



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Numbers:
UI-2022-000684 & UI-2022-001542
[PA/51654/2020; IA/01270/2020]**

THE IMMIGRATION ACTS

**Heard at Field House
On the 27 July 2022**

**Decision & Reasons Promulgated
On the 15 September 2022**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

UI-2022-000684

**M S
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel instructed by Ravi Solicitors Ltd,

For the Respondent: Mr E Tufan, Home Office Presenting Officer

Between

UI-2022-001542

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**M S
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Home Office Presenting Officer

For the Respondent: Mr N Paramjorthy, Counsel instructed by Ravi Solicitors Ltd,

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the party MS is granted anonymity. No-one shall publish or reveal any information, including the name or address of MS, likely to lead members of the public to identify MS. Failure to comply with this order could amount to a contempt of court. MS seeks international protection and is entitled to privacy and publicity might create a risk to her safety.
2. MS is a national of Sri Lanka. It is MS's case that if she returned to Sri Lanka she would face persecution from the authorities and she would not be able to get necessary medical treatment and would find life in Sri Lanka exceptionally difficult because of a combination of her circumstances.
3. The First-tier Tribunal dismissed the appeal on Refugee Convention and grounds relying on Article 3 of the European Convention on Human Rights but allowed the appeal on grounds relying on Article 8 of the ECHR. Before me both parties are appealing the decision. They are dissatisfied for different reasons.
4. MS is dissatisfied because the First-tier Tribunal made no clear findings on her case that her mental health is such that it would be wrong to return her. She has a claim under Article 3. It is not my function today to determine if that claim has merit. She has clearly asserted her case and it has not been considered at all adequately. It is impossible to discern just what the judge made of her case and no attempt has been made to consider the development in the law initiated by **Paposhvili v Belgium** [2016] ECHR 1113, and explained in **AM (Zimbabwe) v SSHD** [2020] UKSC 17.
5. Second, it was equally clearly MS's case that her particular circumstances, taking account of her mental health and her being a sole woman in Colombo, would make it unlawful to return her there. Again, I am not commenting on the merits of the case. The point is the case has been clearly raised and just not answered at all adequately. It is impossible to work out why the judge rejected the claim.
6. Mr Tufan, realistically, did not resist these criticisms.
7. Equally realistically, Mr Paramjorthy did not resist the Secretary of State's criticism that the decision to allow it on Article 8 grounds was, if not wholly unexplained, paid no regard to the statutory requirements and it really should have done. I agree that this is not a case where the statutory requirements can be "read in" to the decision with any kind of certainty as was suggested when, initially, permission to appeal was refused; I have thought about that argument and it just does not work.
8. I have been assisted by two experienced representatives who accepted promptly that this decision is unsalvageable and I find for the reasons I have given that the First-tier Tribunal erred in law and I set aside its decision.
9. Given that there has been no proper determination of the core issues in MS's case, it is, I find, an appeal that needs to go back to the First-tier

Tribunal to be looked at again. I appreciate that this would be at least its third trip to the First-tier Tribunal for the MS but one decision was some time ago and points have been raised that are said to be different and the Tribunal that should have dealt with that, I am sorry to say, on this occasion just did not and from the appellant's point of view she is entitled to preserve all her rights.

10. My decision is that the First-tier Tribunal erred in law. I set aside its decision and I direct that the case be heard again in the First-tier Tribunal.

Notice of Decision

11. The First-tier Tribunal erred in law. I set aside its decision. I allow the appeal of MS and I allow the appeal of the Secretary of State. I direct that the appeal be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 28 July 2022