



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

Appeal Number: PA/03952/2018

THE IMMIGRATION ACTS

**Heard at UT (IAC) hearing in Field
House
On 6th June 2019**

Decision & Reasons Promulgated

On 17th June 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

**K P D G K F
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms M Gherman, Counsel instructed by Nag Law Solicitors
For the Respondent: Ms S Jones, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka whose appeal was dismissed by First-tier Tribunal Judge Norris in a decision promulgated on 12th February 2019. Grounds of application were lodged and initially permission to appeal was refused but granted by Deputy Judge of the Upper Tribunal Shaerf in a decision dated 2nd May 2019. Thus, the appeal came before me on the above date.

2. For the Appellant Ms Gherman departed slightly from the grounds put forward by the instructing solicitors and explained that she had a number of main points.
3. Firstly, it was important to note that in paragraph 7.4 of the judge's decision reference had been made to a previous decision by First-tier Tribunal Judge Baldwin that the Appellant's husband and the Appellant were "wholly credible in their assertions". In assessing the Appellant's credibility in the asylum appeal this should have been the starting point for the judge but it was not. This was an error in law.
4. The second and fundamental point was that central to the Appellant's case was that the abduction was made by persons using a white van. The judge had dismissed this as implausible - see paragraphs 7.17 and 7.20. The judge was entirely wrong to come to that conclusion given what was said in **GJ and Others (post-civil war: returnees [2013] 0031 (IAC)** a country guidance case, and in particular at page 76, paragraph 343 where it said that a number of white vans had been used in connection with disappearances and their usage was increasing. However, the judge had given no proper reasons for discounting this and had failed to apply country guidance. Further failures were in respect of the fact that the Appellant had given a statement to the LLRC and not sufficient reasons had been given for discounting that. There were conflicting remarks made by the judge in connection with the spelling of documents (see paragraphs 7.18 and 7.22) and finally in terms of the criticism that the Appellant's husband did not go back to Sri Lanka for a funeral this was a subjective view of the judge and did not take into account that his wife was ill.
5. In all the circumstances I was asked to set aside the decision and remit it to the First-tier Tribunal.
6. For the Home Office Ms Jones said that the judge had applied **Devaseelan** and the material before Judge Norris was completely different to that in the previous decision.
7. In terms of whether the judge was correct to discount the use of the white vans it was important to look at the case in its totality.
8. In terms of paragraphs 7.18 and 7.20 the judge had looked at the various spellings and had given the Appellant the benefit of the doubt on one occasion. Overall the judgment was sound and the appeal should be dismissed.
9. I reserved my decision.

Conclusions

10. The judge gave several reasons for finding that the Appellant was not a credible witness before going on to dismiss the appeal. Some of these reasons are not impugned.

- 11.** However, the key passages in this decision are the judge's consideration of the plausibility of the abduction of Mr Sathiyakumar in paragraphs 7.17 and 7.20. In particular at paragraph 7.17 the judge says, "we then have the thoroughly implausible suggesting that they would send white vans to circle the area...".
- 12.** Again, in paragraph 7.20 the judge says that the Appellant accepted it was pure speculation that it was the authorities who took Mr Sathiyakumar given that there were just two men in plain clothes driving a white unmarked van with no numbers and this speculation has found its way into her sworn affidavit.
- 13.** Reading these passages together it seems to me that the judge has thoroughly discounted the Appellant's account because it was implausible that white vans would be used to circle the area and be used in the abduction. However, that is not what **GJ** says and the judge failed to apply country guidance on this particular point which was central to the Appellant's appeal. Had the judge applied the country guidance then it seems clear enough that she might have made a different finding in that regard and not to consider it all was a material error in law.
- 14.** Other points raised by Ms Gherman may or may not be material but this point goes to the essence of the Appellant's appeal and it is clear enough that this decision is not safe. It must therefore be set aside. I have concluded that because further fact-finding is necessary that the matter should be remitted to the First-tier Tribunal to be heard by a judge other than Judge Norris.
- 15.** The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal. In the meantime, the anonymity order will be continued.

Notice of Decision

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

I set aside the decision.

I remit the appeal to the First-tier Tribunal.

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.

Signed *JG Macdonald*

Date 13th June 2019

Deputy Upper Tribunal Judge J G Macdonald