



IAC-CH-AP-V1

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

Appeal Number: AA/08249/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 27th August 2015**

**Decision & Reasons Promulgated
On 16th September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVIDGE

Between

**MISS LIYANAGE NILUKA SANJEEWANI SILVA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Aghayere, Solicitor

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

DECISION AND REASONS

1. The Appellant is a 37 year old Sri Lankan national who appeals a decision of the First-tier Tribunal dismissing her appeal against a refusal of asylum.
2. The First-tier Tribunal set out in detail the Appellant's case between [4] and [16], the evidence and submissions between [17] and [37], the standard and burden of proof at [38], the contra case between [39] and [47], and country background evidence between [48] and [51]. The consideration of the parties' positions is detailed. No issue as to the

accuracy of the judge's understanding of either party's case was made before me.

The Appellant's Claim

3. In summary the Appellant's claim is that in 2005 following successful studies in Sri Lanka she was appointed as a project assistant to the Vocational Training Authority of Sri Lanka which operated as part of the Ministry of Youth Affairs and Skills Development. In 2010 the project that she was working on, largely funded by the South Koreans, ground to a halt. At the time she contacted and told trade union officials that as a result of conversations with her director and having overheard some of his telephone calls, it was her view that the project had ground to a halt because funds were being diverted to Basil Rajapaksa, a government minister involved in the economic development of Sri Lanka and brother of the then Prime Minister, Mahinda Rajapaksa. At the Tribunal hearing the Appellant added that on reflection she now thought the interview with the trade union, rather than being a response to her expressed dissatisfaction with work, was because "the Trade Union were sent to her by the politicians to find out what she knew".
4. There was no official investigation or action taken as a result of her disclosure but some months after the project had closed and she had been moved to other work, this time in the government planning department, she received sporadic telephone calls of a non-specific but threatening character. Between 2010 and July 2012 she was involved in various other government departments and finding that she did not advance left employment in July 2012, and successfully obtained entry clearance as a student to the United Kingdom. She arrived in the UK in October 2012 and her student visa was valid until 21st May 2014. On 21st May 2014 she applied for asylum on the basis that she had recently been advised by her parents that the police had visited their property knowing that she was going to come back and telling them that when she did she had to come to the police station and until she returned and reported to the police station her father had to go to the police station every Sunday to report. That visit took place on 9th May 2014. Since then the Appellant claims that two summonses have been issued requiring her to report at the Kadawatha Magistrates' Court on 27th June 2014 and 5th September 2015 and following the non-appearance on 5th September 2014, a warrant was issued by the Magistrates' Court. Confirmation of that position is set out in a letter from a Sri Lankan attorney, who has attached copies of the relevant summonses and arrest warrant.
5. Between [52] and [85] the judge sets out what he made of the evidence and the arguments. At [60] to [63]:
 - "60. The appellant's claim to be a whistle-blower is at the heart of her claim. Her answers at interview and her statement describe events but do not disclose any unauthorised disclosure of information. She became aware of corrupt activities by the President's brother, because she overheard telephone conversations and was informed why the

project she was involved with was being closed down. She claimed she told members of her Trade Union and was interviewed. She has never claimed that she released this information into the public domain e.g. by informing the press or media or any individual outside her workplace. If this was whistle-blowing it was very limited in nature.

61. The appellant was not confronted by any individual in government (Minister or Senior Civil Servant) and she was interviewed very briefly by Trade Union members. She was not reprimanded, disciplined or dismissed. Importantly she was not interviewed by the police or any person in the security services. Although she claims that she was transferred to another part of the organisation this is hardly surprising as she was employed as a project assistant and the project upon which she was working had been wound down.
 62. The appellant claimed she left her job and came to the UK to further her education. She undertook an MBA course at the University of Sunderland and obtained her degree in April 2014 (see MBA certificate at page 66 of A's bundle).
 63. The appellant claims that she booked her flight home in May 2014 and was informed by her family that the government knew about her impending return to Sri Lanka and police had visited her home asking for her. She was asked at her Screening Interview on 21 May 2014 whether she was subject to an arrest warrant or wanted by any law enforcement agency for an offence in any country. She replied 'I don't know' (SI 5.2). At her appeal hearing she produced a document purporting to be a Warrant of Arrest issued by a Judge at Kadawatha Magistrates' Court. It is dated 5 September 2014. The appellant claims she was not told by her father about this warrant or two summonses addressed to her dated 9 June 2014 and 14 August 2014 requiring her to attend court on 27 June 2014 and 5 September 2014. The summonses were addressed to her at her home address."
6. The judge goes on to look at the documentary evidence brought forward, and importantly and correctly, does so before drawing any conclusions as to the Appellant's credibility. Difficulties with the summons and warrant identified include the following:
- (a) The summonses dates show they are issued after the police had apparently visited the property on 9th May, and had been told that she was not in Sri Lanka,
 - (b) The documents show that they had been "served" to her at her home address, i.e. her parents' address,
 - (c) Her lack of knowledge of the summonses having been issued, as well as the fact of the warrant, by the time of her interview on 16th September 2014, when she was in contact with her family,
 - (d) The inconsistency between the issue of and chronology of the summonses and warrants with the information that she had received from her father,
 - (e) The explanation that her father had not mentioned either of the summonses to her to prevent worry begin incoherent when he had told her of the police visit and of his obligation to report ,

and undermined by his failure to provide any evidence in support of her appeal,

(f) The failure of the Appellant's mother, in her letter for the appeal, to mention police visits, summons or warrant.

7. At [67] the judge found it undermining of her account that no action had been taken against her for four years, and that the summons was issued in June 2014, i.e. three weeks after the Appellant had claimed asylum. The judge considers at [68] the evidence of the attorney's letter. The fact that it is dated 28th November, and the illegible signatures on the documents attached are undermining.
8. The grounds assert that the judge found that the Appellant was a "limited whistle-blower" and that it was incumbent upon him to assess risk based on that positive finding of fact. Looking at the decision in the round I am satisfied that the judge did not find that the Appellant was a whistle-blower, limited or otherwise. Reading the decision as a whole I am satisfied that all the judge is doing at paragraph [60] is merely drawing attention to the limited scope of the Appellant's claimed activity.
9. The judge's considerations are clearly couched in language of assessment rather than concluded findings; at [67], "if her account is true ...", at [70], where the judge refers to the Appellant's apparent ability to continue working for the government department "where she claims to have been a whistle-blower" for more than one year after being interviewed by her trade union.
10. The judge continues to review evidence through to [73] and reminds himself of the relevant test set out in the case of Tanveer Ahmed (starred) [2002] UKIAT 00439, a position which I pause to note was confirmed in the case of PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011, before concluding at [75]:

"75. The documentary evidence in the form of warrant and summonses are not documents upon which reliance can be placed."
11. Taking account of the limited character and quality of the evidence, the difficulties identified by the judge that is a finding consistent with the jurisprudence. It was not significantly challenged and was not a matter upon which permission was granted.
12. If any doubt remained in the Appellant's mind that the judge had rejected her claim to be a whistle-blower, it is conclusively dealt with at [76],

76. "... the Appellant's core story about her being a whistle-blower and receiving anonymous threats by telephone, is not to be relied upon. I conclude that her core story is not a true and accurate account of events."
13. That is not undermined by the judge also writing at [76],

"76. I also accept that she had been interviewed by Trade Union Representatives. However I do not accept that such an interview amounted

to harassment or persecution. It is apparent from her evidence that she had never been arrested or interrogated in connection with whistle-blowing and she had not spoken to anyone outside work about the corruption at high level in the government department where she worked.”

All the judge is doing is rejecting the Appellant’s late evidence at the Tribunal hearing, that the interview with the trade union resulted ([21] refers), because “the Trade Union were sent to her by the politicians to find out what she knew” rather than being a response to her expressed dissatisfaction with work.

14. The judge under a heading “Conclusions”, reasserts between [77] and [88], that the Appellant has **not** established that she has been harassed or threatened for whistle-blowing, or been sought by the police or faces criminal sanctions. Further that he does not accept that a warrant has been issued for her arrest, or that she will face any trial on return.

15. The grounds go to extremes when asserting that the judge’s finding at [82],

“82. I take the view that there is no reliable evidence showing that the Appellant is a whistle-blower within the usual meaning of that expression or that an arrest warrant has been issued against her”,

can be read in the context of the decision as a whole, including [60], to show that the judge found that the Appellant was in fact a limited whistle-blower, and that he overlooked assessing risk on that basis.

16. The decision is a lengthy and detailed consideration of the Appellant’s claim, which was fully understood by the judge. The assessment of the Appellant’s credibility is correctly undertaken through the lens of the documentary evidence produced, and bearing in mind the extent and state of the evidence as a whole. The challenge is a narrow one which does not encompass the judges findings and reasoning in other respects.

17. If the Judge, by inference, did accept that the Appellant had, to the low standard of proof, told the Trades Union that she believed her project folded because of the diversion of money to the then president’s brother, it is clear that the judge thought that if that asserted revelation held any significance, in terms of whistle blowing so as to impute a perception of anti government activity, the Appellant would have suffered adverse consequences at the time. The judge found that she did not because she stayed in the same department for a considerable period after. He did not believe her account of having received any threatening phone calls. To the contrary the judge noted the evidence was that she continued to enjoy a government position for years. The judge found that the Appellant’s claim to be facing consequences now, as evidenced by the documents, was not made out. There was no past persecution, and the evidence of future persecution was predicated on unreliable evidence, so that even on the lower standard of proof, risk on return was not established.

18. In context the judge's use of the words whistle blowing is his merely picking up on the words used by the Appellant to describe her activities. The grounds finesse the use of the words "whistle blower" as a term of art, but in doing so are misconceived because the fundamental point is that the judge examined all the evidence and made sustainable findings of fact, correctly self directed and found no risk on return. The adverse credibility findings are rooted in the evidence and are cogent, to the point that the judge's conclusion is properly open on the evidence.
19. The grounds seek to impute an error arising from nuance and inference available because of, at worst, infelicitous drafting, and they do not withstand a full consideration of the decision. For those reasons in the event that I were remaking the decision so as to remedy the infelicitous drafting my conclusion would be the same.
20. The decision dismissing the appeal is not vitiated by any material error of law and stands.

Signed

Date

Deputy Upper Tribunal Judge Davidge