



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/12317/2017

THE IMMIGRATION ACTS

Heard at Field House
On 30 August 2019

Decision & Reasons Promulgated
On 13 September 2019

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

NWSD

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Senior Home Office Presenting Officer
For the Respondent: Mr N Paramjorthy, counsel, Paramount Chambers

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Plumptre, promulgated on 29 March 2019. Permission to appeal was granted by Upper Tribunal Judge Macleman on 16 July 2019.

Anonymity

2. Such a direction has been made previously, and is repeated below, this being a protection matter.

Background

3. On 18 January 2009, the respondent arrived in the United Kingdom from Sri Lanka with leave to enter as a student. Her leave was extended in the same capacity on several occasions. The respondent's leave to remain was curtailed on 2 March 2014 because the licence of her Tier 4 sponsor was revoked. She unsuccessfully applied for further leave to remain as a student on 6 June 2014 and her appeal against this decision was dismissed. On 4 December 2014, the respondent was encountered by immigration officials working illegally and was served with removal directions. Thereafter, the respondent sought to remain on human rights grounds, but this application was rejected. On 16 May 2017, the respondent applied for asylum.
4. The substance of the respondent's asylum claim was that she was arrested and detained by the Sri Lankan authorities during 2008 as she was suspected of involvement with DG, who in turn was suspected of having involvement with the LTTE. The respondent had worked with DG in connection with her employment at a realty company in Colombo. The respondent described being detained for a week, being questioned about DG and mistreated. The respondent saw DG in the United Kingdom, when he advised her not to return to Sri Lanka.
5. In a letter dated 10 November 2017, the Secretary of State, refused the protection claim on the basis that since the respondent's arrest, DG had become an MP and a minister in the Sri Lankan government for the ruling United National Party (UNP). The Secretary of State noted that the respondent was unable to demonstrate awareness of any links between DG and the LTTE; that she had been photographed at an official UK UNP meeting with DG which undermined aspects of her claim and that she had been attempting to leave Sri Lanka prior to her problems in Sri Lanka. There were also said to be a number of inconsistent aspects to the respondent's claim as well as criticism of her delay in leaving Sri Lanka and in seeking asylum. The respondent's claim that she suffered from depression was considered but did not engage Article 3 ECHR.

The hearing before the First-tier Tribunal

6. The respondent did not attend the hearing before the First-tier Tribunal, having fallen and injured herself earlier in the day. The appeal proceeded by way of submissions, with the judge dismissing the protection claim and humanitarian protection claim but allowing the appeal on Article 3 grounds, based on the respondent's current mental health problems and PTSD. The judge found there to be no evidence of DG, who was described as a high-profile minister for the UNP, having any links with the LTTE and she rejected the core of the respondent's claim.

The grounds of appeal

7. The grounds argued firstly, that the judge misdirected herself in stating that the appropriate test in Article 3 health cases had been relaxed following *Paposhvili v Belgium* [2017] Imm AR 867 and secondly that she failed to apply the test set out in *J v SSHD* [2005] EWCA Civ 629
8. Permission to appeal was granted on the basis sought.

9. The respondent did not file a Rule 24 response.

The hearing

10. Mr Walker argued as follows. There was no evidence before the judge regarding what medical care was available in Sri Lanka and she erred in finding that the appellant ought to be granted leave to remain on health grounds. The judge had further erred in failing to follow the test set out in *N* and finding that the threshold had been lessened. Given that the judge found that the appellant was not at risk of persecution, it was an error to allow the appeal based on aspects of that claim.
11. Mr Paramjorthy made the following comments. The decision and reasons did not read well. There was a comprehensive rejection of the appellant's asylum claim at [49], however the appellant relied on the circumstances of her detention to support her claim that she had serious mental health issues. At [67], the judge recorded that the appellant was claiming that there was a risk of suicide or self-harm, whereas the argument had been regarding the availability of treatment in Sri Lanka and the "intense suffering" test. The judge recommended that the appellant be granted leave to remain to receive treatment whereas she ought to have reached a finding on whether Article 3 would be breached by her removal.
12. At the end of the hearing I announced that the decision contained material errors of law.
13. In discussing the remaking of the decision, Mr Paramjorthy stated that there had been a number of developments since the previous hearing and requested that the matter be remitted to the First-tier Tribunal.

Decision on error of law

14. The judge considered the appellant's Article 3 claim on the basis that she was relying on a risk of suicide. At [67], the judge said as follows; "*The real issue before me is not whether or not there is adequate medical treatment in Sri Lanka but whether or not the enforced return of the appellant might bring about her suicide or the risk of self-harm...*" Yet, the skeleton argument before the judge clearly states that what was relied upon was paragraphs 454-456 of *GJ*, on the basis that there was insufficient psychiatric treatment available for the appellant in Sri Lanka. Accordingly, the judge's reliance on *J* was misplaced and she failed to consider the case advanced. Furthermore, the judge had rejected the appellant's protection claim and it was therefore irrational for her to accept that she was suicidal as a result of what she said had happened to her in detention.
15. The judge purported to allow the appeal on Article 3 grounds but did not explain her reasoning. It is hard to discern why the appeal was allowed, given the judge's criticism of the appellant's protection claim as well as the deficiencies noted in the report of Dr Raj Persaud. The judge also wrongly stated that the test in *N* had been relaxed following *Paposhvili*. Indeed, the judgment in *MM (Malawi)* [2018] EWCA Civ 2482 shows that the reverse was found.

16. In view of Mr Paramjorthy's comments it is unnecessary to say more. The judge's decision contained material errors of law such that her conclusions on the Article 3 health claim are unsafe. There was no challenge to the judge's findings on the protection claim and these are preserved.
17. I was told that efforts are being made to find the appellant a legal aid solicitor and that there have been developments in her case. While mindful of Statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of her Article 3 claim at the First-tier Tribunal and it would be unfair to deprive her of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set aside in relation to the free-standing Article 3 claim.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Plumptre.

The appellant is represented pro bono by Mr N Paramjorthy of Paramount Chambers - the matter is to be listed at his convenience

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 06 September 2019

Upper Tribunal Judge Kamara