or read English. She does not understand Arabic. It is unreasonable to expect her to know the different countries that she had travelled through when coming to the UK.
32. Further, the Judge failed to consider the evidence of the appellant and her daughter properly.
33. The Judge did not make any findings regarding the core issue of the appellant's asylum claim, namely, that she was afraid that the army would kill her for assisting in her work for the LTTE. She gave a detailed account of her husband's working with the LTTE. The determination regarding the issue of the appellant's work with the LTTE is vague.
34. He referred to her witness statement where she stated that she supported her husband in preparing the accounts of funds of the LTTE. She did not join the LTTE formally. She supported the LTTE secretly, just like her husband. The Judge did not engage with her claim for fear of persecution due to her working with the LTTE. He did not consider her evidence "in depth."
35. The Judge did not make any findings regarding her account of arrest and detention by the authorities on three occasions. However, as I have already noted, the Judge did make findings: He found that there was no reason for her to have been arrested and detained in April 2017, given that her husband died in March 2015. Further, on her own account she had already been questioned by the army twice and nothing had happened to her as a result. He found that she was not arrested in April 2017, some two years after her husband's death [31].
36. The Judge has not provided any reasons to conclude that the appellant's daughter and son in law encouraged her to travel to the UK. Those negative findings on the 'non-issue' resulted in the negative credibility about the appellant's core asylum claim.
37. He submitted that the Judge also erred in failing to consider the report of Dr Hussain about the risk of removal on her mental health condition. He warned her about the risk of deterioration in her mental health if she failed to comply with the medical treatment as recommended.

38. He submitted at paragraph 33 of the grounds, that the Judge wrongly concluded at [34] that the appellant required constant care. However, at [34] the Judge in fact stated that whilst accepting that her husband has died, there is no evidence that she did require constant care in relation to her physical and emotional needs, nor is there any evidence that personal care is not available or affordable in Sri Lanka.
39. On behalf of the respondent, Ms Isherwood submitted that there has been no material error of law. The grounds amount to a disagreement with the Judge's findings.
40. The Judge properly identified the appellant's claim from [5] of the determination.
41. She accepted that the Judge erred at [26] in stating that the visit visa application made in 2015 was not mentioned by the appellant during her asylum interview. As already noted, it had been mentioned by her in the screening interview. However, that 'mistake' did not amount to a material error of law.
42. She referred to the death certificate relating to the appellant's husband at page 143 of the bundle. The cause of death is stated as "Encompensent crooning liver sale decease diabetics moltas (sic)." He thus died of natural causes.
43. Although the respondent did not dispute the appellant's travel arrangements, she noted that the appellant claimed to have been aware that she came to the UK through European countries. She submitted that if you are a genuine asylum seeker, you should accordingly avail yourself of the opportunity to claim asylum in those countries.
44. With regard to the Judge's credibility finding at [28], she submitted that the appellant has to do her best to support her claim. The documentary evidence referred to by the Judge would have been available.
45. She submitted that the psychiatrist relied on the statement and account submitted by the appellant, as well as the solicitors' instructions. However, the respondent's reasons for refusal had not been made available to the psychiatrist who thus accepted the claim at face value. There was no assessment made. Nor is there any evidence that the appellant has received any treatment suggested in the recommendations at paragraph 7, page 100. Dr Hussain found that there was a risk of deterioration if she fails to comply with the medical treatment as recommended.

46. Ms Isherwood submitted that the appellant in any event did not fall into any of the categories of persons at risk of persecution or serious harm on return to Sri Lanka. The Judge had referred to the decision of GJ and others, supra, at [10].
47. Finally, she referred to the decision in Ribeli v Entry Clearance Officer, Pretoria [2018] EWCA Civ 611. There has to be something more than normal emotional ties between the appellant and her daughter and son in law. There is accordingly a high threshold which was not met in this case.
48. In reply, Mr Shahzad referred to the appellant's witness statement at paragraph 24. When she went to Switzerland to see her daughter, she did not have any illness. Her husband was only diabetic. His health was good. She was told that his liver was damaged, resulting in his sudden death. She did not believe them as she has seen scars of torture on his body.
49. He submitted that following GJ, if a person is detained in Sri Lanka by the security services, there remains a real risk of ill treatment or harm requiring international protection.

Assessment

50. It is accepted by Ms Isherwood that the First-tier Tribunal Judge I A Ross erred in stating that the appellant failed to mention the refusal of her visit visa application made in 2015.
51. It is also contended that the Judge wrongly imposed a requirement to provide evidence to substantiate her asylum claim. However, as noted by First-tier Tribunal Judge Grimmett, when granting permission to appeal, grounds 7 and 8 failed to indicate where corroboration or evidence not available to the appellant was required by the Judge. As submitted by Ms Isherwood, the Judge did not accept the evidence of the appellant's daughter and son in law that the appellant simply arrived unexpectedly by taxi on 17 December 2017. It is in that context that he found that there was an absence of any documentary evidence to substantiate that fact.
52. The Judge has given a detailed decision. He noted that the appellant claimed to have been detained and questioned by the army about her husband's activities in December 2016, February 2017 and April 2017. He found that there was no reason for the appellant to have been arrested and detained in April 2017 given that her husband died in March 2015 and that she had already been questioned twice by the army and that nothing

happened to her as a result. He accordingly found that she had not been arrested in April 2017 which was two years after her husband's death.

53. He found that the appellant gave a vague account of her husband's activities in helping the LTTE. She would help her husband with his work by writing accounts. However, he noted that her husband was a village official and it is likely that he would have had to keep accounts and that the appellant may have helped him. The only evidence that her husband assisted the LTTE however, came from the appellant and her daughter, both of whom he found were not credible witnesses.
54. It is contended that his incorrect finding that the appellant had not disclosed the visa application that she made in 2015 following her husband's death, arguably coloured the Judge's findings regarding the appellant's and her daughter's credibility.
55. However, the Judge also had regard to other evidence including the fact that the death certificate produced stated that her husband died of liver disease and did not mention any signs of physical assaults or trauma.
56. Further, he did not accept as credible the assertion by the appellant's daughter and son in law that the appellant had simply arrived unexpectedly in December 2017. He found that they must have been aware that the appellant was coming to the UK. He noted that the appellant herself stated in the visa application which was refused in 2015 that her daughter and father suggested she come to live with the daughter in the UK [29].
57. Her husband died on 10 March 2015. However, she claimed that it was in December 2016 and February 2017 that she was questioned by the army about her husband's activities. She always stated that she had no knowledge or involvement. On her evidence, the authorities had shown no interest in her for more than one and a half years after her husband's death. He accordingly found on the evidence as a whole that the appellant had not been arrested and detained, as claimed, in April 2017.
58. First-tier Tribunal Judge Ross has also considered the psychiatric report from Dr Hussain. He noted that there was no evidence that the appellant required constant care in relation to her physical and emotional needs. Nor was there any evidence that personal care is not available or affordable in Sri Lanka. Notwithstanding the submission at paragraph 33 of the grounds of appeal, the Judge did not wrongly conclude that the appellant required constant care.

59. First-tier Tribunal Judge I A Ross has given sustainable reasons for his adverse credibility findings. Having regard to the determination as a whole, I find that he has not made any material error on a point of law.

Notice of Decision

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

Anonymity direction continued.

Signed

Date 10 January 2019

Deputy Upper Tribunal Judge Mailer