



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/04121/2015**

**Appeal Numbers:**

**PA/04148/2015**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision &  
Promulgated**

**Reasons**

**On 27 March 2018**

**On 18 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN**

**Between**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**FLA  
SAA**

**(ANONYMITY DIRECTION MADE)**

Respondents

**Representation:**

For the Appellant: Ms J. Isherwood, Home Office Presenting Officer

For the Respondents: Mr. T. Gaisford, Counsel instructed by Sriharans Solicitors

**DECISION AND REASONS**

1. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Khawar, promulgated on 20 July 2017, in which he allowed FLA and SAA's appeals against the Secretary of State's decision to refuse to grant asylum.
2. For the purposes of this decision I refer to the Secretary of State as the Respondent, and to FLA and SAA as the Appellants, reflecting their

positions as they were before the First-tier Tribunal.

3. I have made an anonymity direction, continuing on from that made in the First-tier Tribunal.

4. Permission to appeal was granted as follows:

“It is arguable that the Tribunal’s approach to section 8 of the Asylum and Immigration (Treatment of Claimants etc.) Act 2004 was flawed because, amongst other reasons, (i) it failed to treat the first appellant’s immigration history as operating adversely to her credibility as required by that section, (ii) despite what is said in the final sentence of paragraph 58, it only had regard to her immigration history after it had already found her to be credible (see, especially, paragraph 42), and (iii) in accepting the appellant’s explanation for her immigration history, it had regard to knowledge derived from other appeals rather than from the evidence that was before it. It is also arguable that the Tribunal failed to give adequate (or any) reasons for finding that the first appellant was still at risk from her husband notwithstanding the absence of contact between them during an intervening period of approximately 12 years as at the date of the hearing. It is arguable that the Tribunal skirted round this issue at paragraph 51, by finding that the appellant’s husband would harm her “if he was minded to do so” and, at paragraph 52, by stating that there was “no reason to believe that ... he would behave differently than he did in the past”. Permission to appeal is accordingly granted on both grounds.”

5. The Appellants attended the hearing. I heard submissions from both representatives following which I reserved my decision.

### **Error of law**

6. I have carefully considered the grounds and the decision. In regard to the Judge’s approach to section 8, taking into account the decision as a whole, I find that the Judge considered matters which fell under section 8 in his overall assessment of credibility, and did not consider them only after he had found the first Appellant to be credible.

7. Ms Isherwood stated at the hearing that, while she continued to rely on both grounds, having considered the Appellants’ Rule 24 response, she could see the argument that section 8 had been considered in the round. She agreed that this was the weaker ground when the decision was considered as a whole.

8. I find that it is clear from the decision that the Judge was considering the evidence in the round. At [39] he states:

“It is necessary to make a finding of credibility concerning the evidence of the Appellants after mature consideration of all relevant and material circumstances which are detailed below. In making my findings I have taken into account all the available evidence, in the round, and have attached such weight after anxious scrutiny to be properly attributable including country background evidence and the

extent to which the Appellants' accounts may or may not be consistent with this evidence."

9. At [53] he states:

"Accordingly, on the totality of evidence before me I am satisfied that the Appellants are entitled to be recognised as Refugees in the United Kingdom".

10. At [55] he states:

"In coming to the aforesaid conclusions I bear in mind the delay in the Appellants asylum claims under Section 8 of the Asylum and Immigration (Treatment of Claimants) Act 2004. [...] In any event, in the circumstances of this appeal, I treat the delay in the asylum claim as evidence in the round."

11. I find that the decision clearly indicates that the Judge considered all the evidence in the round, including the behaviour of the Appellants which fell under section 8. At [55] he explicitly states that his section 8 considerations were borne in mind when he came to his conclusions as a whole. He made findings contrary to the first Appellant's evidence at [43], indicating that he did not just accept everything that she said.

12. I am mindful of the case of SM (Section 8: Judge's process) Iran [2005] UKAIT 00116 which states in the headnote:

"Even where section 8 applies, an Immigration Judge should look at the evidence as a whole and decide which parts are more important and which less. Section 8 does not require the behaviour to which it applies to be treated as the starting-point of the assessment of credibility."

13. At [35] the Judge correctly set out the onus and standard of proof, and what he had to consider in relation to the asylum claim. At [39] he correctly set out how the assessment of credibility and findings of fact would be made. He was aware of the delay in claiming asylum, and he took this into account in his consideration of the evidence as a whole. While it might have been better to have referred to section 8 prior to his conclusion in [53], taking into account the decision as a whole, it is clear that he bore section 8 behaviour in mind when assessing the evidence as a whole. I find there is no error of law in the Judge's approach to section 8, and consequently no error of law in his credibility findings.

14. In relation to future risk, the majority of the Judge's findings have not been challenged in the grounds of appeal, for example the position of Mr. C and Mr. S. Further, the grounds state that the only evidence is the Appellants' story, but I find that this is not the case. The Judge referred to the scarring report at [41]. This is independent evidence. He found that this supported the Appellants' case and that it would be speculative to suggest that the second Appellant's injuries had been caused in circumstances other than those described by the Appellants. At [42] he states:

"Therefore I find as a fact that the First Appellant was the victim of domestic violence by her husband, assessed to the lower standard of proof required, that of a reasonable likelihood. In addition that the

Second Appellant was also the victim of domestic violence on occasions when he attempted to protect his mother.”

15. The Judge has made a clear finding that the Appellants have suffered previous ill treatment at the hands of the first Appellant’s husband in Sri Lanka. His findings are not based on the “Appellant’s word alone” as stated in the grounds of appeal, but also on independent medical evidence. There was also the unchallenged independent evidence regarding the activities of Mr. C and Mr. S (see below). It is wrong for the grounds to state that the only evidence was the Appellants story.
16. In accordance with paragraph 339K, previous ill treatment is a “serious indication” of a well-founded fear of persecution or real risk of suffering serious harm, “unless there are good reasons to consider that such persecution or serious harm will not be repeated”. It is incumbent on the Judge to take this into account.
17. The Judge considers at [47] to [52] whether there are any such reasons by way of his consideration of the first Appellant’s husband’s connections and position. At [52] the Judge is entitled to find that there was no reason to believe that “he would behave any differently towards the Appellants than he did in the past”.
18. The finding at [48] that the first Appellant’s husband is linked to two criminals has not been challenged. The independent evidence which supported this which was provided in the Appellants’ bundle for the hearing in the First-tier Tribunal has not been challenged. The Judge refers to the loss of the photographs by the Respondent which showed the Appellant’s husband together with Mr. C and Mr. S, but resolved this issue in the Appellants’ favour. At [48] he found:

“I resolve in favour of the Appellant the issue of whether the Appellant’s husband is connected with Mr. C and Mr. S.”
19. At [49] he states:

“In addition, there is no issue that Mr. C and Mr. S have allegedly in the past been accused of such nefarious activities as drug dealing, prostitution, extortion, intimidation and murders.”
20. At [50] the Judge finds that “the likes of Mr. C and Mr. S are political individuals who are able to operate with “impunity” having regard to the corruption of the authorities within Sri Lanka generally”. This finding was not challenged. It was submitted by Mr. Gaisford that, as stated at [12] of his skeleton argument before the First-tier Tribunal, the Respondent had not contested the Appellant’s claim that, if her husband was politically connected as stated in her evidence, she would be at real risk of further ill-treatment in Sri Lanka. He submitted that there had been no contest to this element of the Appellant’s claim, and that the reasons for refusal letter had not addressed it. The reasons for refusal letter does not consider the Appellant’s claim at its highest. It does not state that the Appellants will not be at risk if their claim is found to be credible. There is

no consideration of the position for the Appellant if her husband is politically connected as claimed.

21. Given the unchallenged finding that the first Appellant's husband is connected with criminals who are able to operate with impunity in Sri Lanka, and given the finding that both Appellants have been the victims of domestic violence in the past at the hands of the first Appellant's husband, the Judge was entitled to find that the Appellants would be at risk on return. He adopts the correct standard of proof at [52] when finding "in my judgment there is at least a reasonable likelihood that his attitude towards the Appellants will be the same as it was in the past."
22. I find that the Judge has not "skirted round" the issue of whether the first Appellant's husband would still have an interest in the Appellants. I find that he gave adequate reasons for finding that the Appellants would still be at risk, as set out in [45] to [53]. The Judge was bound to take into account that the Appellants had previously suffered serious harm at his hands. He took into account the unchallenged evidence of his contacts in Sri Lanka, and the evidence that such men could act with impunity. These findings were not challenged.
23. In relation to the reference to GJ, it was not argued before the First-tier Tribunal that the Appellants fell within GJ, but rather GJ was cited as evidence of the corruption within the Sri Lankan police force, and therefore the ability of Mr. C and Mr. S to act with impunity (see [7] and [8] of the first skeleton argument before the First-tier Tribunal). As stated above, this finding has not been challenged.
24. The Judge found at [45] that the Appellant formed part of a particular social group as a woman from Sri Lanka who had suffered domestic violence. There was no challenge to this and, in any event, the Judge considered in the alternative that the Appellants would succeed under Article 3 for the same reasons [54].
25. I find that the Judge has given adequate reasons for his finding that the Appellants would still be at risk on return. This ground of appeal is not made out, and is an attempt to reargue the case. I find that the decision does not involve the making of any error of law.

### **Decision**

26. The decision of the First-tier Tribunal does not involve the making of a material error of law and I do not set it aside.
27. The decision of the First-tier Tribunal stands.

Signed

Date 17 April 2018

**Deputy Upper Tribunal Judge Chamberlain**