



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

Appeal Number: PA/00274/2018

THE IMMIGRATION ACTS

**Heard at Manchester Justice Centre
On 28 September 2018**

**Decision & Reasons
Promulgated
On 15 February 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**RD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Jegerajah, instructed by Greater London Solicitors Ltd
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, RD, who was born in 1989 is a female citizen of Sri Lanka. The appellant entered the United Kingdom February 2011 as a student. She overstayed her visa and subsequently returned to Sri Lanka. Thereafter, she returned to the United Kingdom on a valid entrepreneur visa on 29 April 2013. On 23 August 2016, she claimed asylum. By a decision dated 2 December 2017, the appellant's application to refuse by the Secretary of State. She appealed to the First-tier Tribunal (Judge Graham) which, in a decision promulgated on 2 March 2018, dismissed the

appeal. The appellant now appeals, with permission to appeal to the Upper Tribunal.

Section 8: 2004 Act

2. The judge began her assessment of credibility with her findings on Section 8 of the 2004 Act. [31]. She found that the appellant had, without adequate explanation, delayed claiming asylum. The grounds of appeal purport to give an explanation of the appellant's conduct but I do not see how this explanation undermines in anyway the judge's findings. The appellant claims that she made contact with her family to claim funds for her next visa application to the United Kingdom and was then told about her father's "most frequent arrest and the authority's renewed interest in him." The judge considered this explanation and gave clear reasons for rejecting it. [31]. The evidential basis for this rejection appears to be accurate. I reject the submission that the judge made the finding on Section 8 assessment and then, without further examination of the remaining evidence, concluded that the appellant is not credible. The judge's finding on the question of delay in claiming asylum is only one of several findings which were open to the Tribunal on the evidence and which the judge supports with clear reasoning.

Medical Evidence

3. I am satisfied, having read the decision carefully, that the judge took the medical evidence properly into account before making any findings (*Mibanga* [2005] EWCA Civ 367. The judge found that there was an inconsistency between the evidence given by the appellant to the medical expert appellant that she prefers, as a consequence, of her past experiences, to be alone and that she avoids putting herself social situations which she findings stressful and the appellant's own evidence that she arranges charity dances. The appellant says that her dances are a form of therapy which help her deal with past trauma. I find that it was open to the judge to find that the appellant's evidence was inconsistent and to give little weight to the appellant's explanation. Setting the medical evidence in the context of all the evidence, the judge did not err in law by attaching little weight to the medical evidence for the reasons he has given. Further, the judge has taken the medical evidence into account when considering the records of the appellant's evidence in the form of interviews, statements and oral evidence. He has, in my opinion, reached sustainable findings of fact in respect of those items of evidence which, in turn, have led him to consider the appellant as an unreliable witness. In the light of his findings, the judge did not err by refraining from treating the as a vulnerable witness.

The appellant's father and uncle

4. I accept Mr McVeety's submission that the appellant has no claim for protection based on her own characteristics or past conduct in Sri Lanka or *sur place*. The judge has assessed the role the uncle and father played in

the appellant's account of past events and concluded that the appellant's relationship with those family members did not expose her to risk. In reaching that finding, it was open to the judge to have regard to the apparent anomaly that it was claimed that only the appellant and not her sister who had been exposed to risk on a account of the activities of the uncle and father. The appellant has not explained that why her sister had safely remained in Sri Lanka when it was necessary for the appellant seek international protection abroad. Further, the judge may have wrongly recorded that the appellant's sister is a refugee in India. She is, in fact, a student. However, the appellant has failed to explain why that misunderstanding should undermine the judge's analysis. I note that the judge has also made findings regarding claim that the father left Sri Lanka to travel to India whilst on court bail. The judge's assessment that the "appellant's account of how her father was able to leave the country is irreconcilable" with material provided by the British High Commission was plainly open to him.

Certified Court Documents from Sri Lanka

5. Mr McVeety acknowledged that the judge may have misunderstood by what means the court documents from Sri Lanka had reached the appellant. However, any error was not, in my opinion, material to the outcome of the judge's analysis of the evidence or the outcome of the appeal. It is clear that the judge [at 40] assessed court evidence in the context of all the evidence of the case; he has not simply rejected any evidence on the mistaken basis that it had not arrived in the correct envelope.

Article 8 ECHR

6. The judge has provided a brief but, given the facts, an adequate examination of the appellant's representations in respect of Article 8 [48 - 50].

Conclusion

7. The judge's decision was not flawed by error of law either for the reasons stated in the grounds of appeal or at all. The judge has given good reasons for concluding that the appellant is not at real risk on return to Sri Lanka on account of the activities of her uncle or father. Accordingly, the appeal is dismissed.

Notice of Decision

This appeal is dismissed.

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 him or any member of their 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

Date 12 December 2018

Upper Tribunal Judge Lane

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 12 December 2018

Upper Tribunal Judge Lane