



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/06116/2018

THE IMMIGRATION ACTS

Heard at Manchester
On 13th June 2019

Decision & Reasons Promulgated
On 23 July 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

MRS M P I A G
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr J Khan, Counsel, instructed by MTC & Co Solicitors

For the respondent: Mr C Bates, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant has permission to appeal to the Upper Tribunal the decision of First-tier Tribunal Judge Holt. In a decision promulgated on 21st March 2009 the judge dismissed her appeal against the respondent's refusal to grant her protection and to find no breach of a protected human rights.

2. She is a national of Sri Lanka, born in February 1982. She is a Buddhist. She trained as a nurse. She came to the United Kingdom on 30 March 2014 as a dependent her husband. He was granted permission on foot of a post study Visa. That Visa was issued on 13 March 2014 and expired on 25 April 2015. Shortly before it expired application was made for further leave and this was refused in August 2015. The appellant contacted the respondent in September 2015 about making a protection claim and then attended for interview the following month.
3. In summary, her claim is that following an attack on a Mosque in April 2012 the injured were admitted to the hospital in Kandi where she was working. She says that the attack was blamed on an extremist Buddhist organisation. She said that body warned medical staff against treating the injured. By coincidence one of the injured included her former boyfriend. She said she treated him at her own home. Subsequently, she started to receive threatening telephone calls. In March 2014 the authorities came to her parents' home and detained the appellant. During this time she was sexually abused by CID officers. She was released after a week.
4. She claimed to fear the Sri Lankan authorities as well as non- State individuals on the basis she is perceived to be a Muslim sympathiser. The respondent did not accept the truth of her claim.

The First tier Tribunal

5. The judge did not find the appellant credible and rejected her claim of past difficulties. The judge gave various reasons. This included her ability to leave without difficulty through the main airport. As part of her appeal the appellant had produced a report from a consultant psychiatrist, Dr O who concluded she was suffering from post-traumatic stress disorder. The judge did not accept this was attributable to her claim. The judge concluded the doctor had not approached the question of causation with sufficient rigour and refers to the appellant self-reporting symptoms. The judge observed the appellant had gone through several stressful experiences, including entering into an arranged marriage and then moving to a culturally different environment and now facing the possibility of being returned. The judge also concluded there would be adequate treatment facilities available for her in Sri Lanka.

The Upper Tribunal.

6. Permission to appeal was granted on the basis it was arguable the judge erred in concluding that the appellant's ability to leave through the airport affected the credibility of her claim. Reference was made to GJ and others (post-Civil War: returnees) Sri Lanka CG [2013] UK 80 00139 about the ability to leave through airports. The second ground was a Mibanga point and related to how the judge dealt with the psychiatric report. Two other

grounds advanced were considered to have less merit, namely, that the judge was unduly reliant upon the question of plausibility in considering the account and failing to have regard to the appellant's mental health on return and her article 3 claim.

7. At hearing Mr Khan emphasised the first two grounds. The two other challenges were not pursued with the same vigour.
8. Regarding passing through the airport, I was referred paragraph 25(vi) of the decision were the judge said:

“... In the asylum interview she said that she feared the people who attacked her, i.e. the CID... Nonetheless, she was able to pass through security at the airport and leave Sri Lanka for the UK only a few days later. If she was a person to whom the authorities attached political sensitivity, then I am not satisfied that she would be able to leave the country so easily ...”

9. I was referred to paragraph 275 of MM (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 36. Lord Justice Richards decision states:

“9. ... Various arguments are advanced as to why it was a material error of law to find that the appellant would have been stopped at the airport if he had been of interest to the authorities and reliance is placed in addition on the new country guidance in GJ in support of those arguments.

10. The Secretary of State accepts that the Upper Tribunal judge made a material error of law in concluding that the appellant would not have been able to depart from the airport unnoticed if the Sri Lankan authorities had an interest in him. It is also accepted that exit procedures at the airport are the subject of detailed consideration in GJ, by reference to which it is said that the matter would have to be assessed on a remittal to the Upper Tribunal.”

10. In relation to the psychiatric evidence I was referred to paragraph 24 and 25 of the decision. Mr. Khan contended that the judge had assessed credibility without having regard to the psychiatric report.
11. Regarding the remaining two grounds I was referred to paragraph 25 again where it was submitted the judge engaged in assessing probabilities. Regarding the final ground and the suicide risk, he submitted the judge failed to apply the test in J v Secretary of State for the Home Department [2005] EWCA Civ 629.
12. Mr Bates relied upon the rule 24 response. He argued that the judge properly factored into the assessment the appellant's mental health. The judge had made numerous references to the appellant's vulnerability. At paragraph 21 for instance, the judge referred to the appellant's ability to cope at the hearing. Before this, in paragraph 18 the judge had recorded the

representatives had been reminded of the need for sensitivity in questioning. This also features at paragraph 19 and 20 where the judge refers to the psychiatric report and her ability to give evidence and whether an interpreter was necessary. In summary, the appellant's vulnerability was always at the forefront of the judge's mind.

13. Regarding the comments about her departure through the airport this was a single point taken against a credibility assessment whereas the judge in fact had considered many factors.
14. Regarding the third point raised Mr Bates said that the judge had focused on what was happening in Sri Lanka and had not sought to apply a westernised view. He submitted that when the decision is read fairly there was ample consideration given to the claim made. Generally in relation to the psychiatric report and the claim risk of self-harm, he pointed out that the report was based the largest extent upon the appellant's account.

Consideration

15. The primary issue in the appeal related to the truth of the claim and the appellant's credibility. The judge accurately set out the claim made. At paragraph 13 the judge emphasised that he was considering every piece of evidence and had reviewed the evidence as a totality.
16. The appellant's Counsel in the First tier emphasised the appellant's vulnerability. At paragraph 16 the judge acknowledged this issue and said regard was being had to the Presidential Guidance. The judge noted it had been suggested the appellant could provide a witness statement covering her claim about sexual assault and thus avoid the stress of giving evidence on this aspect. However despite that suggestion no such statement had been produced. Paragraph 18 records the consideration of how cross-examination should proceed bearing in mind the appellant's vulnerability. The judge indicated he bore this in mind throughout. Paragraph 19 is a referral to the medical evidence.
17. The judge was at pains to ensure the appellant was able to follow the proceedings. The judge had commented that the appellant has studied nursing in the United Kingdom through the medium of English and had worked in a care home. Furthermore, her husband had spoken clearly in English. The judge raised the question of the need for an interpreter and offered the appellant the choice if she preferred to speak in English and to avail of the interpreter if she ran into difficulties. This suggestion was declined.
18. Having dealt with these preliminary matters the judge turned to the substantive issues. The judge found the claim lacked credibility. At paragraph 25 a series of reasons are given. The judge queried why or how she needed to nurse a patient in her room rather than in the hospital. The

appellant initially said that it was the Buddhist group who posed a threat to him rather than the authorities. The judge made the point that she had not explained why he could not have remained in the hospital. The judge also noted the appellant had not reported threats to the Sri Lankan authorities. The judge commented about the vagueness of the evidence.

19. The judge did not find it credible that the appellant would be arrested in March 2014, two years later. By that stage she was not in a relationship with the injured person.
20. Furthermore, the appellant remained in Sri Lanka for two years after this without any issues. The judge took this as an indication that she was not at risk. There was no suggestion she was in hiding but in fact went about her day-to-day work in the hospital. Whilst she claimed threatening phone calls were made nothing untoward had happened.
21. The judge found the appellant's account about who she feared to be incredibly vague. Whilst she said she feared the CID the judge commented that she was nevertheless able to pass through security at the airport. The judge makes the observation that her ability to leave without difficulty was seen as a contra indicator of someone at risk from the State. The country guidance decision emphasises a sophisticated database is maintained but still suggest people can pass without difficulty. The judge has not referred to this specifically. However, the guidance is not that there is never a risk for an individual at the airport. Security personnel are likely to be concentrated there. Each case is fact specific. GJ does not say individuals are not stopped. For example, it found a person whose name appears on a computerised "stop" list accessible at the airport, comprising a list of those against whom there is an extant court order or arrest warrant. Individuals whose name appears on a "stop" list will be stopped at the airport and handed over to the appropriate Sri Lankan authorities, in pursuance of such order or warrant. His comments about her ability to leave for only part of the wider assessment.
22. The judge considered if any mental issues which could account for the gaps in her account. Having made this allowance, the judge still concluded her account was inconsistent and incoherent and this could not be explained by her health.
23. At paragraph 27 the judge commented on the fact the appellant added further details to the claimed assault, saying she was beaten so badly that she had scarring to her breasts. The judge observed a change in her evidence on this when cross-examined. Furthermore, medical evidence of scarring could have been used to support the claim and this was not forthcoming. The judge also referred to the cross-examination of her husband and concluded he sought to avoid answering questions before saying he had not noticed any marks.

24. The judge then considered the appellant's mental health and made an assessment. The judge considered the medical management. At paragraph 29 the judge considered why she had declined counselling and treatment. The judge did not accept her explanation. She suggested she would have required an interpreter which she would be expected to provide. However the judge referred to her ability in English. The judge noted that she subsequently attended counselling.
25. The judge deals with the psychiatrist's report. The judge observed that the consultant did not have the appellant's GP notes and records. The judge referred to relevant case law and the approach to experts. In the absence of medical records the appellant's account to the psychiatrist was described as 'self-reporting' symptoms. The judge questioned whether the psychiatrist had adequately evaluated causation. The judge is not challenging the doctor's expertise but is making legitimate comments in assessing the weight to be attached to the report in relation to the claim. Most significantly, the judge is not dismissing the diagnoses but is simply suggesting there could be other causes and goes on to name them.
26. The judge made the observation that the appellant had worked as a nurse in Sri Lanka and the evidence indicated there existed a sophisticated medical service there. It was for the appellant to demonstrate she could not receive adequate treatment and according to the judge failed to do this.
27. The judge then had regard to section 8 factors pointing out this was not determinative and the case had to be looked at in its entirety. The judge then refers to her delay in claiming protection and the circumstances of her claim.

Conclusions

28. The judge has been most careful in the conduct of the hearing and in the assessment of the evidence. The points made were ones open to the judge. The decision when read as a whole clearly shows that the judge had not reached a conclusion absent the psychiatric report. There is constant reference throughout to consideration of the appellant's mental state and possible vulnerability. The judge considered measures which would assist. In summary, I find this is not a Mibanga situation.
29. I do not see any material error in the comment made by the judge about the appellant being able to leave through the airport. This was clearly not the central point but an observation in relation to the appellant's claimed fear. There were many other credibility points taken which justify the outcome.
30. The other two points have not been laboured at hearing. Reading the decision I do not see anything which suggests the judge was applying Western values. The judge was most careful in the approach taken to the appeal and this is set out in numerous occasions. The observations made in

relation to the claim and the chronology are logical and legitimate observations.

31. The final grounds advanced related to the absence of consideration of the risk of suicide if returned. The appellant's representative has been unable to say if this was argued in the First-tier Tribunal. Had it been raised I would have thought it most likely would have been a reference to it by the judge. Reference was made to the other points raised. There is a high threshold for a claim to succeed on this basis. The point had been mentioned in the psychiatric report at paragraph 65. The doctor saw a moderate risk, referring to the appellant's family as a protective factors albeit the prospect of removal could lead to a change.
32. Whilst I note the risk of self-harm was raised in the skeleton argument submitted, it could well be that the appellant's Counsel decided not to pursue this at hearing. I have gone through the judge's notes. These are detailed and typed. The details of the presenting officer's submission are recorded and there is no reference to any risk of self-harm. The record in relation to the submissions of the appellant's representative is much shorter. Again, there is no reference to self-harm. As Mr Bates points out, it was open to the appellant's representatives to obtain a statement from Counsel.
33. In conclusion, having regard to the points made and having studied the decision in its entirety and the background material I find no material error of law established.

Decision.

No material error of law has been established in the decision of First-tier Tribunal Judge Holt. Consequently, that decision dismissing the appeal shall stand.

Deputy Upper Tribunal Judge Farrelly

17 July 2019