



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

Appeal Number: AA/01594/2015

THE IMMIGRATION ACTS

Heard at Bradford Upper Tribunal

Decision & Reasons

On 1 June 2015

Promulgated

On 7 July 2015

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

F M

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mrs R Pettersen, Senior Home Office Presenting Officer

For the Respondent: Miss S Khan, instructed by Howells, Solicitors

DECISION AND REASONS

1. The respondent, FM, is a female citizen of Sri Lanka born in 1974. She entered the United Kingdom as a student in 2010 and claimed asylum in September 2014. Her application was refused and the appellant also took a decision on 19 January 2015 to remove her from the United Kingdom. The respondent appealed against that decision to the First-tier Tribunal (Judge Myers) which, in a determination promulgated on 2 April 2015, allowed the appeal on asylum and human rights (Article 3 ECHR) grounds. I shall hereafter refer to the respondent as the appellant and to the appellant as the respondent (as they appeared respectively before the First-tier Tribunal).

2. The Secretary of State now appeals with permission, to the Upper Tribunal. There are two grounds of appeal. First, the respondent asserts that the judge failed to take proper account of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The appellant had delayed in claiming asylum, having entered as a student in 2010 at a time when she subsequently claimed she had been in fear of return to Sri Lanka. Secondly, the judge had failed to take account of political changes in Sri Lanka. The appellant claimed fear, *inter alia*, the former president's brother; the respondent argues that the judge failed to take account of the fact (referred to in the refusal letter at [58]) that the government of Sri Lanka had changed since 2010.
3. As regards ground 1, I find that the Secretary of State has not established any error of law in the judge's decision. The judge did not refer in terms to Section 8 of the 2004 Act but she did record at [39] that she accepted "That when [the appellant] first came to the UK as a student she did not initially claim asylum because she thought that things might calm down and she would be able to return [to Sri Lanka]." Further, at [40] the judge found it,

troubling that [the appellant] did not claim asylum on her return from Sri Lanka in 2013 after it became apparent that the threats were still ongoing. It is hard to accept an intelligent highly educated woman who had by this stage lived in the UK for three years would be unaware of the asylum system or that her details would remain confidential. Having accepted the crux of her claim and finding her credible, on balance I accept her evidence that she had health problems and did not know what to do at that stage. She was under stress and she still had a current visa, it is credible that she only decided to address the problem when her visa expired and she had no choice but to act.

In my opinion, that passage of the judge's decision deals adequately with the Section 8 factors arising in this appeal.

4. As regards the second ground of appeal, I find that the judge has failed to deal adequately with the matters concerning risk on return which were not only referred to in the refusal letter but recorded (in a paragraph dealing with submissions) by the judge in her own decision at [29]. Recording the respondent's submission before her, the judge noted that, "Even if her account was accepted, there has been a change of government in Sri Lanka and therefore there would be sufficiency of protection and if she wanted she would be able to internally relocate." Having accepted the appellant's account as credible, the judge went on at [41] to find as follows:

Having found it credible it follows that I accept she would not have sufficiency of protection or be able to relocate on return. The respondent raises the point that the corruption and embezzlement was already subject of international publicity and therefore it lacks credibility that efforts would be made to shut the appellant up as in effect it is already too late. The appellant's rebuttal is credible in my judgment; she is perceived as a threat by those with powerful interests to protect because she is Sri Lankan and

can give first hand evidence. Furthermore, because of her profile she would be unable to relocate.

5. It was the appellant's case that she had become involved (after the Tsunami in 2004) with relief work in Sri Lanka but that she had become aware that international other funds donated for that relief work may have been embezzled by individuals in Sri Lanka. These "whistle blowing" activities also led to tensions with her husband from whom she is now divorced. The refusal letter [58] noted the change in government in the recent election of January 2015. The letter also dealt [60-68] at length with the possibility of internal flight within Sri Lanka. Miss Khan submitted to me that the individuals with "powerful interests to protect" identified by the judge still have power and influence in Sri Lanka notwithstanding the change of government. That may be the case but I find that the judge has failed to deal with that aspect of the appeal adequately. Had the judge believed that the appellant was still at threat from elements within the previous government, then she should have said so and identified those items of evidence which might support such an opinion. On reading the decision and reasons, one is left with the impression that, although she has recorded the respondent's submission at [29], the judge has omitted taking into account the change of government in her assessment of risk on return. Likewise, her analysis of the internal flight alternative ("because of her profile ...") is also brief to the point of being inadequate. I consider that risk on return and the internal flight alternative need to be looked at in greater detail and it is for that reason that I set aside the decision and reasons of the judge and remit this appeal to the First-tier Tribunal (not Judge Myers) to consider the matter afresh. Having said that, I have rejected the respondent's submissions as regards Section 8 I am satisfied that the judge's assessment of the credibility of the appellant should stand. The new Tribunal will need to consider risk on return and internal flight on the basis of the credibility findings made by Judge Myers. Miss Khan told me that, in the event that the decision was set aside, the appellant would seek to adduce new background evidence concerning the change of government. The appellant will be at liberty to do so subject to the standard directions as to the notice she will need to give of new evidence to the Tribunal and the respondent.

Notice of Decision

The decision of the First-tier Tribunal which was promulgated on 2 April 2015 is set aside. The appeal is remitted to the First-tier Tribunal (not Judge Myers) to remake the decision. The findings of the First-tier Tribunal regarding the credibility of the appellant's account shall stand.

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 1 July 2015

Upper Tribunal Judge Clive Lane