



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05699/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 4 April 2018

Promulgated

On 13 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE WOODCRAFT

Between

**MS JEYAMALINI LINGESWARAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S. Muquit of Counsel

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The Appellant is a citizen of Sri Lanka born on 26 February 1983. Her appeal against the refusal of asylum was allowed by Judge of the First-tier Tribunal Andonian sitting at Taylor House on 1 December 2017. The Respondent appeals with leave against that decision and for the reasons which I set out in more detail below I have set the decision of the First-tier Tribunal aside. Although therefore this matter came before me initially as an appeal by the Respondent, for the sake of convenience I will continue to refer to the parties as they were known at first instance.

2. On 27 September 2016 the Appellant left Sri Lanka by fishing boat. From there she travelled to India. On 2 November 2016 she travelled for 2 or 3 hours to another unknown country and from there travelled by aeroplane to a European country. On 8 November 2016 she entered the United Kingdom and after being served with illegal entry papers claimed asylum on 1 December 2016.

The Appellant's Case

3. The Appellant's case was set out by the Judge at [4] to [8] of his determination. In 2004 the Appellant began working for the separatist organisation the LTTE as an administration assistant. From August 2006 until 2008 she was employed to help the LTTE by taking wounded people for treatment. On 12 August 2016 (the Judge gives it an impossible date of 2060) the Appellant was arrested by officers of the CID who came into her textile shop and stated they need needed to ask some questions.
4. She was taken to Verpankulam a camp run by the CID who she was able to identify because they were clean-shaven and speaking Tamil. Whilst detained there she was raped by CID officers and beaten every day. On 25 September 2016 she was released from the camp because her father and aunt had bribed a CID officer. Since that time the CID day had visited her home looking for her and her husband was in hiding in Sri Lanka. She feared that if she returned to Sri Lanka she would be arrested again due to her past involvement with the LTTE.

The Decision at First Instance

5. The determination of Judge Andonian has been described by both the Respondent and Designated Judge McClure (who granted permission to appeal) as "riddled with errors in both spelling and grammar" and with the hallmark of "having been dictated into a computer software program then issued without having been proof read." It is indeed difficult to follow in places and it is not always easy to understand where the Judge is giving his own views and where he is repeating submissions made to him see [31] for example. In support of her appeal the Appellant had submitted photographs of scars on her back in support of her claim to have been detained and beaten in Sri Lanka and she submitted a medical report.
6. The Judge considered the risk categories set out in the country guidance authority of GJ as they applied to the Appellant. At [34] the Judge appeared to have rejected the claim that the Appellant was ever detained in Sri Lanka and did not find that the Appellant had had any role in post-conflict Tamil separatism. She had not been politically active in any way since she had arrived in United Kingdom. She was no more involved with the LTTE than the general population. The Appellant had not given testimony to the reconciliation commission and even if she had left Sri Lanka illegally without a passport her activities were not such as to indicate she was working to destabilise the Sri Lankan state. Previous

interest or arrest by the authorities did not necessarily indicate a future risk of arrest. The new Sri Lankan government which had come into power since January 2015 had vowed to investigate violations of human rights in Sri Lanka.

7. At [47] the Judge appeared to find that the Appellant did not have a well-founded fear of persecution in Sri Lanka or that she would be at risk upon return. The Judge then went on to consider the Appellant's claim under Article 8. At [84] on page 16 of the determination the Judge began his conclusions. The Judge appeared at [88] to accept that the medical evidence supported the Appellant's claimed injuries she received in detention. He allowed the appeal.

The Onward Appeal

8. The Respondent appealed against this decision in succinct grounds drafted by the Presenting Officer who appeared before me. The grounds commented on the presentation of the determination (see above paragraph 5). It was unclear on what basis the Judge had allowed the appeal or which of the categories (if any) of **GJ** the Appellant succeeded under. It was unclear at [107] what the finding of the Tribunal was on how the Appellant would be perceived by the authorities on return or what reasoning had been applied to support the findings. Permission to appeal was granted by Designated Judge McClure on 22 January 2018 who, while noting the existence of errors in the determination, also commented that the Judge appeared to have accepted some parts of the Appellant's case.

The Hearing Before Me

9. At the hearing before me it was conceded by counsel for the Appellant that the decision of the First-tier Tribunal could not stand and that the case should be remitted back to the First-tier to be decided again. The issue between the parties was to whom the case should be sent. For the Appellant counsel argued that the case could properly be sent back before Judge Andonian because the argument in the case was that the Judge had not made any proper findings and therefore it was still open for him to do that.
10. For the Respondent the Presenting Officer argued that it was clear from Judge Andonian's determination that the case had not been given anxious scrutiny. The rehearing should be before a different First-tier Tribunal Judge. Sending it back to the same Judge was giving him an opportunity to tidy it up but it did not solve the problem that the case needed to be looked at again. At the conclusion of the submissions I indicated that my view was that the case should be sent back to be reheard by Judge Andonian. I now give my reasons for that course of action.

Findings

11. I have highlighted above some of the difficulties in the determination. From [88] onwards the comprehensibility of the determination further deteriorated. The Judge referred to a number of submissions made to him without clearly indicating what findings he made on those submissions. The Judge rejected the argument that only diaspora activities would lead to a person's risk on return but did not indicate clearly why the Appellant's previous activities would lead to a risk. I pause to note here that the Judge throughout the determination employed the word "dicer" for "diaspora". The Judge did not indicate into which category of risk (whether in the case of **GJ** or otherwise) the Appellant fell into. If no risk category applied the Judge should have stated on what basis the Appellant would be at risk upon return. This was a crucial finding which the Judge needed to make but he did not.
12. It could not be seen from the determination that there had been a properly reasoned written decision in this case. It might almost be argued the matter remained outstanding before Judge Andonian to write a proper determination. Even if that was not the legal position, I consider this was a case where the trial Judge should be required to complete the task with which he had been entrusted.
13. There was a further consideration which was that on the Appellant's case she was a vulnerable witness having been subjected to severe ill-treatment in Sri Lanka. If the matter was remitted back to a different Judge, it is difficult to see how any findings could be preserved since it was arguable the Judge had not made any findings. In those circumstances there was a grave risk that the Appellant would have to give her evidence again, a potentially unnecessary trauma for her to go through. By contrast she had already given her evidence to Judge Andonian and would not need to repeat the matters on which she had given evidence.
14. It might not be necessary were the matter to go back to Judge Andonian for there to be any further live evidence at all. I would envisage that once this case was back at the First-tier Tribunal it could be dealt with on submissions by the parties' representatives and then Judge Andonian could write a proper determination, proof read with understandable conclusions and identifying what matters were submitted by the parties and on what matters he was making findings. This was particularly true in relation to whether the Appellant fell within any of the **GJ** categories.
15. It is, I acknowledge, an unusual step to remit an appeal back to the same Judge who had heard it at first instance. Where there was a clear error of law, it would normally be appropriate to remit the case back to a different Judge because the First-tier Judge might already have expressed views prejudicial to the outcome of the case. That does not apply here because of the unusual facts of this case. The determination is impenetrable due to the numerous errors, typographical and otherwise which permeate the determination. The Judge must make findings of fact on the next occasion, no doubt influenced by the evidence he will have already received. It is open to the Appellant to submit further evidence if she so wishes. Such

evidence must be submitted at least 14 days before the resumed hearing. I find that there was a material error of law in the determination at first instance and I set it aside. I remit the appeal back to be heard by Judge Andonian at Hatton Cross.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and I set it aside. I direct that the appeal be remitted to the First-tier to be reheard by Judge Andonian at Hatton Cross.

Respondent's appeal allowed to that limited extent.

I make no anonymity order as there is no public policy reason for so doing.

Signed this 4th of April 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge

TO THE RESPONDENT
FEE AWARD

Although a fee award was made in this case, it is not clear from the file whether a fee was actually paid. In any event as I have set aside the decision of the First-tier Tribunal I have also set aside the fee award made on that occasion and the issue of a fee award remains outstanding before the First-tier Tribunal.

Signed this 4th of April 2018

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Judge Woodcraft
Deputy Upper Tribunal Judge