



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-001849

First-tier Tribunal No: PA/00040/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 19th of November 2024

Before

UPPER TRIBUNAL JUDGE BULPITT

Between

AW
(ANONYMITY DIRECTION MADE)

Applicant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K Pullinger, Counsel

For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 22 October 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is the appellant's appeal against the decision of First-tier Tribunal Judge Moffatt (the Judge) dated 12 July 2023. In that decision the Judge dismissed the appellant's appeal against the respondent's refusal of her protection claim. Because the appeal related to a protection claim the First-tier Tribunal made an

Anonymity Order. Lest anything said or done in these proceedings gives rise to a risk to the appellant I maintain that order.

Factual Background.

2. The appellant is a Sri Lankan national and is thirty eight years old. She came to the United Kingdom as a student in 2011 but she did not leave the United Kingdom when her student visa expired on 8 February 2016 and on 7 March 2016, having been served with removal papers as an overstayer, she claimed asylum.
3. The appellant's asylum claim was made on the basis she had a well-founded fear of persecution by the Sri Lankan state authorities who suspected her of being a supporter of the LTTE and to have given evidence to the Lessons Learned and Reconciliation Commission (LLRC). The appellant said that in 2007 she started a relationship with a female Ms R, and that the couple lived together in Nugawela. In March 2008 masked men abducted the appellant and R from their home and the appellant learnt that Ms R was suspected of involvement with the LTTE. The appellant was detained in a camp where she was tortured and interrogated. She never saw Ms R again. She became friendly with one of the police officers in the camp, Mr K, who arranged her release on condition that she began a relationship with him. Following her release she married Mr K. In 2010 she approached the LLRC and provided a statement about her mistreatment in the camp. In 2011 she came to the United Kingdom to study bringing Mr K as her dependant. Mr K committed sexual offences in the United Kingdom for which he was sent to prison. Whilst resident in the United Kingdom she returned to Sri Lanka in 2013 and again in 2015. During her visit in 2015 she was detained by state authorities for a second time, who tortured her and interrogated her about Mr K who they said had given evidence against the government. She was released on payment of a bribe having been held for ten days and then returned to the United Kingdom. Following her return and whilst she has been living in the United Kingdom the police in Sri Lanka have regularly attended her home address with a warrant seeking to arrest her. Following his release from prison Mr K was deported to Sri Lanka where he has gone missing and the appellant fears that if she were to return to Sri Lanka she would be persecuted by state authorities.
4. The appellant's asylum claim was refused by the respondent on 8 November 2019 and she appealed to the First-tier Tribunal. Following a hearing at which the appellant gave evidence, her appeal was dismissed by First-tier Tribunal Judge Norris on 10 January 2020. Judge Norris did not believe the appellant's account of arrest and detention in Sri Lanka in 2008, did not believe the appellant's account about giving a statement to the LLRC in 2010, found that there was almost no evidence of the appellant's marriage to Mr K, did not believe that the appellant was detained in 2015, and did not believe that there was a warrant outstanding for the appellant or that she was wanted by the Sri Lankan authorities. There is nothing to indicate that the decision of Judge Norris was appealed.
5. Despite being appeal rights exhausted from February 2020 the appellant remained in the United Kingdom. On 14 September 2021 she made further submissions to the respondent which were treated as a fresh asylum claim. In that fresh claim the appellant maintained that her initial account the police in Sri Lanka were prosecuting her and that her claim was true. The respondent refused

the appellant's fresh asylum claim on 18 November 2022 and the appellant appealed to the First-tier Tribunal.

The Judge's Decision

6. The Judge heard the appeal on 7 June 2023. The appellant was represented by counsel and the respondent by a presenting officer. The Judge heard evidence from the appellant and considered documentary evidence that had been submitted by the parties. That evidence included an additional psychiatric report about the appellant which was not before the respondent.
7. The Judge promulgated her decision a month later on 12 July 2023. The Judge treated the decision of Judge Norris as her starting point and assessed the further evidence that was adduced with the fresh claim but concluded she was not able to attach any weight to the new documents. The Judge found the appellant not to be a credible witness and that there was no reason to depart from the findings made by Judge Norris. She therefore dismissed the appellant's protection appeal. The Judge went on to consider the appellant's human rights claim and found that the appellant's return to Sri Lanka would not breach either the appellant's Article 3 or Article 8 rights under the Convention on the Protection of Human Rights and Fundamental Freedoms (the Convention).

The Appeal to the Upper Tribunal

8. The appellant was refused permission to appeal by the First-tier Tribunal but granted permission following renewed application to the Upper Tribunal that was submitted two months late. Having determined that it was in the interest of justice to extend time, Upper Tribunal Judge Reeds granted permission on all six grounds of challenge noting that the grounds were unclear, ran to 57 paragraphs some of which overlapped and some of which were contradictory.
9. Mr Pullinger acknowledged the deficiencies in the grounds (which he had not drafted but which were apparently drafted by counsel) but made submissions in support of the arguments advanced. Mrs Nolan resisted the appeal on all grounds. At the end of the hearing I reserved my decision.

Analysis

Ground One - speculative findings

10. This ground is covered in paragraphs [9] – [24] of the grounds of appeal. Although the ground is titled "speculative findings on documents and credibility" it includes an assertion that the Judge failed to put relevant matters to the appellant and that the Judge's concerns "should have been explored" with the appellant. This submission of a failure to put matters to the appellant was pursued by Mr Pullinger who argued that the Judge's should have asked the appellant about the failure to adduce her marriage certificate in the hearing before Judge Norris and should have asked the appellant about her mother's bank statement which the Judge said had not been adduced before Judge Norris but which the appellant claims were adduced in that first appeal.
11. This complaint amounts to a challenge to the fairness of the procedure adopted by the Judge. As such it should have been supported by some evidence (e.g. a

relevant extract of the evidence given in the hearing) to demonstrate that these matters were not in fact put during the hearing. Instead, as was pointed out by Judge Reeds when granting permission, not only is there no evidence to show that the matters were not put to the appellant, the grounds at [11], [15] and [18] refer only to it being “unclear” whether matters were put to the appellant or not. On the material provided therefore this procedural challenge simply does not get off the ground. There is no evidential basis for asserting that the matters were not put to the appellant, indeed the grounds of appeal are unclear about whether they were put or not.

12. The other assertions within these paragraphs about the Judge making speculative findings are equally baseless and misconceived. It is said for example without further explanation at [9] that the Judge “ought to have taken ample regard and time towards the Appellant’s documents” when the Judge has clearly had regard to the documents. The thrust of ground one however is the submission at [21] that the Judge’s view that documents relied upon could have been adduced at the hearing before Judge Norris was “speculative” and at [24] that the Judge’s findings on the credibility of the Appellant and her documents are “speculative”. From Mr Pullinger’s submissions it was apparent that these were complaints about the Judge’s treatment of a marriage certificate and bank statements that were adduced.
13. Far from being speculative, the Judge’s finding that the marriage certificate could have been provided at the first hearing was unquestionably correct as the marriage pre-dated the hearing. Judge Norris commented adversely on the absence of the marriage certificate when concluding that there was almost no evidence to support the marriage taking place. The Judge was undoubtedly entitled therefore to view the subsequent production of a marriage certificate with a degree of circumspection, especially in the light of the inconsistencies in the document that the Judge identified and which the appellant was unable to adequately explain (see [50] and [51] of the Judge’s decision). There was nothing “speculative” about the Judge’s approach to this evidence.
14. Likewise there was nothing speculative about the Judge’s assessment of the bank statements. The Judge had before her the decision of Judge Norris in which Judge Norris rejected the assertion that in 2015 the appellant’s mother had provided money to pay a bribe from her bank account ([7.26]). The Judge also had before her evidence of the appellant’s mother’s bank account from 2020-2021. The Judge did not have evidence before her of the appellant’s mother’s bank account from 2015. It was not speculative but entirely accurate for the Judge to comment that the bank statements that had been adduced did not cover the period when the bribe was paid and it was not speculative or unfair for the Judge to draw an inference from the failure to adduce evidence from the relevant period in the hearing before her. The assertion at [22] and [28] of the grounds that the appellant had previously provided the relevant bank statements for 2015 during the proceedings before Judge Norris is contrary to Judge Norris’s summary of the evidence before her ([3.3]) and her finding that “it is very unclear why or how the Appellant’s mother, who did not have a paying job, would have a bank account” ([7.26]). It is in any event a red herring, the Judge was required to treat Judge Norris’s decision as her starting point, to analyse the evidence that was before her and not to second guess what evidence had been before Judge Norris. The Judge clearly did this without speculating and having “had ample time and regard” for the documents.

Ground 2 – Inadequate reasoning / misconstruing evidence

15. This ground is covered in paragraphs [25] - [43] some of which repeat the complaints about the Judge's treatment of the marriage certificate and bank statements which have already been covered in ground one. Some of the paragraphs consist of misconceived attempts to reargue the appeal: "*When viewed with introspection the circumstantial evidence indeed suggests that he has surely gone missing.*" Some of the paragraphs include misconceived attempts to respond to the Judge's findings by giving further evidence or explanation: "*it is customary for the criminal court to conclude all the statements from the witnesses and collect all the reports & evidence before the charge sheet is prepared.*" In other paragraphs there are unsupported and unarguable assertions that the Judge has "*failed to have ample regard*" to the evidence.
16. Sensibly, Mr Pullinger only pursued the complaints in this ground about the Judge's treatment of the letters adduced from two Sri Lankan barristers Mr Abeynayake and Mr Sananayake and the documents that are said to relate to a criminal case being pursued against the appellant at the Magistrate Court of Kandy. Mr Pullinger argued that the Judge made mistakes about what evidence had been adduced before Judge Norris and about when the Sri Lankan barristers became involved with the appellant's case. Mr Pullinger also argued that the Judge failed to engage with the proposition that the evidence from the barristers should carry greater weight because they were letters written in the course of their profession and that the Judge dismissed Mr Abeynayake's evidence as speculative without acknowledgment of his position as a senior lawyer.
17. I am not persuaded that the Judge made mistakes about the evidence that was before her. Instead it is clear from the Judge's decision that there was confusion about what evidence was adduced in the earlier hearing and about how and when the evidence was obtained. The Judge records seeking clarification from the appellant but that the appellant could not remember. The Judge records that the appellant accepted that Mr Abernayake had had no dealing with her case before 2021, and records that it was the appellant who said that "documents of the proceedings against her were available before Judge Norris" even though some of them are dated after the appeal (see [21] - [22]). Contrary to the assertions made elsewhere in the grounds, it is apparent that the appellant was given a clear opportunity to provide clarity about the evidence and was unable to satisfactorily do so.
18. Contrary to what is said in the grounds, it is evident that the Judge considered the court documentation and the letters with care. It is apparent that the Judge was aware of the fact Mr Abeynayake was a lawyer when she did so and there is no reason to infer that the Judge failed to take that into consideration when assessing the evidence. Neither is there any reason to conclude that the Judge has not taken the letter from Mr Sananayake into consideration when assessing the evidence, indeed the Judge repeats at [47] and [63] that she has considered all the evidence before reaching her conclusion. Contrary to what is said in the grounds, having done so the Judge gives adequate reasons to explain why she attached no weight to the documents. Those reasons included the delay between the events in 2008 which are said to have led to the prosecution, and the apparent issuance of proceedings more than twelve years later; the appellant's earlier evidence that she was not charged following release in 2008; the timing of the documentation coming after the hearing before Judge Norris; and the speculation within the letters. These are all factors which it was rational for the Judge to consider. Although the grounds argue with the Judge's reasoning they do not identify an error of law in the Judge's decision.

Grounds 3 and 4 - Medical Evidence

19. In ground three (paragraphs [44] - [49]) it is asserted that the Judge's consideration of the medical evidence is "inadequate" and that the Judge had failed to consider the impact the appellant's mental health might have on her credibility. In ground four (paragraphs [50] and [51]) it is said that the Judge failed to recognise the appellant's fear of persecution when considering the risk of suicide. Mr Pullinger took these two grounds together and submitted that at [62] of her decision the Judge appears to go behind the appellant's diagnosis of PTSD and that the Judge's assessment of the appellant's Article 3 claim on the basis of her ill health was inadequate.
20. I am not persuaded by Mr Pullinger's suggestion that the Judge went behind the findings of Dr Mihaylov when noting at [62] that the first mention of the appellant suffering PTSD was in July 2020 after she had become appeal rights exhausted. That was a simple statement of fact. Neither am I persuaded that there is any merit in the vague submission that the Judge failed to consider the impact of the diagnosis on the appellant's credibility. There was in fact no suggestion in Dr Mihaylov's report that the appellant's PTSD and depression would make her oral account any more or less credible. The Judge makes repeated reference to considering the evidence in the round and there is no reason to infer that she failed to do that.
21. The complaints about the Judge's treatment of the appellant's Article 3 claim on the grounds of ill-health are similarly baseless. The Judge was clearly entitled to find that the evidence adduced, which included no evidence that the appellant was a seriously ill person and a finding of a "medium risk" of suicide where the expert notes that the appellant did not have a plan to end her life, does not meet the test set out in AM (Zimbabwe) [2020] UKSC 17.

Ground 5 - Devaseelan

22. In ground five (paragraphs [52] - [55]) the submission is made that the Judge failed to correctly apply the guidance in Devaseelan [2002] UKIAT 00702. The written grounds pursued by Mr Pullinger in the hearing are hard to understand, but are in reality a disagreement with the Judge's decision. Contrary to the submissions made, the Judge correctly applied Devaseelan, taking Judge Norris's decision as her starting point, viewing documents that could have been adduced before Judge Norris but weren't, with circumspection and considering all the evidence in the round. Whilst it might be right that the Judge was mistaken when she called the document that was adduced before Judge Norris a "charge sheet" rather than a "warrant" this was not a mistake that could have any bearing on the Judge's decision.

Ground six - Inadequate reasoning about the stop list

23. The complaint in ground six is described as a complaint of inadequate reasoning from the Judge for her finding that the stop list document adduced by the appellant was not something she could rely upon. In reality however the two paragraphs setting out this final ground of appeal simply dispute the reasons the Judge gave for rejecting the evidence. Mr Pullinger did not seek to add to those written grounds. They do not identify an error of law in the Judge's decision. The Judge's reasoning is clearly adequate to enable the appellant and this Tribunal to understand why the Judge found this not to be reliable evidence. This was unquestionably a decision the Judge was entitled to reach.

Conclusion

24. Despite the length of the grounds of appeal and the scattering of complaints within them, there is no error of law in the Judge's decision. The Judge has considered the appellant's case with care, applied the law correctly and reached a decision that was reasonably open to her. The fact the appellant disagrees and seeks to argue with the Judge's findings does not mean that the decision involves the making of an error of law.

Notice of Decision

The appellant's appeal is dismissed.

The decision of the First-tier Tribunal did not involve the making of a material error of law and therefore stands

Luke Bulpitt
Upper Tribunal Judge Bulpitt

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14 November 2024