



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

Appeal Number: AA/04960/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 13 January 2016**

**Decision and Reasons Promulgated
On 2 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE DRABU CBE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**Ms S S
(ANONYMITY DIRECTION RETAINED)**

Respondent

Representation:

For the Appellant: Mr P Duffy, Senior Presenting Officer
For the Respondent: Ms K Reid of Counsel instructed by Sriharans Solicitors.

DECISION AND REASONS

1. This appeal has been brought by the Secretary of State against the decision of Judge Seifert, a Judge of the First Tier Tribunal, who following a hearing at Hatton Cross on 20 August 2015 allowed the appeal of the above named now named as respondent in this determination. The Secretary of State had refused her application to be allowed to remain in the United Kingdom as a refugee. The respondent is a female citizen of Sri Lanka. Her date of birth is 1 October 1978. The respondent came to the UK with a valid visa as a Tier 4 General Student allowing her leave from 12 January 2011 until 13 April 2014. She claimed

asylum on 27 March 2014 and on 4 March 2015, the appellant refused to grant her asylum for reasons set out in her letter of 4 March 2015.

2. The Secretary of State, hereinafter referred to as the appellant, contends in her grounds of appeal that the First Tier Judge Seifert erred in law by “making a material misdirection of law” and by “failing to give adequate reasons for findings on material matters.” In relation to the first ground of appeal the appellant asserts that the relevant case law (GJ and Others (post civil war returnees) Sri Lanka CG [2-15] UKUT 319 IAC was not properly applied as “it was incumbent on the Judge to consider whether the respondent’s account in facts fits the category of persons that is currently focus of the Sri Lankan Government concerns as described in the Summary Findings [2] and [3]”
3. In her second ground of appeal, the appellant states, “ The Judge has failed to make findings as to why, if this appellant were of interest, why there was no attempt made to actually detain her again, until after she had left the area.”
4. Judge Jane Reid, a Judge of the First Tier Tribunal granted permission to appeal on 2 November 2015 stating, “It is arguable that the judge’s conclusions on the Appellant’s argument on risk on return with reference to GJ lack reasoning.” Judge Reid goes on to say in her decision, “The grounds disclose an arguable error of law”.
5. In his submissions at the hearing before me, Mr Duffy, representing the appellant said that he wished to rely on the grounds of appeal, which he described as “only one ground of appeal and that being a reasons challenge”. He invited me to look closely at Paragraph 57 of the determination and note that the appellant had not been paced on a “Stop List” by the authorities in Sri Lanka. He asked that I should follow what the Court of Appeal has said in its decision in MP & NR. He was not able to produce a copy of the decision but gave its citation as 2014 EWCA Civ.829 (Paragraph 50).
6. Ms Reid invited me to find that the First Tier Judge had given adequate reasons for her conclusion. She drew my attention to Paragraphs 53, 56 and 57 of the determination, emphasising that in her grounds of appeal, the appellant had not raised any challenge to the positive credibility findings made by the Judge. Ms Reid argued that the Judge of the First Tier had correctly and properly concentrated on the risk category set out in Paragraph 7 (a) of the GJ decision as the appellant had been perceived to be a threat to the integrity of Sri Lanka as a single state. Ms Reid contended that the grounds submitted by the appellant were an attempt to re-argue the substantive merits of the case which in the light of absence of challenge to the credibility findings made by Judge Seifert was clearly and plainly wrong.
7. I invited Mr Duffy to respond to the arguments advanced by Ms Reid. He said he had nothing more to say.
8. I have given careful consideration to the grounds of appeal upon which permission to appeal had been granted and the terms upon which it had been granted. I note that the decision granting permission to appeal does not say that the grounds disclose an arguable material error of law but simply states that the “grounds disclose an arguable error of law”. An arguable error of law is not enough for granting permission to appeal. The error has to be shown to be an arguable material error of law before a valid permission to appeal can be granted. However this point was not brought to the attention of the parties at the hearing and it was not taken up.

9. Nevertheless I must only allow this appeal of the Secretary of State if I am satisfied that in allowing the appeal Judge Seifert has made a material error of law. Having heard arguments from representatives of the parties and having examined the determination closely, I am not satisfied that the determination contains a material error of law. I have taken account of the Court of Appeal decision cited to me by Mr Duffy.

10. In my judgment the conclusion that the Judge reached was open to him as he found the respondent credible as set out in Paragraph 53 of his determination and having fully considered the decision in GJ as is evident in the paragraphs that follow. Her reasons for allowing the appeal are set out in paragraph 57 of the determination where the Judge states, “ Having considered the evidence and submissions as a whole, and having found the appellant to be a credible witness in respect of the events leading to her leaving Sri Lanka and the continued interest in her as described in her evidence and the letter from her father, I am satisfied that it has been shown to the required standard that she would be perceived by the authorities to pose a risk to the integrity of Sri Lanka as a single state were she to return there.” This makes it clear that in allowing the appeal the Judge has weighed all the evidence on the correct standard, given adequate reasons for allowing the appeal and in so doing applied the correct current legal test.

11. This appeal of the Secretary of State is accordingly dismissed. The decision of Judge Seifert allowing the appeal stands and as found in that decision the respondent is a refugee.

K Drabu CBE
Deputy Judge of the Upper Tribunal.
23 January 2016