



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

Appeal Number: PA/01330/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 November 2018**

**Decision & Reasons Promulgated  
On 27<sup>th</sup> November 2018**

**Before**

**UPPER TRIBUNAL JUDGE WARR**

**Between**

**MISS P D K  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss D Revill (of Counsel), instructed by MTC & Co Solicitors

For the Respondent: Ms K Pal, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka born in June 1989. She arrived in this country on 4 June 2009 as a Tier 4 (General) Student under a visa granted on 19 May 2009. Her leave was extended twice to expire on 22 May 2014 but was then curtailed on 21 September 2012. An application for further leave to remain on 28 March 2013 was refused on 12 April 2013. An application for a further extension of her student visa was

refused on 24 October 2014. The appellant applied for asylum on 18 January 2015. It is the refusal of that application on 13 January 2018 that gives rise to the appeal proceedings herein.

2. The appellant claimed to be in a relationship with a Tamil man in Sri Lanka (R) from 2007 to 2008. She was detained in March 2009 by the Sri Lankan Army and questioned on suspicion of helping the LTTE and was informed for the first time that her ex-boyfriend had been a member of the LTTE and that his name was RK. The appellant, while admitting her relationship with RK, denied any involvement in or knowledge of his political activities but she claimed that she had been detained, beaten and raped and escaped after her father paid a bribe. She entered the UK in June 2009 on her own passport using a student visa. Since she had been in the UK the authorities had visited her family home in Sri Lanka on several occasions to search for her. She had not returned to Sri Lanka since 2009.
3. The respondent did not accept the appellant's account. She had not provided any evidence of her claimed relationship with R/RK and had been unable to get evidence from her mother in Sri Lanka to confirm matters. No medical evidence had been provided to support her claims of ill-treatment or the claim that she had attended demonstrations critical of the Sri Lankan government. The respondent noted the delay in making her application for asylum in the light of Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. The respondent did not consider that the appellant had given a reasonable explanation for the delay. In the light of **GJ (post-civil war: returnees) Sri Lanka CG [2013]** the respondent was not satisfied that the appellant had a fear of persecution upon her return as she did not fall into any of the risk categories. There were no very significant obstacles to her integration into Sri Lanka and there were no exceptional circumstances. The appellant's Article 8 claims were also refused. Her medical condition did not reach the threshold in **N v. Secretary of State for the Home Department [2005] UKHL 31**.
4. The appellant's appeal came before a First-tier Judge where the appellant was represented by Miss Revill, who appears before me. Having clarified the issues on the appeal, the judge confirms in paragraph 15 that she had taken into account the appellant's evidence and the oral submissions from both representatives prior to reaching his decision and that she had also taken into account the documents that she lists in paragraph 16 including the appellant's bundle and medical documents and Miss Revill's skeleton argument. The judge correctly addressed herself on the burden and standard of proof by reference to **R v Secretary of State, ex parte Sivakumaran [1988] AC 958** and observed: "Each part of the evidence must be looked at separately and given such weight as it merits. Thereafter all the subjective and objective evidence should be considered together as a whole, prior to coming to a conclusion."
5. The judge's conclusions in relation to credibility are set out as follows:

- “52. Although no submission was made by Ms Revill to this effect, I accept that the appellant is a vulnerable witness (given her mental health issues) and accordingly I am mindful of the guidance with regard to the benefit of the doubt.
53. In **KS (benefit of the doubt) [2014] UKUT 552** (IAC) it was held that in assessing the credibility of an asylum claim, the principle of the benefit of the doubt (‘PBOD’), as discussed in paragraphs 203 and 204 of the 1979 UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, is not to be regarded as a rule of law and adds nothing of substance to the lower standard of proof. What is involved is simply no more than an acceptance that in respect of every asserted fact when there is doubt, the lower standard entails that it should not be rejected and should rather continue to be kept in mind as a possibility at least until the end when the question of risk is posed in relation to the evidence in the round.
54. I have found that the appellant has not shown (even on the lower standard) that she had a relationship with someone who was perceived as an LTTE member. I accept that the appellant’s account of her detention was a detailed one and this was not challenged by the respondent. However, I have also noted that the Medico-Legal report does not support the appellant’s account of her detention as the scars identified as obtained during that detention do not tie in with the appellant’s account of her physical treatment during that detention. I do not draw any adverse conclusions from the appellant’s refusal to have a genital examination.
55. If, as she maintained, the appellant had been released from detention due to bribery, she would risk being stopped at the airport. The appellant said her parents instructed an agent to help her leave the country yet the appellant’s evidence as to how she left Sri Lanka was inconsistent and I do not accept her account of the agent and the Buddhist monk. The appellant left Sri Lanka on her own passport and on a student visa. That visa would have been obtained after the appellant was released from detention. This puts in question the credibility of her account of the detention and the reason for any such detention.
56. I also note that the appellant did not provide any external evidence of the visits of the Sri Lankan authorities to her home in 2012 and thereafter. The appellant is in regular contact with her mother who could have provided a letter/statement to confirm the visits. The appellant said whilst her mother might shelter the appellant from the details of such visits she would tell her uncle (with whom the appellant lives in the UK). This in itself is a

plausible explanation however, it would have been relatively easy for the appellant to ask her uncle (with whom she lives) to give evidence orally or by a statement, on this point. The fact that this was not done does impact on the appellant's credibility. I also note that this case was originally listed for hearing in February 2018 but was adjourned to allow the appellant to obtain the Medico-Legal Report. There would have been time to also obtain evidence from her mother and/or uncle.

57. I did not find the appellant to be a credible witness on several matters even allowing for the benefit of the doubt."

6. In relation to Section 8 the judge, again having correctly addressed herself on the law, found the appellant's oral evidence to be inconsistent and it was not explained why the appellant had waited until 2015 before applying for asylum. She found that the appellant's behaviour impacted adversely on her credibility. In paragraph 62 the judge states as follows:

"62. I have considered all the evidence presented in the round. I have found that the appellant's account of her links to an LTTE member; her detention and of her fear of persecution is not credible (see Credibility above). I also find that the appellant has not shown on the lower standard of proof that there would be a serious risk of persecution upon return to Sri Lanka."

7. In relation to the claim based on being at risk of committing suicide the judge found as follows:

"64. The risk of suicide can engage Article 3. In **Pretty v UK [2002] 35 EHRR 1** it was said that suicide is self-evidently a type of serious harm and, if the evidence established that removal would expose a person to a real risk of committing suicide on return, then such a removal decision could give rise to a breach of Article 3. In **N (Kenya) [2004] UKIAT 00053** the Tribunal concluded that there would need to be the clearest possible evidence of such real risk which would not otherwise be preventable by appropriate medical supervision both on the part of the UK and having regard to facilities which might reasonably be expected to exist in the country of destination.

65. The Medico-Legal Report presented by the appellant stated that the appellant was not at immediate risk of suicide but in the event of removal she would need urgent reassessment of such risk. I do not find this to be the clear evidence required in order to engage Article 3 (**N (Kenya)**). It may be that such a reassessment would result in providing such evidence but that was not available at this stage. Further, the Tribunal was not presented with any objective evidence of the facilities available with regard to mental health care in Sri Lanka. However, I note

that the appellant had suffered from mental health issues from a young age and had made suicide attempts while she was in Sri Lanka, prior to her allegations with regard to her detention. This would suggest that she had previously had access to some form of medical care at that stage. The appellant's claim under Article 3 on this ground does not succeed."

8. The judge accordingly dismissed the appeal on all grounds.
9. Miss Revill settled the grounds and it was argued that the judge had not had regard to the medico-legal report from Dr Corbett when holding matters against the appellant, which was contrary to the approach in **Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367** at paragraph 24, in which Miss Revill highlighted the penultimate sentence in relation to expert reports, which reads as follows: "What, however, they can offer, is a factual context in which it may be necessary for the fact finder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them." In paragraph 5 of the grounds it was also argued that there was no indication that the judge had had regard to paragraph 15 of the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance ("the guidance note"), which required the Tribunal to consider the extent to which the vulnerability or sensitivity of the witness was an element of any discrepancy or lack of clarity. It was acknowledged that the judge had noted at paragraph 52 of the decision that the appellant was a vulnerable witness. The judge had erred in asserting in paragraph 52 that no submissions had been made about the matter when the very point had been raised at paragraphs 5 and 6 of Miss Revill's skeleton argument. It was also argued that the judge had erred in paragraph 55 in stating: "If, as she maintained, the appellant had been released from detention due to bribery, she would risk being stopped at the airport." This was contrary to the country guidance in **GJ** at paragraph 146 – expert evidence had been given that it was indeed possible for wanted persons to arrange safe passage on their own passports. The appellant's skeleton argument had cited the relevant passages from **GJ** and **MM (Sri Lanka) [2014] EWCA Civ 36**. Insofar as the appellant's ability to leave on her own passport had been treated as undermining her claim to be of adverse interest, this was a material error of law.
10. It was argued that the judge had erred in rejecting the appellant's account of being assisted to leave by a Buddhist monk on the grounds that this was inconsistent with objective evidence as to the usual security measures at airports. The judge had erred in failing to consider this in the context of the evidence of widespread bribery and corruption in Sri Lanka.
11. The grounds were considered by the First-tier Tribunal and it was found arguable that the judge had erred in the consideration of the likelihood of

the appellant being apprehended at the airport in the light of **GJ and others**.

12. A response was filed on 23 October 2018 in which it was argued that the appellant's grounds amounted to a disagreement with the detailed decision of the First-tier Judge and it was clear that the First-tier Judge had viewed the appellant as a vulnerable witness and it was not necessary to state within every paragraph that she had taken into account the appellant's mental health issues. In any event, the judge had fully considered the report of Dr Corbett in paragraphs 42 - 51. It had been open to the judge to find that the appellant's account had been inconsistent and she had not fallen foul of the principles in **Mibanga**. In relation to the point that the appellant had left Sri Lanka on her own passport, while it was accepted that **GJ** confirmed that a person was able to leave Sri Lanka on their own passport notwithstanding adverse interest in them, the judge had not made such a finding in isolation. The judge had found that there had been inconsistent evidence regarding who had assisted her in leaving the airport and it had been open to the judge to take such factors into account as undermining the appellant's credibility with regard to her detention.
13. At the hearing Miss Revill submitted that the First-tier Judge had not limited the grounds of appeal. The judge had referred to the appellant's oral evidence in paragraphs 30 to 41. These findings had been made before consideration of the medical report in paragraphs 42 to 51. The reference to the appellant being a vulnerable witness was made in paragraph 52, which was after a finding made in paragraph 46 as well as the earlier findings. The judge had cited the guidelines but it did not mean that they had been applied. There had been an error of law in relation to the appellant leaving the airport, as had been conceded in the response. The appeal should be remitted for a fresh hearing.
14. Ms Pal submitted that there was no material error of law in the decision. The judge had considered the appellant as a vulnerable witness and had given her the benefit of the doubt. It made no difference if the references to the medical report were set out before or after the findings of fact. The judge had taken into account the appellant's vulnerability when assessing credibility. Her approach had not been contrary to **Mibanga**. She had noted in paragraph 54 that the medico-legal report did not support the appellant's account of her detention as the scars identified did not tie in with the appellant's account of her physical treatment during that detention. The appellant would not be at risk on return to Sri Lanka and it was submitted that the judge had not materially erred in referring to the risk of being stopped at the airport. The judge had found that the appellant's account had been inconsistent and had rejected the evidence of the agent and the Buddhist monk. The judge had further found that the appellant lacked credibility and noted the lack of evidence of the claimed visits of the Sri Lankan authorities to the appellant's home in paragraph 56

of the decision. The judge had taken into account all the evidence before her and there was no material error of law.

15. Counsel submitted that the credibility findings did not all come after paragraph 52 where reference had been made to the guidance in relation to vulnerable witnesses. Numerous findings had been made before that. Giving an appellant the benefit of the doubt applied to all cases. The judge's findings were perverse.
16. At the conclusion of the submissions I reserved my decision. I have carefully considered all the material before me. I remind myself that I can only interfere with the judge's decision if it was flawed in law.
17. In my view the judge's decision was a fully reasoned one in which she set out her approach properly and directed herself correctly on legal matters by reference to the leading authorities. She confirms in paragraph 16 that she had taken into account the material before her, which included the medico-legal report and the appellant's skeleton argument. She also refers to taking into account the oral submissions made. As I have set out above, she reminds herself to consider all the subjective and objective evidence together as a whole prior to coming to a conclusion. I reject the complaint that the judge made her findings in a vacuum or otherwise fell foul of the well-known principles in **Mibanga**. In that case a "structural failing" was identified by Buxton LJ at paragraph 30 of the judgment:

"...The adjudicator's failing was that she artificially separated the medical evidence from the rest of the evidence and reached conclusions as to credibility without reference to that medical evidence; and then, no doubt inevitably on that premise, found that the medical evidence was of no assistance to her. ..."

There is no such failing in this case. It is quite plain that the judge was well aware of the appellant's vulnerability as well as the medical evidence and the order in which she set out her reasoning and findings does not indicate any flaw in her approach. I reject the argument that the judge cited the guidance on vulnerability but failed to apply it conscientiously and correctly.

18. In relation to the appellant's untroubled departure from Sri Lanka, as is pointed out in the response, the judge had other reasons for rejecting the appellant's account. She had found the appellant's evidence to be inconsistent and she rejected the claimed involvement of an agent and a Buddhist monk. For the reasons given on behalf of the respondent I do not find that what the judge said in paragraph 55 of her decision to be a material error in the context of this case.
19. The determination is fully and carefully reasoned. Despite the arguments persuasively put forward by Ms Revill I am not satisfied that the judge's

assessment of the appellant's credibility was perverse or otherwise materially flawed in law.

**Notice of Decision**

For the reasons I have given the appeal is dismissed and the decision of the First-tier Judge shall stand.

I consider it appropriate to make an anonymity order in this case.

**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 her or any member of her 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.

**TO THE RESPONDENT**  
**FEE AWARD**

The First-tier Judge made no fee award and I make none.

Signed

Date 20 November 2018

Judge Warr, Judge of the Upper Tribunal