



**Upper Tribunal**

**(Immigration and Asylum Chamber)  
PA/01122/2019**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5<sup>th</sup> July 2019**

**Decision & Reasons  
Promulgated**

**On 17<sup>th</sup> July 2019**

**Before**

**UPPER TRIBUNAL JUDGE RIMINGTON**

**UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

**G U**

**(Anonymity Direction Made)**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms B Jones instructed by Tamil Welfare Association

For the Respondent: Ms A Everett, Home Office Presenting Officer

## **DECISION AND REASONS**

1. The appellant seeks, with permission, to challenge the determination of the First Tier Tribunal, promulgated on 24<sup>th</sup> April 2019, which dismissed the appellant's appeal against the refusal of asylum. The appellant's appeal was allowed on article 3 and article 8 grounds but not on asylum grounds. It was described as an 'uplift appeal'.
2. The appellant is a national of Sri Lanka who maintained that she had published an article on human rights in Sri Lanka. She had also engaged in protests in Sri Lanka whereupon she was detained, questioned and raped. Her detention was said to be post conflict and she had related that the authorities had subsequently twice visited her home seeking her whereabouts.
3. The appellant asserted in the application for permission to appeal that, as accepted at paragraph 62 of the First-tier Tribunal determination, she would be at real risk of detention for questioning on her return to Sri Lanka by reason of her past activities (the core of her claim being accepted by the Tribunal), and she would be at real risk of being ill-treated during such detention.
4. It was argued that as the detentions were post conflict and were intelligence led that that should have influenced the outcome of the appeal on asylum grounds in the appellant's favour given *ME (Sri Lanka)* [2018] EWCA Civ 1486 and which had been cited in the appellant's representative's skeleton argument. Insufficient regard had been given to the past persecution (which was accepted) and her activity with the TGTE in the United Kingdom. In that regard, the judge had failed to have regard to *UB (Sri Lanka) v Secretary of State* [2017] EWCA Civ 85.
5. The grounds of challenge to the First-tier Tribunal also asserted that the Tribunal erred in law in failing to apply *Gj and others (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC) given the finding that she was likely to be questioned and detained and allow the appeal on asylum grounds.
6. At the hearing before us Ms Everett resiled from the Rule 24 response which had advanced that the grounds did not disclose any error of law. In the circumstances, we considered that Ms Everett was proper to do so.
7. The First-tier Tribunal Judge accepted the credibility of the appellant, accepted her account of the appellant that she had

been detained in relation to political protests, ill-treated in detention, her whereabouts subsequently sought, and was involved in the United Kingdom with the TGTE. We find that the error of law identified by the grounds of challenge was made out. When considering the asylum grounds the Judge had failed to follow the relevant caselaw.

8. Ms Everett also formally conceded, on behalf of the Secretary of State, that on the findings of the judge, which had not been challenged by the Secretary of State in the Rule 24 response, and in line with case law, that asylum should have been granted.
9. On the unchallenged findings of the judge we found that to be a proper concession. On the findings of the First-tier Tribunal and on the relevant caselaw as cited above, asylum should have been granted.
10. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007) in relation to the conclusions on asylum only. We remake the decision under section 12(2) (b) (ii) of the TCE 2007 and in the light of the concession we allow the appeal on asylum grounds.

### **Decision**

The appeal is allowed on asylum grounds.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 5<sup>th</sup> July 2109

Helen Rimington

Upper Tribunal Judge Rimington