



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

AA/00459/2016

THE IMMIGRATION ACTS

Heard at Glasgow
on 31 January 2019

Decision & Reasons Promulgated
on 13 February 2019

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

[D P]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr E MacKay, of McGlashan MacKay, Solicitors
For the Respondent: Mr A Govan, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka, born on [~] 1987. She entered Italy illegally in 2002, and by 2009 had indefinite leave to remain there. She spent various later periods in Sri Lanka. After several refusals, she obtained a visa to visit the UK on 26 August 2014. She travelled to the UK on 12 October 2014, and sought asylum on arrival.
2. The appellant has two children. The elder, of her first marriage, is now adult. The younger, of her second marriage, was born on [~] 2008. The appellant came to the UK with her second husband, who also sought asylum. The marriage broke down, and after a period of imprisonment in

the UK, he returned to Italy. At the time of the FtT hearing, divorce proceedings were said to be under way. I was advised at the UT hearing that the divorce has not been finalised.

3. The appellant says that there is a gang of brothers, surnamed Lanza, active in politics in Sri Lanka and in crime in both Sri Lanka and Italy. The gang has had a feud with the appellant's husband since 2005, and has tried to kill him. The gang has threatened and attacked the appellant and her children on various occasions, including incidents in Italy in 2008; in Sri Lanka in 2013; and most recently, in Italy on 8 October 2014.
4. The respondent refused the claim for reason which may be summarised as follows, citing the paragraph numbers from the respondent's letter dated 3 March 2016:
 - 13 - 15, no Refugee Convention category;
 - 16 - 17, nationality and identity accepted;
 - 19 - 25, reasons to doubt credibility;
 - 26 - 27, documents do not support gang's powerful political links, or credibility of claim;
 - 28, risk from gang not accepted;
 - 30, internal relocation in Sri Lanka or Italy available;
 - 31, Italy a safe country;
 - 34 - 36, claim fails in respect of humanitarian protection and articles 2 and 2 ECHR;
 - 37 - 58, claim fails in respect of family and private life.
5. The appellant appealed to the FtT, on the grounds that:

My removal would breach the UK's obligations under the Refugee Convention ... risk of persecution due to my religion and imputed political opinion; risk of unlawful killing or serious harm; the decision ... would breach my rights under articles 2 and 3 ECHR.
6. FtT Judge Grant-Hutchison dismissed the appellant's appeal by a decision promulgated on 22 February 2018.
7. The appellant applied to the FtT for permission to appeal to the UT, on detailed grounds which in brief summary, following their paragraph numbers, contend thus:
 - [3] error of fact, wrongly identifying a discrepancy in the appellant's evidence over the number of times she moved in Italy;
 - [4] failure to have regard to material considerations regarding the appellant's movements, 2009 - 2014;
 - [5] failure to have regard to material considerations, regarding whether police records in Sri Lanka might have been tampered with;

[6] error of fact, regarding whether newspaper accounts disclosed targeted attacks;

[7] findings no reasonable judge could make, about attackers being able to recognise the appellant, and attacking her in public;

[8] failure to have regard to material considerations, or inadequacy of reasoning, about the appellant's husband choosing to return to Italy;

[9] failing to address the correct question, and effectively reversing the burden of proof, by asking whether the appellant had shown she could not return to Italy.

8. On 4 April 2018 FtT Judge Froom refused permission, on the view that the grounds were only disagreement, and that the judge plainly decided the case based on risk on return to Sri Lanka.

9. The appellant sought permission from the UT, on grounds contending error by Judge Froom (which is not strictly relevant), and saying finally:

“... the FtT Judge gave a number of reasons ... and by no means all of those are vitiated by error of law. However, ... the question is whether the findings that are vitiated ... when taken cumulatively, demonstrably exercised a material influence on the outcome, or plainly coloured her approach [*authority is cited*] ... the findings impugned in the grounds did demonstrably exert a significant influence on the ... overall decision and plainly coloured her overall approach.”

10. Deputy UT Judge L Murray granted permission on 13 August 2018.

11. Ground [3] aims to show that the appellant said that she and her husband moved to 4 different places before 2009 and moved to 10 different cities after 2006, which could both be true. Ground [4] aims to show that the judge did not have regard to all the details of the appellant's explanations for her movements.

12. Mr Govan responded that these grounds could be taken together, and that they went into exhaustive detail, but did not disturb the judge's general view that the appellant's movements to and from areas of alleged risk, leaving children there, and building a house with a view to the long term, did not sit well with her claim of pervasive risk.

13. Ground [3] is a tenable interpretation, but a rather minute point in a thorough and detailed decision. Ground [4] is less clear, and not shown to be much more than insistence and disagreement. Together, these grounds do little to undermine the overall analysis.

14. The respondent made enquiries resulting in a document verification report which suggested that the appellant's evidence about complaints to the police in Sri Lanka was unreliable. The appellant said that counter-enquiries showed that the explanation might be tampering with police

records. The judge found at [20] that the counter-enquiries failed to show her complaint to be genuine. Ground [5] aims to show that the judge missed the significance of reports about this from lawyers in Sri Lanka. Reading through the sequence of information, I cannot discern error. The judge referenced the latest report obtained for the appellant, which did not contain anything which clearly advanced her case, rather to the contrary. The reports show at best that police records are not generally well kept. They do not show that the judge missed a sinister explanation of later tampering which supports the appellant, or that she erred by interpreting the evidence as she did.

15. Ground [6] contends that reports in Sri Lankan newspapers shortly after the attacks showed that the appellant there and then blamed “a group in Italy” with a grudge against her husband, and that the judge missed this point. Mr MacKay clarified that the newspaper reports are at tab 1 of the appellant’s inventory in the FtT, with translations, and that tab 4 duplicates the reports, certified by letters from the publishers. He said that the judge failed to see how supportive this material was, and that there was no basis for finding at the end of [20] that it disclosed embellishment and damaged credibility.
16. Mr Govan observed that the newspapers reported statements of blame which were not in the police reports, and said that it was reasonable for the judge to take that as embellishment.
17. The materials were perhaps capable of an interpretation more favourable to the appellant; but this ground also resolves into no more than insistence and disagreement.
18. Ground [7] is the strongest. It is not hard to conceive that there might be a targeted attack on the appellant by people she did not recognise. It is not difficult to identify a victim, either in advance or near the scene. A public park in the middle of the afternoon may not be the most obvious choice of venue for such an attack but it not outwith human experience. Mr Govan accepted that the reasoning on those points was not strong. However, as he pointed out, this is one aspect of a decision which contains many reasons.
19. Ground [8] is plainly no more than disagreement. It was obviously within reason for the judge to take the return of the appellant’s husband to Italy as an indication that neither he nor she is at risk there. The description by the appellant of his return as due to homelessness and destitution in the UK takes nothing away from that.
20. There was undisputed evidence in the hands of the respondent that the appellant had indefinite leave to remain in Italy. Even if the onus was on the respondent, no further proof was required. The appellant suggested that her leave had lapsed, but for sensible reasons given at [25] the appellant found that had not been established. The point did not turn on incorrectly placing any burden on her, but on analysing the evidence as

showing that she was able to return. Ground [9] is misconceived in relating this matter to Article 1E of the Refugee Convention and to paragraph 145 of the Refugee Handbook. The judge had asked herself the question whether the appellant was in well-founded fear, and answered it in the negative. The appellant had not shown herself to be a refugee, so those considerations did not arise. In any event, Italy is by definition and by its international obligations a country which if the appellant were a refugee, would protect her against deportation or expulsion.

21. The FtT's decision includes numerous unchallenged reasons. The appellant selectively tackles points of fact, but her grounds and submissions do not embark on an analysis whereby the overall adverse credibility findings might not stand.
22. The appellant's challenge overlooks that the decision did not turn only on credibility.
23. The FtT found at [24] that "... the appellant has separated from her husband and therefore ... would not be a person of interest to anyone in Italy or Sri Lanka". That is a complete answer to the case, in relation to both countries. The grounds make no challenge to it.
24. The appellant's case on the facts has been well researched and strongly presented, both in the FtT and in the UT, but it has not been shown that the overall adverse credibility findings of the FtT should be set aside for having involved the making of an error on a point of law, or that the outcome would be different, even without those findings.
25. The decision of the First-tier Tribunal shall stand.
26. No anonymity direction has been requested or made.



1 February 2019
UT Judge Macleman