



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-002490

First-tier Tribunal No: PA/51320/2023

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 04 November 2024**

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

**CR
(ANONYMITY ORDER MADE)**

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr A Badar, counsel instructed by Indra Sebastian Solicitors
For the Respondent: Ms A Ahmed, Senior Home Office Presenting Officer

Heard at Field House on 1 November 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

Introduction

1. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge CAS O'Garro who dismissed the appeal following a hearing which took place on 18 March 2024.
2. Permission to appeal was granted by Deputy Upper Tribunal Judge Parkes on 5 July 2024.

Anonymity

3. An anonymity direction was made previously and it is appropriate for it to be maintained given that this appeal concerns a protection claim.

Factual Background

4. The appellant is a national of Sri Lanka now aged forty-six, who entered the United Kingdom during 2009 in possession of entry clearance as a student. The appellant sought to extend that leave and was, ultimately granted further leave to remain as a student between August 2012 and August 2015. After several unsuccessful applications for leave to remain in the United Kingdom on human rights grounds, the appellant applied for asylum in 2017. The protection claim was based on her fear of a former partner as well as a claim to have been sexually abused. The appellant also raised a human rights claim under Article 3 ECHR owing to her mental health and an Article 8 private life claim.
5. The appellant's application was refused in a decision dated 26 March 2018 and her appeal against that decision was dismissed by the First-tier Tribunal by Judge MA Khan in July 2018. That decision was set aside by the Upper Tribunal and remitted to the First-tier Tribunal where it was dismissed again by Judge Stedman in September 2019. That decision was also set aside by the Upper Tribunal during March 2020 and Upper Tribunal Judge Perkins redetermined the matter, dismissing the appellant's appeal following a hearing which took place on 7 December 2020.
6. The appellant lodged further submissions on the same basis as previously and included a new factor, that her cousin was planning to kill her because his mother (the appellant's aunt) was killed during December 2020 (shortly after the hearing before the Upper Tribunal) and the appellant's former partner was suspected of orchestrating it. These submissions were refused in a decision letter dated 10 February 2023. It is this decision which is the subject of this appeal.
7. The appellant's appeal was dismissed by First-tier Tribunal Judge Suffield-Thompson on 11 October 2023. That decision was set aside by Deputy Upper Tribunal Judge Monson on 12 January 2024, who remitted the matter to the First-tier Tribunal for a fresh hearing where it came before Judge O'Garro.

The decision of First-tier Tribunal O'Garro

8. At the rehearing before the First-tier Tribunal, the issues in contention were whether the appellant is at real risk of persecution or serious harm on return to Sri Lanka emanating from the former partner as well as from the appellant's cousin, and whether her removal would breach her Article 8 rights. The judge concluded, that the evidence adduced by the appellant did not displace the findings of Upper Tribunal Judge Perkins who dismissed the appellant's claim in 2021. In respect of Article 8, the judge noted that the appellant lived with a partner and had a brother and other relatives in the United Kingdom but concluded that the respondent's decision would not result in unjustifiably harsh consequences.

The appeal to the Upper Tribunal

9. The grounds of appeal expressly relied upon the grounds of appeal to the First-tier Tribunal, which were not enclosed with the application for permission to appeal.
10. The renewed ground mainly commented on the First-tier refusal of permission and alluded to concerns with the manner in which the judge had assessed the evidence before her.
11. Permission to appeal was granted based on what was stated in the renewed grounds.
12. The respondent filed no Rule 24 response.

The error of law hearing

13. The matter comes before the Upper Tribunal to determine whether the decision contains an error of law and, if it is so concluded, to either re-make the decision or remit the appeal to the First-tier Tribunal to do so. The hearing was attended by representatives for both parties as above. Both representatives made submissions and the conclusions below reflect those arguments and submissions where necessary. A bundle was submitted on behalf of the appellant containing, inter alia, the core documents in the appeal, including the appellant's and respondent's bundles before the First-tier Tribunal.
14. Having heard succinct submissions from both representatives, I announced that I was satisfied that the decision of the First-tier Tribunal contained no material error of law. I give my reasons below.

Discussion

15. The grounds of appeal are set out between paragraphs 4 to 8 and criticise the judge's reasons for rejecting the appellant's claim that her aunt had been killed. Those reasons focused on inconsistencies in the evidence adduced by the appellant. It is argued that the judge's reasoning was flawed.
16. The appellant produced her own birth certificate, that of her mother and her aunt as well as her aunt's death certificate. At [44] of the decision the judge noted the different spellings of the surname of the appellant's aunt and compared it to other documents. I will not restate the differences here, but the judge was generous in describing it as different spelling, when it appears to be a different name. Contrary to what is submitted on the appellant's behalf, the judge records and takes into consideration the suggested explanation put forward by counsel in reaching her finding. In any event, the judge did not reject the appellant's account for this reason alone. There is no error here.
17. The grounds, at paragraph 6, set out a series of discrepancies in the names shown in various documents and it is contended that there are more consistencies than inconsistencies. It is also tentatively suggested that the inconsistency in the first name of the deceased between the birth and death certificate is owing to a phonetic spelling of the name. There is no supporting evidence for this claim. Furthermore, the deceased had a European name which is written in that manner in her Sri Lankan birth certificate and therefore counsel's explanation makes little sense.

18. The judge's treatment of the news report is criticised at paragraph 7 of the grounds. In short the judge found the news report to be unreliable because the deceased's name and age did not accord with the details in the death certificate. These are adequate reasons in themselves.
19. The judge notes that no explanation was provided for these inconsistencies. Furthermore, the judge did not reject the claim that the person who was murdered was the appellant's aunt for these reasons alone, but also in light of the findings of Judge Perkins who last considered the appellant's appeal. In particular, Judge Perkins found at [94] that there was no assailant 'looking out' for the appellant in Sri Lanka and noting that the appellant returned to Sri Lanka in 2013 and that she was 'not expecting problems' when she did so. He concluded that the appellant's claim of being at risk from her 'former friend' in Sri Lanka was untrue [99].
20. Paragraph 8 of the grounds contains criticism of the judge's rejection of an email sent by the appellant's brother. The judge placed no weight on that document because she rejected the appellant's claim. The grounds are not wrong to state that the judge could have said that she had considered this particular piece of evidence in the round. Yet at [32] and [50], the judge states that she considered 'all the evidence' in that manner and there is no indication that she did not. Even though the reasons for rejecting the brother's email are brief, it is difficult to say that this is a material error given the difficulties with the remainder of the appellant's fresh evidence. Ultimately, it is apparent from [49] of the decision that the judge reached a global finding after considering each piece of evidence separately. The overall finding was that the evidence relied upon by the appellant had not displaced the findings of Judge Perkins. The judge was entitled to reach that conclusion.
21. Lastly, it is said in the grounds that the judge failed to assess the appellant's oral and written evidence. Again, the judge indicated that she considered all the evidence in the round on more than one occasion. Furthermore, at [49] the judge notes that the appellant has provided no reliable evidence to support her claim that her former partner was looking for and at [50] the judge stated that she did not find the appellant to be a credible witness. Nothing is said in the grounds nor in submissions before me as to the content of the appellant's evidence which was not considered or what material difference it could have made to the outcome of the appeal.
22. The judge provided adequate reasons for rejecting the appellant's claim and her decision contains no material error of law.

Notice of Decision

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

The decision of the First-tier Tribunal shall stand.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

4 November 2024

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email