



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10557/2017

THE IMMIGRATION ACTS

Heard at Field House
On 11 July 2018

Decision & Reasons Promulgated
On 14 August 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE I A LEWIS

Between

NADEERA [M]
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris of Counsel instructed by Nag Law Solicitors

For the Respondent: Ms Z Ahmad, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Black promulgated on 2 May 2018 in which she dismissed the Appellant's appeal on protection grounds against a decision of the Respondent dated 9 October 2017 refusing asylum in the United Kingdom.
2. The Appellant is a citizen of Sri Lanka born on 27 October 1984. On 6 December 2013 she made an application for entry clearance as a Tier 4 Student. The application was

refused on 27 January 2014 following an interview on the basis that she had provided false documents in respect of her employment. The Appellant has subsequently said that this application was made for the purposes of fleeing Sri Lanka because she was in fear of persecution – she now acknowledges that a false application was made.

3. The Appellant remained in Sri Lanka until 24 March 2017 when she left on a false passport for the United Kingdom. Subsequent to entry, the Appellant claimed asylum on 10 April 2017; a screening interview was conducted on the same date. A substantive asylum interview was conducted on 3 October 2017.
4. The Appellant's application for protection was based on a claimed risk arising from activities as a journalist. She claimed that between 2013 and 2017 she had written for a weekly newspaper called "Irida Ratathota"; her articles were political in nature and critical of the Government and its conduct, in particular during the conflict with the LTTE.
5. The Appellant's application was refused for reasons set out in the Respondent's 'reasons for refusal' letter ('RFRL') of 9 October 2017.
6. The Appellant appealed to the IAC.
7. The appeal was dismissed for reasons set out in the Decision and Reasons of First-tier Tribunal Judge Black. The First-tier Tribunal Judge found the Appellant to lack credibility and did not accept that she was a journalist or had ever worked in that capacity.
8. The Appellant applied for permission to appeal to the Upper Tribunal which was granted by First-tier Tribunal Judge Buchanan on 25 May 2018.
9. I am satisfied that the Appellant has made out the broad basis of her challenge to the decision of the First-tier Tribunal to an extent that it is necessary to set aside the decision of Judge Black.
10. In my judgement the evaluation of the Appellant's credibility is something of a curate's egg: it is good in part; however, there are parts of the evaluation which I find fall into error of law and I am persuaded that the impact is sufficiently material that the more sustainable aspects of the decision cannot stand alone as a sustainable basis for rejecting the Appellant's claim in its entirety.

11. The grounds of challenge in part focus on what is acknowledged to be a factual misconception on the part of the First-tier Tribunal Judge.
12. At paragraph 7 of the Decision the Judge makes reference to the Appellant's engagement of an 'agent' to assist her with her travel to the United Kingdom. The Judge says this:

"In her witness statement she referred to an agent who came with her to the UK. This arrangement does not accord with the kind of arrangements that a travel agency would make and it is not plausible that a travel agent would be prepared to create false application in order to assist the Appellant to leave the country".

13. The Judge's reference to "*creat[ing] a false application*" is not clear as to whether it is a reference to the events of 2017 or the earlier application in 2013, given that the reference is made in the context of a consideration of the role of the single agent that came to the UK in 2017. Perhaps it is the case that the Judge is referring to both the application in 2013 and the subsequent departure in 2017. Be that as it may, it is also clear - and is acknowledged by Ms Ahmad on behalf of the Respondent - that the Judge has wrongly considered the use of an 'agent' to be equivalent to the engagement of a travel agent in the manner usual for any traveller. The word "agent" is frequently used in cases of this sort to denote a person who acts in order to facilitate sometimes an unlawful departure and unlawful entry into third countries in order to assist a potential asylum seeker. The notion that this is not the conduct of a *bona fide* travel agency does not begin to undermine the credibility of the Appellant's account or claim; yet the Judge records this aspect of the Appellant's narrative as an adverse feature.
14. I am also concerned about a further aspect of paragraph 7. The Judge makes reference to the fact that the Appellant had worked as a journalist prior to her attempt to flee Sri Lanka in 2013, had stopped such work for a period of time, and then had returned to it later. The Judge says this:-

"Moreover, her claim is that she was in fear from December 2013 at which time she applied for a visa to come to the UK in order to escape, yet she then claims to have returned to writing more articles from 2015 to 2017. This is despite having reached the stage in 2014 that she wanted to flee the country. I do not find her account to be plausible or credible".

15. I am concerned about this passage for two reasons.

16. It is not apparent by what yardstick the Judge has assessed the plausibility of the Appellant's account. Very little reference is made in the Decision to country information; however the Judge does record "*There is external support of the fact that journalists are at risk of persecution in Sri Lanka and they are listed as one of the at risk categories in the country guidance case of GJ*" (paragraph 6). It is manifestly the case that there is an active free press in Sri Lanka, and necessarily that persisted notwithstanding the threat to journalists acknowledged in GJ. Accordingly, without more, it does not seem to be appropriate to characterise the continuation of the practice of writing critical features or articles as a matter that is not 'plausible' or 'credible' in itself.
17. More particularly, the Judge has reached an adverse evaluation of this aspect of the Appellant's account without engaging in her explanation for returning to journalism. This was a matter explored at interview (see question 95), and also referred to in the Appellant's witness statement dated 12 April 2018 at paragraph 29. The Appellant said this:
- "In 2015 after the new government came in, I started working again. I went back to Irida Ratathota but I also did some freelance articles for Lankacitizen.com. I thought that the government change would mean a different situation and I believed that the new government would be better. I thought that there would be more freedom of journalists so I decided to start again. I was still critical of the new government because the expectations I had for change didn't happen. Some of the ministers from the new government were just the same as from the old government as well".*
18. It may ultimately be open to a decision-maker to reject the explanation for the claimed return to writing articles. However, it is not possible to understand from the Decision what the Judge made of the Appellant's explanation, and if she rejected it *why* she rejected it, because the Judge does not engage with it.
19. I do not accept, as Ms Ahmad submitted, that it is adequate for the Judge to state a conclusion that she did not find the Appellant credible in this regard. In order to reach such a conclusion sustainably and fairly it is necessary to engage with what the Appellant had to say about the issue. The Judge has failed to demonstrate that she did so.
20. In a similar way, it seems to me that the Judge has failed to engage with the Appellant's evidence as to the way in which she became a journalist. At paragraph 8 the Judge says this:

"I did not accept her account that she was a journalist. She produced no evidence of any qualifications in that field and it is not plausible that she would be appointed as Editor

after such a short period of employment and without formal qualification in journalism or a related area”.

21. Putting aside that there is an issue as to the precise nature of the Appellant’s claimed role within the journal for which she wrote, the Appellant offered at her interview when challenged in this regard an explanation as to how it was that she had been able to start work as a journalist, and the manner in which she had developed her career. In response to question 65 she gave an account indicating her educational qualifications, that she had been working in marketing and publishing, and that she had been a co-ordinator for the press in her marketing and publishing job when she had encountered the chief editor; further to these circumstances she had developed a professional relationship with the chief editor who had invited her to work for the journal. Question 65 is in these terms:-

“Q. Can you explain why the newspaper recruited you considering you did not have any qualifications in journalism?”

A. I met him, the chief editor, while I was doing a job that included Marketing and Publishing, so I was a co-ordinator for the press, that’s how I met him, then I got to know him during that period, I became quite keen on the Media side while I was talking to him, also I followed the internet and a lot of news stories and comparing a lot of countries to our countries and that is when I saw what was happening in our country which wasn’t right, so while I was discussing with this chief editor we had a good chemistry build up and built up a good friendship and the topics we were discussing became quite similar, that’s how it lead me to, and that’s when he said if you like doing Media work that he offered me a chance, also he told me he will help me as I am new to the job. So may be (sic) he understood that although I did not have any qualifications in Media that he thought that I had enough ability to do the job, especially as I had been in Marketing and Publishing”.

22. The Judge has not demonstrated in the Decision that she engaged with the Appellant’s explanation, and has otherwise failed to offer any reasons for rejecting the explanation. The conclusion at paragraph 8 is inadequately reasoned.
23. The grounds of challenge also criticise the Judge’s approach to the substantial body of supporting evidence that the Appellant produced in respect of her work as a journalist.
24. The Respondent had been unable to verify independently the existence of the publication for which the Appellant claimed she had worked. As Ms Harris has pointed out, whilst the RFRL at paragraph 19 makes a bald assertion to this end, nothing was stated or otherwise provided by the Respondent in respect of the steps taken by way of attempted verification. (In this context it is also to be noted that the Appellant claimed that the publication was no longer current.)

25. Be that as it may, the Appellant had produced in support of her application copies of articles that she had written for the newspaper. The Respondent declined to place any particular weight on these articles because they were not in the original format. Accordingly, for the purposes of the appeal the Appellant produced what she said were the original pages from the various editions of the newspaper that contained her articles. She produced a number of different examples with certified translations. I have had sight of those documents today. Whilst I acknowledge that it may be possible to 'manufacture' such document, on their face they have the appearance of being sheets taken from newspapers. It is also apparent from the newspapers that the details of the editor given match the identity of the one of the Appellant's witnesses who provided a supporting statement in the appeal. It is also apparent from the newspaper articles that the Appellant's picture and name appears alongside her claimed articles.
26. The Appellant also provided other supporting statements from people who she claimed that she had worked alongside as a journalist; the statements were accompanied by identification documents tending to indicate that these were indeed real people prepared to advance testimony on behalf of the Appellant.
27. At paragraph 9 the Judge gives consideration to some of the foregoing evidence. The Judge observes that the Respondent was unable to verify the existence of the newspaper and then states "*no further evidence has been produced by the Appellant to establish that it existed*". It seems to me that that is substantially to marginalise the body of material produced by the Appellant. The Judge goes on to state "*I find no independent or reliable evidence to support that any of the documents are authentic or that the newspaper existed*". It is indeed the case that the materials being relied upon by the Appellant were provided through her and were not directly provided from some third independent party. However, it seems to me that the Judge was plain wrong in stating at the conclusion of paragraph 9 "*The fact that copies of passports and other identity documents have been provided adds nothing to the reliability of the documents*". In my judgement it does add weight to a witness statement that the identity of its maker is verified. Indeed the impression created by the analysis at paragraph 9 is that the supporting evidence has been disregarded because no item of it is in itself determinatively probative. I accept Ms Harris's submission that the result is that it does not appear the Judge has in practice applied the correct standard of proof, or has otherwise imposed an inappropriately high burden on the Appellant in respect of the production of supporting evidence.
28. Moreover, given that the Judge indicates that she has looked at the documentary evidence 'in the round', it is unrealistic to think that she has not been adversely influenced by her adverse assessment of aspects of the Appellant's narrative account - including those aspects that I have found to have been in error.

29. I recognise – as I have acknowledged above – that there are aspects of the decision which properly and sustainably identify problems with the credibility and consistency of the Appellant’s account. However, bearing in mind the ‘in the round’ approach that is required in protection claims, it seems to me that the ‘good’ aspects of the reasoning cannot be inoculated from, or isolated from, those matters where I find the reasoning has fallen into error. Accordingly, the decision is to be set aside.
30. It is common ground between the representatives that given that these matters go to the heart of the Appellant’s credibility, the decision in the appeal requires to be remade after a further hearing before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Black, with all issues at large.
31. I make no specific directions in the appeal. Standard directions will suffice, but the Appellant may wish to consider whether some further evidence from an independent third party with regard to the existence of the publication for which she claims to have written might not now assist the Tribunal in determining the appeal.

Notice of Decision

32. The decision of the First-tier Tribunal contained material errors of law and is set aside.
33. The decision in the appeal is to be remade before the First-tier Tribunal by any Judge other than First-tier Tribunal Judge Black, with all issues at large.
34. No anonymity direction is sought or made.

The above represents a corrected transcript of ex tempore reasons given at the conclusion of the hearing.

Signed:
Deputy Upper Tribunal Judge I A Lewis

Date: 8 August 2018