



IAC-AH-DP-V1

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

Appeal Number: AA/07183/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 5th February 2016**

**Decision & Reasons Promulgated
On 19th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

S C

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Singer (Counsel)

For the Respondent: Mr S Walker (HOPO)

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge O'Malley, promulgated on 2nd October 2015, following a hearing at Taylor House on 26th August 2015. In the determination, the Judge allowed the appeal on human rights grounds whereupon the Secretary of State applied for, and was granted, permission to appeal to the Upper Tribunal and thus the matter comes before me.

The Appellant

2. The Appellant is a female citizen of Sri Lanka, who was born on 3rd July 1988. She is a Tamil. She appealed against a decision dated 4th September 2014, refusing to grant her asylum and/or humanitarian protection and/or protection against abuses amounting to breaches of Articles 3 and 8 of the Human Rights Convention.

The Appellant's Claim

3. The Appellant's claim is that she was associated with the LTTE, involved in printing, and producing pro-LTTE documents at the Eastern University in Sri Lanka. The ICT Director found pro-LTTE documents on her computer and on 5th March 2010, she was detained, beaten, tortured and raped and questioned about the LTTE. She confessed to involvement with the LTTE. She was then released on the payment of a bribe on 9th March 2010, admitted to hospital for three days, and then moved to stay in Wattala. A student visa application was made in her name and she travelled on her passport to the UK. Thereafter, the Appellant's parents' home was visited in December 2013 and the Appellant claimed asylum subsequently.

The Judge's Findings

4. The Judge accepted the Appellant's evidence that she supported the LTTE, and on attending Eastern University to work within the ICT Department, she met other LTTE supporters, and printed pro-LTTE leaflets for distribution (paragraph 71). The Judge observed that the university would be looking to identify the source of the leaflets and that the Appellant was discovered as being responsible because of the computer being used (paragraph 72). The Judge accepted that the Appellant was detained on her way from work to her home on 5th March 2010 (paragraph 73). The Judge accepted that the Appellant was raped during her detention and that she was ill-treated (paragraph 75). The Judge also accepted that the Appellant was able to leave Sri Lanka on her own passport without any difficulty, having arranged a student visa through an agent (paragraph 81).
5. The major bone of contention, as far as this appeal is concerned, was the Appellant's claim that she lost her passport, "... and had submitted that there is an additional danger to her in having to obtain new travel documents if she is required to return to Sri Lanka" (paragraph 83). The Judge went on to observe that, "... having given the matter anxious scrutiny along the lower standard, I accept that the Appellant has lost her passport" (paragraph 83). The Judge did not accept that the Appellant sought asylum in March 2014 because of threats arising out of visits to her family in December 2013 (paragraph 84). He did not accept that the Appellant's parents have been sent a CD or DVD of abuses to other girls (paragraph 86). He did not accept that the family had telephone calls enquiring about the whereabouts of the Appellant or her brother (paragraph 88).
6. The Judge did accept the country guidance case of **GJ**, that the government of Sri Lanka had sophisticated intelligence which can identify those who have links to LTTE (paragraph 89). However, the Judge did not

accept, even on the lower standard, that the Appellant is of interest to the government of Sri Lanka, "... either because she is an absconder, because of an arrest warrant, ... or because of interest in her because of peace dealings or connections with the LTTE" (paragraph 91).

7. However, when the Judge went on to consider the human rights and humanitarian aspect of the claim, he observed that the Appellant no longer had her passport and would have to obtain new travel documents, and the Judge observed that, "... in light of the conclusion that she left travelling under her own passport and on a student visa and has overstayed I conclude that she is at risk of being questioned on arrival in Sri Lanka" (paragraph 94). Given this, the Appellant was likely to be examined on the basis of her past history of arrest and detention in 2010.
8. The Judge observed that, "... there is a risk that she may be questioned because of the need to obtain new documents for travel and they investigate her history of risk, detention and because of the perceived support for LTTE" (paragraph 95). In this respect, the Judge went on to say that,

"I accept the conclusion of Dr Persaud, that her current mental health may lead to her being 'distracted and confused' if she is questioned and that in those circumstances she would be at risk of attracting unwanted interest and/or leading to a detention if she does not answer questions" (paragraph 95).
9. For this reason, the Judge observed that "... there are good reasons to conclude that, if the Appellant is detained the abuse and sexual violence that occurred during the arrest and detention in 2010 will be repeated" (paragraph 96).
10. The Judge ultimately concluded that,

"I find that the conclusions in **GJ** that there are no detention facilities at the airport which means that those who are questioned will be transferred to a prison or detention centre is a relevant consideration here and I find that the Appellant's current vulnerable mental health is likely to deteriorate in such circumstances and therefore the risk of serious harm is to both her physical and mental health" (paragraph 96).
11. The Judge allowed the appeal on humanitarian protection grounds.

Grounds of Application

12. The grounds of application state that the Judge was wrong to have allowed the appeal on humanitarian protection grounds because there are extensive adverse findings of fact, and a dismissal of the asylum appeal in the light of **GJ**. The decision to allow the appeal on humanitarian grounds would appear to be at odds with the guidance given in **GJ**, and the adverse findings made in relation to the asylum appeal. Also it was not clear why the Judge should have accepted that the Appellant would be undocumented given the adverse credibility findings and the bold claim that she had lost her Sri Lankan passport. If the Sri Lankan passport was previously issued to her, then all the Appellant needed to do was to simply

ask for a replacement from the Sri Lankan authorities and it would be given.

Submissions

13. At the hearing before me on 5th February 2016, Mr Walker, appearing on behalf of the Respondent emphasised the grounds of application. He submitted that the third ground was the strongest because here the Judge accepted at paragraph 83 that the Appellant had lost her passport but no identifiable reasons were given for this finding, which was made in the context of the Appellant having fabricated evidence in order to bolster her claim to be at risk. Second, ground 1 was important in that the Judge had misdirected himself in relation to **GJ** and the returns process, because the Judge allowed the appeal on the basis that the Appellant had lost her passport which would require a temporary detention. This would require her to be questioned at the airport which on account of her mental health, would lead to yet further risk. This was unwarranted as a conclusion. Finally, the Judge was irrational in having placed reliance upon the report of Dr Persaud (at paragraph 95) that the Appellant's current mental health may lead to her being distracted and confused: because at paragraph 65 the Judge had already concluded that he is unable to place significant weight on the report's conclusions, and this was inconsistent with the view that the Judge took in relation to the findings at paragraph 95.
14. For his part, Mr Singer relied upon his skeleton argument and submitted that this was an appeal where some of the Appellant's claim was accepted and some of it was not. However, the Secretary of State's entire case was based upon the findings in relation to the Appellant's claim that she had lost her passport and would now be returning as an undocumented person, unless she made a request for the replacement of the documents, which would place her at risk. However, the conclusion on humanitarian protection was open to the Judge and cannot be criticised. It was a reasoned judgment and well considered in his findings. The Judge looked at the evidence and concluded that he would accept the claim as made. His conclusions were within the range of reasonable responses that were open to the Judge. The finding in relation to the passport was one such reasonable finding. The Judge did not say that the Appellant was a liar. He said that she was mentally unstable and that further questioning would cause her condition to deteriorate given her vulnerable mental health. The report of Dr Persaud was partly accepted and partly not. The Judge said that the Appellant did not come within the risk factors of **GJ**, but it was open to the Judge to say that she would still be at risk in other respects (see paragraphs 307 to 308 of **GJ**). In short the Judge had found that the Appellant was a supporter of the LTTE, was detained as a result of that, was ill-treated on account of that association, and all this was entirely consistent with **GJ**.
15. In reply, Mr Walker submitted that at the end of paragraph 65 the Judge said that he did not attach weight to Dr Persaud's report and this was contrary to what the Judge had said at paragraph 95. It was not clear what the Judge accepted and what he rejected. There was an error of law.

No Error of Law

16. I am satisfied that the making of the decision by the Judge did not involve the making of an error on a point of law (See Section 12(1) of TCEA 2007) such that I should set aside the decision. The test for “perversity” is a “very high hurdle”, as confirmed by Brooke LJ in **R (Iran) [2005] EWCA Civ 982**.
17. The Judge here did not allow the appeal on asylum grounds. He allowed the appeal on the grounds of humanitarian protection, and did so on the basis that, given the case of **GJ**, and that there are no detention facilities at the airport, for those who would be questioned, resulting in the Appellant being transferred to a prison or detention centre, that this

“... is a relevant consideration here and I find that the Appellant’s current vulnerable mental health is likely to deteriorate in such circumstances and therefore the risk of serious harm is both to a physical and mental health” (paragraph 96).
18. That conclusion was open to the Judge. In **GJ [2013] UKUT 00319** the Tribunal observed that

“Sri Lankans returning without a Sri Lankan passport would require an emergency travel document for which they need to apply at the SLHC in London. Full disclosure of all relevant identity information is given in the process of obtaining a TTD. An applicant completes a lengthy disclosure form and is then interviewed at the Sri Lankan High Commission in London; the information received is sent to the Ministry of External Affairs and the Department of Immigration and Emigration in Colombo. Files are created and there ‘verified’; if the authorities agree to issue a TTD, the NEA in Colombo emails the document to the Sri Lankan High Commission in London where the TTD is stamped, a photograph added, and issued to the applicant” (see paragraph 307).
19. The case of **GJ** also goes on to say that, “during the re-documentation process in the United Kingdom, or at the airport on return, a forced returnee can expect to be asked about his own and his family’s LTTE connections and sympathies” (paragraph 308).
20. Rather than the Judge having arrived at an irrational conclusion, what the Judge embarked upon was a sophisticated process of reasoning at the nuances of the country guidance case of **GJ [2013] UKUT 00319**, and the conclusion that was reached in relation with the passport, was not simply on account of the fact that the Appellant would have to apply for the passport having earlier lost it, but on the basis that she was in a very vulnerable mental state, as confirmed by the medical reports, and that this condition would be exacerbated to such an extent that her circumstances were “likely to deteriorate ... and therefore the risk of serious harm is to both her physical and mental health” (see paragraph 96 of the determination).
21. Accordingly, there is no error of law.

Decision

There is no material error of law in the original Judge's decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

13th February 2016