



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

Appeal Number: PA/01590/2016

THE IMMIGRATION ACTS

Heard at Liverpool Employment Tribunals

Decision & Reasons

On 7th February 2018

Promulgated

On 6th March 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**FATHIMA [M]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Francis Junior (LR)

For the Respondent: Mr C Harrison (Senior HOPO)

DECISION AND REASONS

- 1.** This is an appeal against the decision of First-tier Tribunal Judge Lloyd Smith, promulgated on 16th May 2017, following a hearing at Manchester Piccadilly on 10th May 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a citizen of Sri Lanka, born on [] 1988, and is a female. Her partner, [NM], and her two children, [NA] ([] 2013) and [RA] ([] 2016) were dependants on her claim. She appealed against the decision of the Secretary of State dated 3rd February 2016, refusing her claim to asylum, humanitarian protection, and human rights violations.

The Appellant's Claim

3. The essence of the Appellant's claim is that she was born and grew up in Sri Lanka where she lived with her parents and two younger brothers. The family were Muslims but the Appellant attended a Buddhist school. In 2007, she started a relationship with her current partner, who is a Buddhist, and the relationship was conducted in private, such that after they left school, they communicated via a mobile phone. After she completed her A levels in 2007, the Appellant's parents were looking to arrange a marriage for her, which she resisted, and in January 2010, the couple decided to elope, when the Appellant left her home at 3 a.m. in the morning to join her partner. They fled on a motorbike. The father heard the Appellant leave. He pursued them with other family members. They managed to block the road causing the motorbike to stop. The Appellant was badly beaten by her father and the Appellant's relatives beat up her partner. The Appellant was taken to her home and locked up in a bedroom without food for two days. On the third day, her partner's brother and another man also entered her room and beat her. The Appellant was then sent to live with her aunt where she remained until November 2010. In August 2011, she went to the local police station to report that her parents were forcing her to marry another man who she did not like. They had provided her with no assistance. On 2nd May 2012 she was taken by four people whilst in the street, driven to a location, where she was kept for three days and beaten and questioned. She was also sexually assaulted subsequently. This was in a police station. After she was released from the police station she managed to obtain a visa to come and study in the UK. She travelled to the UK on 17th May 2012 and attended Ulster University in London for three to four months, but stopped after she became pregnant with her first child. She then decided to claim asylum before, she believed that her visa ran out. This account is set out in the determination of the judge at paragraph 9.

The Judge's Determination

4. The judge went methodically through the Appellant's account (see paragraphs 15 to 17) and concluded that the Appellant was not a witness of truth. It was found that the Appellant's account was inconsistent and incredible (paragraph 15). Examples were given of this. First, whereas all the objective materials described hostility between Buddhist and Muslims, it was for this reason all the more remarkable that the Appellant would have attended, as a Muslim, a Buddhist school (paragraph 15(a)). Second, the Appellant was inconsistent in her account with the account of her

partner as to why they came to the UK (see paragraph 15(e)). Third, it was remarkable that both the Appellant and her partner contacted their families after the birth of their first child in June 2013, given that it had been maintained that both sets of parents were hostile to them to the extent that they had meted physical violence upon them (see paragraph 15(g)). Fourth, the Appellant did nothing to claim asylum until two years further had elapsed (paragraph 15(g)). Fifth, the judge observed that, “given my credibility findings I struggle to even accept that the Appellant and her partner are members of different faiths. The couple do not practise their religion which clearly demonstrates that it is not therefore an important aspect of their lives” (paragraph 15(h)). Finally, the judge found the Appellant’s account to be inherently implausible. This is clear from the description that following the Appellant’s attendance at the police station in August 2011, nothing had happened until 2012, when on 2nd May she was, clearly walking alone “to drop the lunch for my dad” when she was bundled into a car, mistreated and detained for three days (Q.188). As the judge explained, “not only does this account show that she was not confined to the house, rarely going out alone, but it also is inconsistent with other aspects of her account” (paragraph 15(i)).

5. The judge ended the determination with the observation that,

“The Appellant was a poor witness in her own course. I found her to be inconsistent, unreliable, evasive and ultimately not credible, as demonstrated by the examples set out above. I likewise did not find the evidence of her partner to be credible or consistent. I find it incredible that, if a risk existed as claimed, the couple did nothing to get support and protection for three years after her arrival. A letter informing the Appellant that her leave had been curtailed was sent in July 2014. The Appellant claimed to have been unaware about this ...” (paragraph 16).

6. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge erred in concluding that the Appellant and her partner “are not from different religions” (paragraph 15(b)). Second, that the judge erred in concluding that the Appellant and her partner “had no intention of studying in the UK and may not have even studied in the UK at all” (paragraph 15(f)). Third, that the judge erred in concluding that the Appellant “did not leave Sri Lanka as soon as her visa was issued” (paragraph 15(f)).

8. On 14th September 2017, the Upper Tribunal granted permission to appeal.

9. On 4th October 2017 a Rule 24 response was entered to the effect that it was open to the judge to find that the oral accounts of the Appellant and her partner differed from each other. For example, at paragraph 15(c)(viii) it was open for the judge to find that the oral account of both the Appellant and her partner differed because the Appellant was saying a friend of her partner gave her his number and told her to contact him

whereas the partner said that the initial contact was through the friend and after that he would call her on her father's phone. But more importantly, the Rule 24 response goes on to say that the Appellant has not been treated unfairly because the decision in **Maheshwaran [2002] EWCA Civ 173** makes it clear that "where much depends on the credibility of a party and when that party makes several inconsistent statements which are before the decision maker, that party manifestly has a forensic problem". The decision goes on to say that, "usually the Tribunal, particularly if the party is represented, will remain silent and see how the case unfolds" (see paragraph 5). It was stated in the Rule 24 response that this was an approach that the judge was entitled to take. If matters were left ambiguous or unexplained, given that the Appellant was represented, it was not for the judge to enter the fray in order to resolve them because the Appellant ought to have been well aware, given legal representation, that these matters needed proper clarification.

The Hearing

- 10.** At the hearing before me on 7th February 2018 the Appellant was represented by Mr Francis Junior, a legal representative, and the Respondent was represented by Mr C Harrison, a Senior Home Office Presenting Officer. Mr Junior began by stating that he would "rely on paragraph 19 of the grounds of application". First, the judge was wrong to say that the parties did not belong to different religions because they plainly did, and this was the essence of their claim, namely, that they were not allowed to fall in love as they belonged to Buddhist and Muslim religions. Second, there was actually no conflicting evidence between the Appellant and her partner as to the people that were chasing them. Third, the judge was wrong to have concluded, without asking the Appellant in court about this, that she had no intention to study in the UK. The refusal letter did not challenge this aspect of the claim and it was not open to the judge to reach an adverse conclusion without enquiring the Appellant to clarify this matter. Finally, the same applied to whether the Appellant did not leave as soon as her visa came through and the explanation for not so leaving immediately.
- 11.** For his part, Mr Harrison relied upon the Rule 24 response. He submitted that the case of **Maheshwaran** made it quite clear that fairness did not mean that the judge had to enquire of the witness on every aspect where the evidence was left deficient. The Appellant was represented and the judge could in such adjudicative proceedings remain silent.
- 12.** In reply, Mr Junior submitted that the Appellant should have been put on notice as to what was in issue by the judge and should have been asked to clarify these matters.

No Error of Law

- 13.** I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007)

such that I should set aside the decision and re-make the decision. My reasons are as follows.

- 14.** First, insofar as the claim that the judge was wrong to have disbelieved the fact that the Appellant and her partner came from different religions is concerned, this is a mis-reading of what the judge stated. The judge did not state that they had not been born into Buddhist and Muslim religions respectively. What the judge meant was that religion was not a matter of central importance to their lives. It was observed that, “they dress in a western style” (paragraph 15 (h)). It was observed even that, “the partner in his evidence stated that the Appellant is very interested in Buddhism” (paragraph 15(h)). In fact what the judge was really stating in essence was that, “the couple do not practise their religion which clearly demonstrates that it is not therefore an important aspect of their lives” (paragraph 15(h)).
- 15.** Second, as far as the question of the Appellant and her partner not having an intention of studying in the UK was concerned, this was a conclusion that the judge was entitled to come to when consideration was being given at length to the question of how the Appellant utilised the grant of a visa to her, such that the judge was led to the conclusion that, “there is no proof that either of them even embarked on any course” (paragraph 15(f)).
- 16.** Third, the same applies to the third allegation, namely, that the Appellant did not leave Sri Lanka as soon as her visa was issued, because the judge observed that,

“Despite fearing an arranged marriage and constant threats from her family [she] fails to leave immediately on that visa but rather leaves a month after it was issued. Those are not the actions of an individual terrified of the consequences of her actions ...” (paragraph 15(f)).
- 17.** The same would apply to the inconsistent accounts given orally on various matters between the Appellant and her partner.
- 18.** Ultimately, however, what is significant is that there is, no material error of law in the judge’s findings, given the conclusion in the end that, notwithstanding the claimed risk to them, for three years after arrival they made no protection claim.
- 19.** There was a letter curtailing their leave sent out in July 2014, which the Appellant claimed to have been unaware of, leaving the judge to be unimpressed with this. When the first child was born they communicated back with their parents informing them of this.
- 20.** Ultimately, these were questions of fact for the judge to determine on the evidence before the Tribunal. The grounds raised amount to a disagreement with those findings. It cannot be said that the conclusions reached were perverse in any manner or irrational. This was how the evidence came across. This was how the evidence was interpreted and

the judge was entitled to come to the conclusions that he did. There is no error of law.

Notice of Decision

- 21.** There is no material error of law in the original judge's decision. The determination shall stand.
- 22.** No anonymity direction is made.
- 23.** The appeal is dismissed.

Signed

Date

Deputy Upper Tribunal Judge Juss

26th February 2018

