



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11455/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2 August 2019

Decision & Reasons Promulgated  
On 13 September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

K W  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Miss S Anzani, Counsel instructed by Nag Law Solicitors

For the Respondent: Miss Jones, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sri Lanka, appealed against the Respondent's decision made on 12 September 2018 to refuse asylum. Her appeal came before First-tier Tribunal Judge M P W Harris (the Judge) who dismissed that appeal on 21 May 2019.
2. Permission to appeal was given by First-tier Tribunal Judge Chohan on 4 June 2019. The Respondent made a Rule 24 response on 10 July 2019.

3. The Appellant's position in the United Kingdom had started out as a student, but she applied in 2015 for asylum and that matter went to an appeal and was dealt with by First-tier Tribunal Judge Hussain in a decision promulgated on 11 November 2016 wherein he rejected the asylum and Humanitarian Protection claims. So far as I am aware that adverse decision was not the subject of an appeal and it was therefore evidently a starting point in terms of the further consideration given to this matter by Judge Harris.
4. One of the criticisms particularly made by Judge Hussain was the documentation relied upon and the extent to which it truly supported the claim. That Judge rejected the reliability of the Appellant's claim and the matter, when it proceeded before First-tier Tribunal Judge Harris, a significant quantity of documentation was produced; particularly a transcript of court proceedings in Sri Lanka was partly translated. The Judge correctly did not consider the untranslated documentation, not least one suspects because of the Tribunal Procedure Rules.
5. In the event the grounds challenging the Judge's decision essentially argued that points taken against that additional documentation had not been raised at the hearing by the Respondent, who was not represented, nor to Miss Anzani who then appeared for the Appellant. The Appellant had also in the hearing raised through her statement many points about the decision of First-tier Tribunal Judge Hussain and iterated her fears on return.
6. Whilst noting as the Judge did that the Appellant gave evidence, there was scant analysis of it in the context of it being a 'response' the response to First-tier Tribunal Judge Hussain's decision, but also in terms of the centrepiece of her claim. The Judge set out the essential bases of the claim, but he took the view that the documentary evidence was not sufficiently significant and raised a number of doubts about aspects of it.
7. Ultimately the adverse conclusions that he reached, or interpretation he put on various documentation including that said to come from the Appellant's lawyers in Sri Lanka, were essentially a matter for him, but the issue raised was really one of fairness and whether or not had those matters been put it would have been

appropriate and possible to respond to them either at the hearing or if need be, as a result of the doubts raised, by communication with the Sri Lankan lawyers.

8. I conclude, whilst I have considerable reservations about whether the outcome of the appeal will be different, that nevertheless there are aspects of the criticisms of the documentation and the Sri Lankan lawyers' letters which seem to me to warrant further comment and submissions. I therefore conclude, with some reluctance, notwithstanding the views formed by the Judge, that a fair hearing of the appeal did not occur. I note the Respondent's position that quite simply the reliability of documentation provided by the Appellant had previously been found wanting, and this could be seen as a further example of an inadequacy of evidence even now derived by the Appellant. There was some force in that argument and Miss Jones has correctly made the point that simply the volume of documentation did not mean that it was reliable, but on the other hand, on the translations that I have seen that were before the Respondent, it seemed to me that some of the criticisms may not be warranted, but a fresh mind needs to be put to the matter.
9. The parties submit that the matter should be returned to the First-tier Tribunal to be remade. It seems to me if the Judge had made specific and clear adverse findings against this Appellant and had put the points to the representative at the hearing, there would be little purpose in having it remade in the First-tier Tribunal. However, I conclude on balance that the fair, just and proper disposal of this matter requires it to be remade, although as I say I have no confidence that necessarily a different decision will be arrived at.

### **NOTICE OF DECISION**

10. I find therefore there was a material error of law in the way the Judge dealt with the additional evidence provided, be it fresh or otherwise, in the context of the earlier decision of Judge Hussain. Accordingly, I find the Original Tribunal decision cannot stand and the matter will be returned 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.

A handwritten signature in black ink, appearing to read 'T. Davey', written in a cursive style.

Signed

Date 11 September 2019

Deputy Upper Tribunal Judge Davey