IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2023-005195

First-tier Tribunal No:
PA/07727/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 3 July 2024

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

SNR
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr Heeps, Ali & Co Solicitors
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

Heard at 52 Melville Street, Edinburgh on 26 June 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant and her husband are 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 husband. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge DDH Stevenson, promulgated on 19 September 2023, dismissing her appeal against the decision of the respondent made on 29 July 2019 to dismiss her asylum protection appeal.

2. The appellant is a citizen of Sri Lanka whose case is that she is at risk of persecution on return to Sri Lanka owing to adverse attention she faces from a prominent politician, PRB, who she says assaulted her and who later carried out attacks against her husband and their home.

Background

3. The appellant's appeal to the First-tier Tribunal was dismissed by Judge Buchanan on 21 April 2020. Following a successful appeal this was remitted to the First-tier Tribunal to be considered afresh and on 25 October 2021, First-tier Tribunal Judge O'Hagan dismissed her appeal. There was a further successful appeal to the Upper Tribunal and the appeal was remitted to the First-tier Tribunal for a fresh determination. None of the findings made by the two previous Tribunal judgments being preserved. The judge heard evidence from the appellant and her husband. He also had before him a large number of documents provided by the appellant set out in seven inventories of production and a further bundle produced by the respondent, details of which are set out at paragraphs [6] to [7] of the decision.

4. There were, in the inventories of production provided, expert reports from Ms Frederica Jansz, as well as a number of medical reports and letters from the appellant's GP including a specific medical report from Dr Koruth, consultant clinical psychologist.

5. In his decision, the judge dealt first with the psychological evidence before moving on to the evidence of Ms Jansz [21] to [40] before going on to consider the evidence of the appellant, her husband and the supporting documents [41] to [57] before summarising his analysis at [57] and [64].

6. The judge found:-

   (i) absent an indication that Dr Koruth was aware of the relevant Practice Directions or expert evidence relating to mental health matters, or an expert's obligation to the Tribunal, it was unclear whether Dr Koruth or the authors of any of the other report or letters were aware of the case against the appellant or that the correspondence was to be used in adversarial proceedings and that this adversely affected the weight he could provide to the reports [19], although they were harmonious in their descriptions of the appellants and individuals who presents with psychological symptoms consistent with past trauma [20], noting also that the appellant had not substantively engaged in

psychological treatment in the last two years, it being unclear what had changed now that she wished to carry on with the treatment;

(ii) that notwithstanding, the reports could not be discounted [59] and confirmed that she has PTSD, yet are not diagnostic as to the source of the trauma;

(iii) although Ms Jansz's views on the police documents, or as to PRB and as to the absence of a medical report, and the lack of evidence of a medical report in respect of the husband for the reasons set out at [22] to [38] but did accept her conclusions with respect to the prevalence of sexual violence in Sri Lanka, the culture of impunity along with the lack of action by the police and other matters as they were adequately referenced [40];

(iv) given inconsistencies in the appellant's attitude to what she said had happened in the context of her own statement [45]. She had not considered it was credibly explained. Her failure to raise what had happened with her employers [46] having given a second police report, the making of two subsequent police reports [48] demonstrating an implausible degree of confidence in the police despite given that little had happened in respect of the first report, this behaviour not ringing true, the appellant's attitude and behaviour being incongruous [49], it not being credible that given the attacks on her and her husband, and her nearly being abducted herself, that she would simply return to work without minimal precautions, it being improbable that the account of the attack on the appellant's property on 25 November 2018 was not plausible, it being implausible that those seeking her had the ability to locate her in both of her hiding places. They did not survey the locations or wait until they had spotted her to apprehend her [56], as well as the absence of any evidence of PRB's continuing interest. That although her account was broadly consistent, he did not accept her claim [60] given the striking implausibility as incongruities and inconsistencies in behaviour, which were simply too numerous;

(v) that the appellant and her husband had concocted a sophisticated but ultimately untrue account [62].

7. The appellant sought permission to appeal on broadly three grounds, averring that the judge had erred:-

(i) In his Approach to the medical evidence in that he improperly attached limited weight to that;

(ii) in making inconsistent findings about the extent to which weight could be attached to Ms Jansz's reports;

(iii) in making negative credibility findings against the appellant in

(a) failing to take account of the appellant's explanation for her shift in attitude between making the first and second police reports [4];

(b) in reaching findings at [46] as to why the police did not go to the appellant's place of business, which were inconsistent with his findings at paragraph at [40] that there is a lack of action by the police in Sri Lanka;

(c) in making negative findings regarding her failure to mention Mr Da Silva in the first report without raising this matter [6];

(d) in failing to give her an opportunity to address issues of why further police reports were made [7] at paragraphs [47] and [48];

(e) in reaching contradictory findings at paragraphs [41] and [49] (see grounds at [8]) and, taking into account [55] adversely the absence of a copy of a newspaper article and the explanation for that, failing also to address credibility issues outlined in the refusal letter at [29] to [55] addressed by the appellant in her witness statement at paragraphs [113] to [133].

8. On 8 November 2023 First-tier Tribunal Dempster granted permission on all grounds and on 4 January 2024 the respondent provided a response to the grounds pursuant to Rule 24.

The Hearing on 26 July 2024

9. I heard submissions from both representatives. Mr Heeps relied on his skeleton argument. Mr Diwnycz relied primarily on the rule 24 letter.

10. At the end of the hearing, I reserved my decision, which I now give.

11. I address the grounds in turn. In doing so, I bear in mind the following. As was noted in Ullah v SSHD [2024] EWCA Civ 201 at [26]:

> 26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:
>
> (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];
>
> (ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];
>
> (iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier*

Tribunal and Criminal Injuries Compensation Authority [2013] UKSC 19 at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [2019] EWCA Civ 1095 at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [2020] EWCA Civ 1296 at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [2017] UKSC 10 at paragraph [107].

12. Further, I bear in mind what was said in Volpi v Volpi [2022] EWCA Civ 464 at [2]. I bear in mind also what was held in HA (Iraq [2022] UKSC 22 at [72] and the uncontroversial propositions that the decision must be read sensibly and holistically and that it is not necessary for every aspect of the evidence to have been addressed, nor that there be reasons for reasons. Justice requires that the reasons enable it to be apparent to the parties why one has won and the other has lost: English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, [2002] 1 WLR 2409 at [16]. When reading the Decision, I am entitled to assume that the reader is familiar with the issues involved and arguments advanced.

13. The judge directed himself correctly in line with the HA (expert evidence; mental health) Sri Lanka [2022] UKUT 00111 (IAC). Of particular note from the headnote in HA are paragraphs 1 and 6.

14. It is evident from the medical letters that they were produced in response to queries from the solicitors. There is no proper basis in any of these letters for any conclusion that the authors were aware that these were to be used in an appeal in support of the appellant. That is not a criticism of the authors but is a relevant factor in assessing weight which the judge was entitled to do.

15. Viewing the medical evidence as a whole, it is evident that there was a diagnosis at some point that the appellant suffers from PTSD and this diagnosis has not been revised. The judge accepted that the appellant had PTSD. But, given the limitations of the medical evidence, he was entitled, bearing in mind the principles set out in **HA**, to attach less weight to the letters from Dr Koruth. Further, and contrary to what Mr Heep submitted, it does not necessarily follow that a diagnosis of PTSD is confirmatory or of what had happened to the appellant in Sri Lanka. I

accept, as implicitly did the judge, that the report set out the appellant's account of what happened to her. With the limited forensic analysis of this, and it was open to him to note at [59] that:

> "[Psychological and medical reports] confirmed that the appellant has PTSD. Yet they are not diagnostic as to the source of that trauma. Each author simply, and understandably, recites the account that they have been told by the appellant. I do not read from any of the papers that they are asserting that the appellant's past trauma can only have occurred in the way which he claimed. That the appellant suffered trauma and has ongoing psychological consequences did not excluded the possibility that she has not been truthful about the events."

16. In summary therefore, I consider that the judge was entitled to give less weight to the reports for the reasons given. Further, and in any event, for the reasons given by the judge in particular at [59], he gave adequate and sustainable reasons for not attaching weight, both in terms of what their documents could and their limited way establish and in the form in which they appeared. There is no detailed diagnosis of the PTSD nor do the letters properly confirm that that is the only way in which it could have occurred is because the appellant had told the truth about what had happened to her. There is a difference between a psychiatric diagnosis of PTSD on the one hand and, on the other, a scarring report which complies with the Istanbul Protocol.

17. With respect to the criticisms of Ms Jansz's report, as Mr Diwnycz pointed out, there is no indication that she had any forensic training. To that extent, her criticisms of the police report and their appearance, although she may have some expertise and experience of documents in Sri Lanka, it might be justified but that was not the basis on which the judge reached his decision. That said, I note that she accepted she only received copies of the documents [27] and it was her view that the reports were authentic, as they looked like other reports she had seen.

18. As the judge notes [28] Ms Jansz turned to the potential for forgery. It was open to the judge to note [30] that Ms Jansz did not address the possibility that documents that appear to be genuine in that they emanate from a proper source and a proper form of proper paperwork with proper seals and so, whether the information contained in them is particular untrue. As was noted in Tanveer Ahmed, there is a need to differentiate between form and content; that is whether a document is properly issued by the purported author and whether the contents are true. These are separate questions.

19. It was open to the judge to note in that context, given that Ms Jansz had referred to the rampant corruption of the police, that there may well be a concern that reports could emanate from the appropriate authority, in conformity with the correct format, yet contain untrue information. That was a point open to the judge and for which he gave adequate and sustainable reasons. It was open to him to note that Ms Jansz had not dealt with this matter nor did Mr Heep take me to any indication that she

had done so. It was also open to him to note [32] that in this case it appears that the police had accepted the reports but this was contrary to how the police almost always are unsuccessful in issuing a first instance report.

20. Similarly, the judge's assessment of PRB is fair and reasoned. It was open to the judge to note [37] that Ms Jansz appeared to have descended into advocacy on behalf of the appellant, making assertions unsupported by evidence of particular reference to the allegations against PRB of sexual misconduct or harassment against women.

21. It was also open to the judge to note [38] Ms Jansz had not provided an answer to the central question posed which is why a report of the appellant's husband's stay in hospital cannot be obtained. Having considered Ms Jansz's report, I considered that the observation that her evidence is complex, irrelevant and failed to address the central question is one open to him. It was also for him to note that there was no basis given as to why a patient must attend the hospital in person and be represented by a relative from their family unit in order to obtain a report.

22. For these reasons, I considered that it was open to the judge and he gave adequate reasons for discounting aspects of Ms Jansz's report. It was open to him to do so and it was also open to him to attach weight to other parts of the report given that they were referenced and thus his approach to her evidence did not involve the making of an error of law.

23. In addressing the challenges to the adverse credibility findings, I note that credibility is primarily a matter for the judge who had before him all the evidence. As here, and as has been deprecated in Volpi v Volpi, there is a significant degree of "island hopping" in an attempt to undermine the findings. It was open to the judge to draw a distinction between inconsistency between evidence and evidential matters and inconsistencies in behaviour. It is also possible for a witness to be consistent yet not to be telling the truth.

24. Contrary to what is asserted in the grounds at [4] the appellant's evidence cannot fairly be considered that she was compelled to give a report. The circumstances are that she was told to give a report by the police, who were present at the hospital. Contrary to what is asserted, the focus of the judge's analysis is not a change in attitude into providing details of the assault, it is that she had initially feared making a complaint, because the consequences for her of doing so. It was open to the judge to note that providing full details of the sexual assault implicating the politician would have escalated adverse attention, as noted from her statement, in which she said that even after the police report she did not want her employers to know, she did not want anyone to know about the assault, yet that, by implication, she nonetheless gave a statement giving full details rather than, saying that she did not know who had assaulted her, who has perpetrated the attack on her and her husband or giving details of the prior assaults.

25. Similarly, the point then made by the judge at [46], properly understood in the context of the decision as a whole, is that if the appellant had not wanted her employers to find out, then she would not have given details to the release of the incident that had happened at the hotel; or, even taking into account the incompetence of the police, that there was a risk that they would have contacted her employer. The judge's reasoning on this is supplemented by his observations that it would have been the obvious choice to mention Mr Da Silva so that he could support the appellant's claims and to have said that she did not want to employer her to know about what had happened.

26. It is averred [6] that the judge erred in not giving the appellant an opportunity to explain why she had not mentioned Mr Da Silva in the first police report or that she did not want the matter to become known to her employer.

27. This is, however, a minor point. The grounds do not advance any explanation that might have been given and in the circumstances, viewing the decision as a whole, I am not satisfied that it was a material error which affected the outcome which is that the judge did not accept the appellant's account.

28. Whilst it is correct that the judge did not, it appears, ask the appellant why the police reports were made, notwithstanding the appellant's own attitude and belief towards the police, first, in the context of the evidence of the police not taking account of things and the appellant's lack of belief in the police, and her concerns about matters being reported to her employer and matters escalating, this was clearly a point that the appellant herself ought to raise. It is not for a judge to identify to an appellant every matter which could and should have been addressed. Again, there is no proper explanation as to the appellant's course of action, which is particularly striking in the light of the evidence of the corruption and inability of the police to do anything. It is, however, of note that a number of cogent credibility issues have not been challenged. Amongst these are the findings with regard to delay, the apparent lack of any continuing interest in the appellant by PRB and the lack of any attacks on her and the implausibility of PRB's agents being able to track the appellant to her hiding place, yet not be able to take the sensible step of being able to, for example, lie in wait or wait until she appeared before trying to adopt her rather than, as the judge notes, making their presence known.

29. In that context, the observation [55] it is not entirely clear that the lack of the newspaper article is a matter which gave rise to any findings with less regard to credibility. The judge simply mentions it and there is no proper indication that this informed his attitude towards disbelieving the account given. It is of note that there is no challenge to the judge's finding at [55], followed up at [56] that is somewhat inconsistent for violent assailants who held a gun to the appellant's mother's head, that

she would report this to the police despite being warned by the assailants that they knew of the police reports and are aware of the police in action.

30. In submissions, Mr Heeps did turn to the issue of whether, even if there was not any direct reference to what the appellant said in evidence, that they should have been set out in the decision. That is not a matter raised in the grounds of appeal and if there were concerns about what had or had not been sent in the hearing, then a transcript could have been requested. That did not happen.

31. Finally, as prefigured above, it is not inconsistent to state (as the judge did at [60]) that there were inconsistencies in behaviour. There is a distinct difference between inconsistencies, behaviour and inconsistencies in, for example, dates on which events occurred. It is sufficiently clear, reading the decision as a whole, that the judge in referring to the account being consistent is in terms of the appellant's account providing a consistent account of the facts but it was open to the judge to note that there were a number of occasions in what the appellant did in response to those events, was inconsistent with what she had said. There is no, viewing the decision as a whole, failure properly to reach reasons.

32. Accordingly, for these reasons, I am not satisfied the decision of the First-tier Tribunal involved the making of an error of law and I uphold it.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of an error of law and I uphold it.

Signed Date: 1 July 2024

Jeremy K H Rintoul
Judge of the Upper Tribunal