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**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/10740/2014
AA/10741/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 November 2015**

**Decision and Reasons
Promulgated
On 19 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE FROMM

Between

**GRKS
GNPW**

(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Kumudusena, Legal Representative

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Sri Lanka. They have appealed with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal Malins, promulgated on 18 August 2015, dismissing their appeals against decisions of the respondent to refuse to vary their leave to

remain on asylum grounds and to remove them.

2. The appellants are husband and wife. The basis of their claims was that first appellant had been detained in 2008 on suspicion of helping LTTE members find accommodation in Colombo. The second appellant had been detained and questioned about her husband when she returned to Sri Lanka for a visit in 2012. The authorities believed the first appellant was helping Tamils in the UK. The appellants claimed asylum separately. In support of their applications they provided a number of documents said to show the first appellant was subject to investigation for offences under the Prevention of Terrorism Act. Medical evidence was submitted concerning the first appellant's scars and the second appellant's psychiatric health.
3. The appeals were heard by Judge Malins on 20 July 2015 at Hatton Cross. The appellants were represented by Mr D Kumudusena. Both appellants elected to give evidence in Sinhalese. The judge first considered the documentary evidence. She set out the police reports said to relate to both appellants but concluded that she could not accept that the documents were genuine. She set out her reasons in paragraph 10.4. She did not find it credible that, if the first appellant had been suspected of involvement with his cousin in bombing the Hilton Hotel and other serious terrorist activities, that he would have been able to leave Sri Lanka on his own passport eight months later. Nor was it credible that the police would write a report five years later. The appellant had not been able to produce the arrest warrant despite being asked to do so at his interview. The judge did not find it "plausible" that either appellant was an LTTE supporter, inferring that they belonged to the Sinhalese community. It was fanciful that the police reports would recite all of the appellant's respective domestic, family and educational circumstances. There was no evidence that the first appellant was a leading member of the LTTE diaspora. He claimed to have been kicked and beaten with a metal bar during his detention. The medical report of Mr Andrew Mason, a specialist in accident and emergency medicine, found that the scars on the first appellant's head were consistent with his account of being struck and rendered unconscious, as was the scrape on his chin. It was not uncommon for persons to strike their heads accidentally. However, the scars on his leg were highly consistent with his account of how they were caused by blows from a hard object, such as a piece of metal. The judge found this report of limited assistance, particularly given that no age could be ascribed to the head and leg injuries.
4. The judge then turned to consider the credibility of the appellants. In relation to the second appellant, the judge gave reasons for finding her not credible in paragraph 11.2. It was not credible the second appellant would have remained in Sri Lanka for 10 months after her detention. It was not credible the police sent a passport to the authorities to facilitate the issuance of a new one. As a Sinhalese Buddhist her sympathies would naturally lie against the LTTE. There was no arrest warrant issued despite her failure to sign on weekly. The judge then noted the following:

“(e) The second appellant's credibility is further diminished by the claim advanced by her Representative (clearly, on her instructions) that “the second appellant works in Sri Lanka as a human rights lawyer” (advanced as an additional reason for her to be in danger) which is manifestly untrue...”

The judge went on to give reasons why this claim could not be true.

5. The judge then turned to the credibility of the first appellant. She started by noting she had rejected the second appellant's claim to have been arrested in Sri Lanka by reason of the first appellant's activities. Giving her reasons for disbelieving the first appellant also, the judge relied on the late timing of his asylum claim. The judge found the finding of Mr Mason in relation to the first appellant's leg injury was insufficient to show he had been mistreated sufficiently to induce a well-founded fear of persecution. The fact his cousin had been granted asylum in Switzerland in 2007, having gone in 2006, did not indicate the first appellant would be tainted by his relationship but was indicative that it was not credible the authorities would have had an interest in the first appellant through this relationship two years after the cousin had left the country.
6. The grounds seeking permission to appeal challenge virtually every one of the reasons given by the judge for making adverse credibility findings. Many of the grounds simply express disagreement with the judge's findings and attempt to re-argue the case. However, paragraph 20 of the grounds refer to the judge's finding at paragraph 11.2(e), set out above. The grounds submit that the representative did not raise any claim that the second appellant worked in Sri Lanka as a human rights lawyer as an additional reason for her life to be in danger. It was simply not mentioned. Appended to the grounds is a witness statement made by Mr Kumudusena confirming that he did not state the second appellant worked in Sri Lanka as a human rights lawyer in his oral submissions. There would be no reason for him to make such a submission as the second appellant had nothing to do with the legal system in Sri Lanka. Paragraph 4 of the statement suggested this must have been a genuine error by the judge.
7. The respondent has filed the rule 24 response opposing the appeal. In essence, this argues that the judge directed herself appropriately and made detailed and thorough credibility findings. Even if it had not formed part of the appellants' case that the second appellant was a human rights lawyer, this did not undermine the various and numerous other credibility findings made by the judge and it was difficult to see how this would materially change the outcome of the decision.
8. Permission to appeal was granted by the First-tier Tribunal because it was arguable the judge had misunderstood the appellants' representative's submissions in relation to the second appellant being a human rights lawyer. Further, it would not appear the judge considered all the evidence in the round.
9. I heard submissions on whether the judge made a material error of law. Mr Tufan did not rely on his colleague's rule 24 response and confirmed that,

in his view, the judge's decision should be set aside on the grounds it contains material errors of law. In addition to the point about the apparent error in hearing the appellants' representative's submissions, he was concerned about the correctness of the finding that the appellants would not have been allowed to leave through the airport, the finding on the appellants' ethnicity and the finding there was no arrest warrant in respect of the first appellant.

10. I did not need to call on Mr Kumudusena to reply in view of Mr Tufan's acceptance that the decision contains material errors of law.

Error of law

11. I accept the judge misheard Mr Kumudusena's submissions and it was never the appellants' case that the second appellant was at risk on account of being a human rights lawyer. She had never claimed to be a lawyer. The judge therefore erred in relying on this as undermining the second appellant's credibility. In my judgment, this error alone is sufficient to set aside the decision. Whilst, as the response says, the judge gave numerous findings for making an adverse credibility finding against both appellants, the parties cannot be confident the judge would have done so had she not considered that the second appellant had made a false claim about being a human rights lawyer. It follows that the decision of the first-tier Tribunal must be set aside.
12. The representatives were also in agreement that the appropriate course was for the appeals to be re-heard by a different judge in the First-tier Tribunal. In this particular case, I consider the appellants should be given a fresh hearing. I direct as follows:

DIRECTIONS

1. The appeals will be heard together at Hatton Cross by any judge, except Judge Malins, on a date and time to be notified. None of Judge Malins's findings are to be preserved.
2. Any additional evidence which either party wishes to rely on must be filed and served no later than 7 days before the hearing.
3. A Sinhalese interpreter will be provided unless the appellants indicate they would prefer a Tamil interpreter no later than 5 days before the hearing.

NOTICE OF DECISION

The Judge of the First-tier Tribunal made a material error of law and her decision dismissing the appeals on asylum, humanitarian protection and human rights grounds is set aside.

The appeals are to be re-heard by the First-tier Tribunal.

Signed

Date 17 November 2015

**Judge Froom,
sitting as a Deputy Judge of the Upper
Tribunal**