



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-000796
First-tier Tribunal No: PA/07662/2018

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 March 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

VR
(ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Mr M Sowerby, counsel instructed by Nandy & Co Solicitors
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 19 January 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and any member of her family, is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant or her family members. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Monson promulgated on 5 October 2021.
2. Permission to appeal was granted by Upper Tribunal Judge O'Callaghan on 22 April 2022.

Anonymity

3. An anonymity direction was made previously and is repeated as this is a protection matter involving an appellant with mental health issues.

Background

4. During August 2016, the appellant arrived in the United Kingdom with leave to enter as domestic worker in a private household. She applied for asylum shortly before her visa expired in December 2016. The appellant's protection claim was based on her assistance given by her husband to the LTTE from 1991 until his arrest in 2014. In addition, the appellant left Sri Lanka in 2014 to work for a family in Oman. She was not paid and was physically ill-treated by this family, whom she accompanied to the United Kingdom in 2016. The appellant stated that a warrant had been issued for her arrest and she feared persecution if she was forced to return to Sri Lanka.
5. The appellant's asylum claim was refused by way of a decision dated 6 June 2018. The appellant's account of her husband's activities was rejected owing to an absence of credibility in the appellant's overall claim. In addition, the appellant's ability to leave Sri Lanka using her own passport and visa was found to be at odds with her claim that she was of adverse interest to the Sri Lankan authorities and her delay in seeking asylum was found to damage her credibility.
6. The appellant appealed the decision of 6 June 2018. Her appeal was dismissed by the First-tier Tribunal Cassel, but that decision was set aside by the Upper Tribunal and the appeal was remitted to the First-tier Tribunal for a rehearing by way of a decision promulgated on 6 April 2021.

The decision of the First-tier Tribunal

7. At the hearing before First-tier Tribunal Monson, the respondent relied on a Document Verification Report (DVR) in relation to the arrest warrant produced by the appellant shortly before her asylum claim was decided. The appellant submitted documents which addressed the conclusions set out in the DVR. The appellant did not give evidence before the First-tier Tribunal owing to medical opinion that she was unfit to do so. Submissions were made that the appellant would be at risk on return owing to the arrest warrant and that she qualified for relief on Article 3, mental health, grounds. The medical evidence revealed that the appellant had an arranged marriage while still a minor and was subject to domestic abuse at the hands of her husband. The protection appeal was dismissed owing to a want of credibility and the judge did not accept that the appellant's removal would expose her to a serious, rapid, and irreversible decline in her mental health.

The grounds of appeal

8. The grounds of appeal firstly, criticised the judge's consideration of the DVR, arrest warrant and lawyer's report. Secondly, it was argued that the judge's assessment of the appellant's credibility was unreasonable. Thirdly, the judge

failed to engage with the contents of the psychiatric report and whether the appellant would be able to seek out the care required to avoid the risk of suicide.

9. Permission to appeal was granted on the basis sought.
10. In the respondent's Rule 24 response, dated 14 October 2022, the appeal was opposed, and the included the following comments.

Much of the FtTJ's reasoning dwelt on the apparent conflicts between (the Sri Lankan lawyer's) evidence and the DVR. The judge also provided clear and detailed reasons for finding that some of the content of the claimed court documents did not appear to be credible. The judge clearly considered the documents in the round.

The hearing

11. When this matter came before me, I heard submissions from both representatives. Mr Sowerby relied on and supplemented the grounds drafted by his colleague, Ms Bayati. Ms Cunha provided detailed submissions in respect of the first two grounds but accepted that the First-tier Tribunal had erred in its approach to the discrete Article 3 ECHR claim. I have taken the representatives' submissions into consideration in reaching my decision. At the end of the hearing, I announced that I was satisfied that the judge had erred as set out in the grounds and that the decision of the First-tier Tribunal was set aside. There was a brief discussion as to future disposal of the appeal. Mr Sowerby submitted that, notwithstanding that the appeal had already been remitted once, it was appropriate for it to be remitted again as the appellant had not had a fair hearing. Ms Cunha did not disagree.

Discussion

12. I will briefly address the third ground, given Ms Cunha's acceptance that the First-tier Tribunal had not dealt with the Article 3 claim properly. The appellant has been diagnosed with PTSD owing to being a victim of physical abuse at the hands of her husband, owing to abuse during her employment and, in addition, was experiencing a moderate depressive episode. The opinion expressed in the psychiatric report is that there would be a significant increase in the current, moderate, risk of suicide were the appellant to be removed to Sri Lanka. Furthermore, the doctor stated that owing to the effect of stigma and shame, that the appellant's mental health was likely to deteriorate further. The judge does not appear to have rejected this evidence. Nonetheless, his brief consideration of the matter at [85-86] of the decision, referred only to the presence of the appellant's adult children and siblings in Sri Lanka, with the judge being of the view that these relatives could, without more, negate the absence of psychiatric and psychological care in Sri Lanka, as referred to in *GJ*. It is unclear how the judge came to this conclusion given that the appellant's daughter is married and there is no reference to her son's circumstances in the papers, other than to say both children have faced threats. The findings by the judge do not adequately engage with the findings set out at *GJ* from paragraph 454 onwards as to the paucity of mental health services, nor with how the risk of suicide could be reduced once the appellant is in Sri Lanka. The judge also fails to acknowledge the cause of the appellant's mental health problems or to demonstrate understanding that this was a separate issue to the protection claim. This error is material as without it the result of the appeal could have been different, notwithstanding the judge's findings on the credibility of the account based on the activities of the appellant's husband.

13. Turning to the first ground, I am satisfied that the judge erred in the consideration of the DVR. The report in the DVR was that there was a visit to the relevant magistrates court by a 3rd secretary from the British High Commission in Colombo who was informed that there was no record of the reference number on the arrest warrant relied upon by the appellant in the records relating to the cases heard at that court. The report also notes that the author checked the register for themselves.
14. The content of the DVR was challenged in the letter from the appellant's lawyer in Sri Lanka who explained, with reference to legislation, that it would have been unlawful for a third party to examine court records. However, at [73] the judge found that the author of the DVR had not claimed to have inspected the documents and at [75] that there was no explanation as to how the 3rd Secretary and his colleague satisfied themselves as to the reliability of the information provided by the court clerk. These are unsustainable conclusions given the clear statement in the DVR to the contrary and amount to a mistake as to fact. The judge's remaining findings on the DVR at [76-77] were somewhat speculative, in that the judge suggests that the records were examined in a manner which might have avoided breaching Sri Lankan law. In addition to the foregoing, there was a lack of assessment of the content of the letter from the appellant's Sri Lankan lawyer which was to the effect that the appellant's document was genuine. Indeed, there is no indication that the judge did not accept the bona fides of the lawyer in the decision and reasons and accordingly, it was therefore necessary for this evidence to be considered. I accept that these errors are material as without them, the judge might have come to a differing conclusion as to which evidence he preferred.
15. I find that the errors set out in grounds one and three suffice to render the decision of the First-tier Tribunal unsafe and as such there is little need to explore the five matters set out in the second ground under the heading of credibility other than to say they are not without substance.
16. As indicated above, I decided to remit this appeal to the First-tier Tribunal for a de novo hearing as the appellant has not had a fair hearing.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Taylor House, with a time estimate of 3 hours by any judge except First-tier Tribunal Judge Monson.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

26 January 2023