Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/13804/2016

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 August 2017	**On 06 October 2017**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MRS KANTHI NANDANI SAMARAWICKRAMA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: No appearance and not represented
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka, born in 1964. On 8 November 2016 the respondent made a decision to refuse an asylum and human rights claim.

2. The appellant appealed against that decision and her appeal came before First-tier Tribunal Judge V Fox ("the FtJ") at a hearing on 12 January 2017. The FtJ dismissed the appeal on all grounds, both in terms of the asserted

claimed fear of return to Sri Lanka, and also on human rights grounds on the basis of her mental health.

3. Summarising the FtJ's detailed decision provides the background and context for my assessment of her appeal to the Upper Tribunal.

The FtJ's decision

4. The appellant's claim as summarised by the FtJ is to the effect that she left Sri Lanka to avoid an abusive ex-husband who has influence with politicians and the police there.

5. As regards her immigration history, the FtJ referred to the appellant as having applied for entry clearance and coming to the UK as a Tier 4 Student in September 2009. She applied for further leave to remain on successive occasions, with leave being granted until June 2015. Her leave was however, curtailed on three occasions during that period and her leave as a student expired on 28 July 2014.

6. She applied for a residence card as an extended family member on two occasions, both applications having been refused. The most recent application was refused on 11 February 2016.

7. She was encountered by immigration authorities on 17 April 2016 and notified of her status as an overstayer. She then made an appointment to claim asylum on 22 April 2016. The appellant's (current) partner applied for entry clearance as her dependant on 3 February 2010 and he remains her dependant in terms of his immigration status.

8. The appellant has a child whose father is her ex-husband. That child is currently studying in the UK.

9. In relation to the hearing before the FtJ, the appellant's partner had written to the Tribunal on 6 January 2017 asking for an adjournment on the basis that the appellant was overwhelmed by the asylum process. The application was refused, pre-hearing. The appellant in fact attended the hearing but the FtJ noted that she was distressed from the outset of the proceedings. He said that despite reassurances she initially refused to communicate with the interpreter before she finally agreed to participate in the proceedings.

10. She had said that she did not understand the respondent's decision and her son had assisted her in drafting the grounds of appeal, as she has issues with her memory.

11. The FtJ records that he explained to her the reasons given by the respondent for refusing her claim and she was asked whether she wished to rely upon further documents. Her partner provided documents relating to an incident on 15 December 2016 when the appellant went missing.

12. The FtJ further recorded that during oral evidence the appellant became hysterical as she volunteered evidence of her ex-husband's appetite for sexual voyeurism and his requirement that the appellant should engage in sexual activities with anonymous males. The FtJ explained to her that no-one had asked her to provide those details and if she wished to volunteer that evidence she should do so in a calm manner.

13. During her oral evidence the appellant had also said that her son had witnessed her ex-husband's recent abuses via telephone. Although her son had driven the appellant and her partner to the hearing centre that morning, it seems that the appellant said that it was not considered necessary for the son to attend as a witness. Later however, it seems that the appellant changed her mind about her son giving evidence and the FtJ allowed the appellant's partner to telephone her son so that he could attend the hearing. Apparently, her son did not answer the phone.

14. The FtJ set out the appellant's and her partner's evidence in detail. He also summarised the respondent's submissions and what the appellant said in reply.

15. The FtJ made detailed findings of fact, starting at [67]. He concluded that the appellant had failed to discharge the burden of proof to the lower standard. He found that she was not a witness of truth. In the very next paragraph he said that he had considered the medical evidence in accordance with *JL (medical reports-credibility) China* [2013] UKUT 00145. He noted that the appellant and her partner claimed to suffer with historic psychological and physical "issues" but stated that the appellant alone had sought medical intervention during the process of the asylum claim, despite having been in the UK since 2010. It seems that the FtJ was commenting on the fact that the appellant had not sought medical help earlier.

16. At [69] he said that the medical report in the respondent's bundle makes no meaningful reference to self-harm or suicidal ideation. The discharge notification dated 22 December 2016 referred only to immigration issues as the cause of the appellant's anxiety. There is no reference in that document to historic trauma. The FtJ stated that the medical evidence did not provide any meaningful investigation into the appellant's psychological state, for the purpose of her claim, and relied upon the appellant's account of her circumstances "which does not stand up to scrutiny for the reasons stated below".

17. The FtJ then gave a number of reasons for doubting the appellant and her partner's credibility. Before doing so he stated that the Tribunal remained the finder of fact and the medical evidence was of limited probative value when the evidence was considered in the round.

18. He concluded that the appellant was vague and evasive in oral evidence. He said that he had attempted to assist her in examination-in-chief to set out her claim. However, she deviated from her evidence immediately

when she stated that her ex-partner had confiscated her home. When the interview record at question 96 was brought to her attention, he said that she amended her evidence to state that another property had been confiscated. The FtJ said that had her ex-husband really confiscated her home it is reasonable to conclude that she would recall the event with some degree of accuracy. He dismissed the possibility that this was simply a mild variation in her account, stating that the evidence related directly to the preservation of the appellant's home, and it was reasonable to expect the appellant to maintain general consistency in that respect.

19. In expressing those views, it seems that the FtJ in referring to question 96 of the interview took the view that the appellant had said, or at least implied, that she remained in her home after the divorce.

20. He went on to state that the appellant was vague and evasive in relation to the alleged attacks upon her partner. The appellant was unaware of when the attacks occurred, when she was informed of them, and the nature of any injuries sustained. Her partner however, had said that he was assaulted on one occasion only, following his abduction on the way home from work. His evidence was that he did not tell the appellant about the incident until they were in the UK as the appellant's ex-husband had told him not to tell her.

21. The FtJ said that there was the obvious discrepancy between the appellant and her partner regarding the number of assaults suffered by the partner. Furthermore, he said that the appellant was unable or unwilling to provide evidence of abduction, blindfolding and beating. He made the observation that it was a common feature of dishonest witnesses to claim memory problems as the cause of their unreliable evidence, but he said that in the absence of medical evidence that explanation was unconvincing.

22. He went on to state at [77] that it was not credible that the appellant's partner would acquiesce in her ex-husband's demands to maintain the secrecy of the assault, yet that her partner would simultaneously approach two separate police stations in an unsuccessful attempt to register a complaint. He also said that it was not credible that the appellant's partner would be able to conceal the injuries from the appellant, especially when one considered the claim that he continues to suffer from the effects of the alleged assault. He also found that it would be reasonable to expect such long-lasting injuries to give rise to some medical evidence, from medical practitioners in the UK at least. The absence of such evidence which was available "with relative ease" did not assist the appellant in her appeal.

23. The FtJ then repeated that the appellant was vague and evasive throughout her evidence, but that he had highlighted the more apparent examples although "the record" shows the appellant's propensity for evasive and embellished claims.

24. Notwithstanding that the appellant's son was said to have received death threats from her ex-husband, he remarked that it was nevertheless not deemed appropriate by the appellant to ask her son to attend the appeal hearing, notwithstanding his presence at the hearing centre. He also found it unusual that the appellant's partner should fail to mention the threats against her son. He repeated his view that the number of discrepancies and inconsistencies in the evidence damaged the appellant and her partner's credibility, along with the core of the claim.

25. At [82] – [83] the FtJ referred to the appellant's and her partner's evidence about whether they had ever cohabited. Their evidence in this respect was, he concluded, inconsistent. He found that that inconsistency damaged their credibility and caused him to doubt the motivation for their marriage in the period immediately prior to their entry clearance applications. However, the FtJ appears to have taken the view that that was not a central issue in the appeal, he having stated that he would continue to focus upon their issues in the appeal.

26. He concluded that it was not credible that the appellant's ex-husband would wage a longstanding vendetta against the appellant yet fail to exert his alleged influence in any meaningful way, allowing the appellant to maintain a home in close proximity to his family, and failing to exert any influence to disrupt the appellant's employment activities. Nor was it credible that he would fail to contest the divorce petition in 2002, and by default accept the allegation that he had abandoned her. On the other hand, the appellant's claim was that her ex-husband was an alcohol abuser who forced the appellant into prostitution.

27. This led the FtJ to conclude that the appellant was prepared to make any allegation, however sensational, to bolster her claim.

28. He found that neither the appellant nor her partner had any "independent proof" of her ex-husband's apparent influence, despite the appellant's partner's assertion that he is aware of the ex-husband's social status via news media.

29. In relation to the absence of the appellant's son as a witness, and whether the appellant had been disadvantaged by that fact, the FtJ concluded that there were numerous reasons as to why neither the appellant nor her partner were credible witnesses. He found that it was open to the appellant to ask her son to give evidence when he drove her to the hearing centre. However, the evidence demonstrated that the appellant merely sought every opportunity to embellish her evidence. He said that he was able to make a finding of fact on the existing evidence "with confidence" that there was no merit in the appellant's allegations.

30. He referred to the timing of the appellant's claim as damaging her credibility further. He noted that she had made two unmeritorious applications pursuant to the Immigration (European Economic Area) Regulations 2006, and that her leave to remain as a student had been

curtailed on three occasions. It was reasonable to conclude therefore, that the appellant had extensive experience of making representations to the respondent. However, she only claimed asylum after she received formal documentation to confirm her status as an overstayer. He described her claim as opportunistic, with the exclusive purpose of frustrating her departure from the UK.

31. He went on to dismiss the appeal with reference to Article 8 of the ECHR. He referred to the appellant's temporary status in the UK and said that she had made a false claim for asylum and that her partner had colluded with her in that. He noted that the appellant's son was 24 years of age, and that his status in the UK was unclear. If he was a dependant in immigration terms, he could be expected to leave the UK with her. Furthermore, there was no reliable evidence of family life beyond normal emotional ties between adult relatives.

32. So far as the medical evidence is concerned with reference to Article 8, he concluded that there was no reliable evidence to demonstrate that the appellant could not obtain adequate medical services in Sri Lanka. In any event, the alleged nexus between her medical needs and the core of her claim was not made out.

33. Finally, in the alternative, he went on to state that any interference with the appellant's Article 8 rights was proportionate to the legitimate aim pursued, and the appellant was a "resilient migrant" who had engaged in abusive conduct to prolong her presence in the UK.

The grounds of appeal and submissions

34. There are two sets of grounds from the appellant, the second following from the initial refusal of permission to appeal. Both sets of grounds are brief. In the first, the appellant stated that because of her mental health she was unable to express her side of the story perfectly at the hearing before the FtJ. She also stated that she needed a chance to provide specialist medical reports for her next hearing. It is asserted that some answers included in the FtJ's findings are not exactly what had been said (by her and her partner) and that there were a "lot of confusions" in his decision.

35. In the second set of grounds it is stated that the appellant would be receiving a new medical report in relation to her mental and physical health. It is then stated that she had requested an adjournment before the hearing "because of my situation" but the FtJ did not accept it. At the time of the hearing before the FtJ she was not 100% recovered from her "mental condition" and her conditions had not fully been understood by her GP.

36. In submissions, Mr Duffy said that although permission to appeal had been granted by a Judge of the Upper Tribunal, on the basis that it was arguable that the FtJ failed to have adequate regard to the medical evidence before

him, it was not clear exactly what was before the FtJ. Furthermore, it was not simply an issue of the appellant's health in terms of the assessment of her credibility but also the significant inconsistencies, as well as her immigration history. She had made unmeritorious applications in terms of the EEA Regulations, and her student leave had been curtailed three times. She had only claimed asylum after being notified that she was an overstayer. All the findings were open to the FtJ and the weight to be attached to the evidence was a matter for him.

37. In relation to any adjournment application, if the application had not been renewed before the FtJ it could not have been an error of law for him not to have adjourned the hearing.

Conclusions

38. The appellant did not attend the hearing before me and was not represented. At a hearing on 26 June 2017 before Upper Tribunal Judge Frances, the appellant did not attend either. Judge Frances gave directions, which were sent out in writing, that the appellant was to serve a medical report in relation to her fitness to attend the next hearing. She also stated in those directions that it was not to be assumed that the appeal would be adjourned if the appellant did not attend on the next occasion. An earlier hearing before Upper Tribunal Judge Allen on 10 May 2017 was also adjourned on the basis that the appellant was unwell.

39. In relation to the hearing before me, no medical evidence was provided indicating that the appellant was unfit to attend. There was no application for an adjournment in advance of the hearing, or on the day. No messages were received by the Tribunal to indicate that the appellant was unable to attend. In those circumstances, I decided that it was appropriate to proceed with the hearing in the appellant's absence, having regard to Rules 2 and 38 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The appellant was notified of the date, time and place of the hearing and had not applied for an adjournment or offered any explanation for her non-attendance. No information had been provided by the appellant's partner either.

40. The appellant's grounds are not entirely clear, although I have interpreted them as best I can. Insofar as the appellant claims that she sought an adjournment, which the FtJ wrongly refused, there is nothing to indicate that the appellant made any application to the FtJ for an adjournment, either expressly or by implication. The FtJ's manuscript record of proceedings does not indicate such an application either. Furthermore, it was not as if the appellant was alone at the hearing. She had her partner with her. There is nothing to indicate that he made mention of the appeal not being ready to proceed from the appellant's perspective.

41. It is true that there was an application for an adjournment prior to the hearing, dealt with on the papers by a Designated Judge of the First-tier Tribunal. That application was refused. It was not encumbent on the FtJ to revisit that decision of his own motion, and he was not asked to do so. The fact that there was an application for an adjournment prior to the hearing indicates that the appellant and/or her partner were aware that an appeal can be adjourned. Furthermore, it is apparent from the FtJ's decision that both the appellant and he took an active part in the proceedings.

42. As regards the contention that the FtJ's decision does not reflect exactly what was said at the hearing and that seemingly his assessment was confused, it was open to the appellant or her partner to explain in the grounds the basis upon which that assertion is made. Not only is there no specific detail given in relation to that allegation, there is not even any indication of the areas of the appellant's or her partner's evidence which are said to have been affected in this way. This, it seems to me, is merely a general assertion expressing disagreement with the FtJ's decision in an attempt to undermine it, but without any basis for doing so.

43. In terms of the suggestion that the appellant has further medical evidence to provide, the FtJ's decision cannot be said to be erroneous in law in relation to material that was not put before him.

44. As to the contention that because of her mental state she was unable to "express my side of the story perfectly" again the appellant does not explain what aspects of her evidence were affected by her mental state. The FtJ referred to the appellant being vague and evasive and, on the basis of his summary of the evidence and detailed conclusions, he was entitled to come to that view. It is not apparent from the FtJ's decision that the appellant's vagueness and evasiveness was the result of any mental health condition. It is however apparent, that the appellant's partner's evidence suffered from the same defects. Their evidence was inconsistent in various respects and inherently implausible, according to the FtJ. Furthermore, it is perfectly clear from the FtJ's decision that he was aware of the medical evidence that had been provided. It is also evident that he was at pains to ensure that the appellant was properly able to participate in the proceedings, he having taken care to explain the proceedings to her. Furthermore, there is no information provided in support of the grounds from the appellant's partner in terms of her inability to express herself.

45. It is apparent that the appellant's claim is not based on any Convention reason. Accordingly, the FtJ was bound to dismiss the appeal on asylum grounds.

46. His decision is detailed and properly reasoned. Although at times the FtJ expressed himself in emphatic terms in relation to the appellant and her partner's credibility, that in no way undermines his findings.

47. In addition, as submitted on behalf of the respondent before me, the timing and circumstances of the appellant's claim and her immigration history are matters that the FtJ was entitled to take into account in assessing the credibility of the claim.

48. Likewise, even if everything the appellant said about her ex-husband's behaviour towards her is true, there was simply no evidence before the FtJ to indicate that the appellant's ex-husband has any influence at all in Sri Lanka, a matter relevant to the issues of sufficiency of protection and internal relocation.

49. I cannot see, either in terms of the grounds of appeal, or considering any *Robinson* obvious potential errors of law, that there is any basis from which to conclude that the FtJ erred in law in his conclusions. Accordingly, his decision to dismiss the appeal is to stand.

Decision

50. The decision of the First-tier Tribunal did not involve the making of an error on a point of law. Its decision to dismiss the appeal on all grounds therefore stands.

Upper Tribunal Judge Kopieczek Date 5/10/17