



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

Appeal No: UI-2021-001689
(PA/50371/2020); LP/00309/2020

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
on 7th September 2022

Decision & Reasons Promulgated
on 15th November 2022

Before

UPPER TRIBUNAL JUDGE MACLEMAN
AND DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

Thusanli Upendran

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

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

DETERMINATION AND REASONS

1. This determination is to be read with:
 - (i) The respondent's decision dated 28th May 2020.
 - (ii) The appellant's grounds of appeal to the First-tier Tribunal.
 - (iii) The decision of FtT Judge Buchanan promulgated on 16th April 2021.
 - (iv) The appellant's grounds of appeal to the UT, stated in the application for permission.
 - (v) The grant of permission by the FtT dated 7th May 2021.

Introduction

2. The appellant arrived at Heathrow airport with her husband and their son on a flight from India on 28 July 2019. They had all been issued with visit visas on their Indian passports.
3. On 16 September 2019 she sought protection, claiming to be a Sri Lankan national at risk from the authorities.
4. Her account was that she witnessed an atrocity on 17 June 2006 when people taking refuge in a church were attacked. The authorities wanted to blame the LTTE but she attended court and said that members of the Sri Lankan Navy, whom she could identify, were to blame. During the attack she was shot in the shoulder.
5. For safety, she moved to India. However, when the Indian authorities saw the scar on her shoulder they suspected she was a member of the LTTE and subjected her to ongoing abuse. In India she met her future husband, an Indian national from an influential family. They married in 2016. His family did not approve of the marriage and meant harm to her and their child.

The refusal

6. The claim was refused on 28 May 2020. The respondent did not accept that she was a Sri Lankan national or her account of events. She was taken to be an Indian national, not at risk in that country from her husband's family or anyone else. In any event, there was, in India, sufficiency of protection and the option of relocation.

The First-tier appeal

7. Judge Buchanan heard evidence from the appellant and her husband. The appellant's bundle came to 646 pages and the hearing took place over two days, with the judge making 48 pages of notes on the first occasion and 28 on the second. The decision runs to 50 pages, considers all aspects of the case, and gives detailed reasons for rejecting the evidence about claimed events in Sri Lanka and in India.

The Upper Tribunal

8. Permission to appeal was confined to the judge's approach to a report obtained by the appellant's representatives from a psychotherapist, Dr. Lee, dated 4th August 2020. It was thought arguable that the judge erred by not attaching sufficient weight to the report because the author did not feel it appropriate to seek a detailed history of the claim from the appellant.
9. In the report Dr Lee states she spoke to the appellant on 11 occasions for about an hour each time. Her involvement was voluntary and came about following a request by a facilitator of a community project which the

appellant attended, in light of concerns about her mental health. The meetings were by telephone because of Covid restrictions and then by zoom conferencing. The author does not refer to having sight of the details of the appellant's claim, the refusal letter, or her GP records.

10. Dr Lee states it was not appropriate for her to allow the appellant to go into detail about her experiences as there was a danger of re-traumatising her. Using recognised diagnostic criteria, the results indicated complex post-traumatic stress disorder and extreme depression. Complex post-traumatic stress disorder is said usually to be the result of multiple traumatic events.

11. The challenge relates to one paragraph of the determination:

18.1 I take account of the conclusion; but note that it was "not appropriate for [the psychotherapist] to let [the appellant] go into intricate detail about her experiences" [40/646]. So, although consistent with the appellant's claim overall and I attribute weight to the report for that reason, the report and its conclusions are of limited weight in making specific findings in fact on the events described in evidence.

12. The grounds argue that the diagnoses were highly relevant to the factual findings about the underlying claim and the judge erred by attributing limited weight to the diagnoses in making those findings. It was also suggested the judge gave inadequate weight to the diagnoses.

13. Mr Fyffe submitted that the judge failed to place the diagnoses at the forefront of his mind, and that in assessing the truth of the claim the judge failed to have regard to the fact that post-traumatic stress disorder can affect an individual's ability to recall.

14. In response, Mr Mullen submitted he failed to see how it could be argued that the Judge did not have the diagnoses to forefront of his mind. This was the first matter mentioned in his analysis. Mr Mullen further argued that the report was, at best, of limited forensic value given the appellant was relaying claimed events after a lapse of 14 or 15 years.

15. Representatives agreed that if we found a material error of law the case should be remitted for fresh hearing in the FtT.

Consideration

16. Dr Lee, for good professional reasons, did not feel it appropriate to ask the appellant for a detailed account of her claim. Her intention was to diagnose the appellant's difficulties rather than to risk re-traumatisation. We think it is obvious that her report, accordingly, could have only limited probative value in relation to the detailed sequence of claimed events. The most that could be derived is that the diagnoses are usually as a result of multiple traumatic events.

17. We note also that Dr Lee is explicit that such diagnoses are not always a result of trauma and that she cannot be prescriptive as to the causes of trauma.
18. We have had regard to precisely what the judge said about the report. The judge acknowledged that the conclusions in the report were consistent with the claim overall. That is as far as the report could sensibly go in favour of credibility. The judge did not discount the report. He attributed weight to it. In saying that the report and its conclusions were of limited weight in making specific findings of fact, we do not see what other conclusion he could have come to.
19. It would be pedantic and inaccurate to suggest that use of the phrase “but note” rather than “and note” indicated that the Judge was discounting the report because the psychotherapist had not explored the details of the experiences. As we have already observed, the judge specifically said he attributed weight to the report but that it was limited when he came to make specific findings of fact on the claimed events.
20. It is also important to place the appellant’s criticism in context. She did not seek to renew other grounds on which the FtT refused permission; rightly so, as they were plainly only insistence and selective disagreement on the facts. The decision contains a multitude of good reasons for rejecting the credibility of the claim and for declining to find that the appellant is a Sri Lankan national. Many of those reasons are detached from the possibility of faulty recollection due to PTSD.
21. We find that the challenge amounts to no more than a strained and inaccurate reading of one passage in a clear and comprehensive decision.
22. The FtT made an anonymity direction, but there is no ongoing need to depart from the usual principle of open justice, so that is discontinued.
23. The decision of the FtT shall stand.

F Farrelly

5 October 2022

DUT Judge Farrelly

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal’s decision was sent.

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.

3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.

5. A “working day” means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is “sent” is that appearing on the covering letter or covering email.