



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number PA/07727/2019 (V)**

THE IMMIGRATION ACTS

**Heard by *Skype for Business*
On 17 March 2021**

**Decision & Reasons Promulgated
On 12 April 2021**

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

S N R

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr T Ruddy, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mrs R Pettersen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka, aged 36. She has permission to appeal to the UT against the decision of FtT Judge Buchanan, promulgated on 21 April 2020. Her grounds are set out in an attachment running to 28 paragraphs over 17 pages.
2. The hearing took place by remote means. There were a few periods of poor audio quality, requiring some repetition, and two brief interruptions of connection. Parties agreed that all submissions had been conveyed.
3. Mr Ruddy adopted the grounds, and in his further submissions he identified the points most relied upon. He said that despite the length and

detail of the decision, and (consequently) of the grounds, the claim was straightforward. He argued that together the grounds showed recurrent oversights and errors, such that the decision made little sense as an overall explanation of why the claim failed, and that it should be set aside.

4. Mrs Pettersen argued that none of the grounds disclosed any material error, and that collectively they amounted only to disagreement on the facts.
5. I reserved my decision.
6. The appellant was employed in management of an hotel in Colombo, part of a major international chain. She says that a Sri Lankan politician, B, had an apartment there. Her claim is that she was at a promotional cocktail event in the hotel in September 2018 when B invited her, with his secretary and bodyguards, to his apartment. He told the others to leave, then made unwelcome physical advances to her. She pushed him off and ran away to her office on another floor. There she met her friend and immediate supervisor, A, and told him what had happened, but she was unwilling to tell higher management. She returned briefly to the function. Her husband, M, was away from home because his father was seriously ill. She did not tell him. She stayed for a few nights with A. B made telephone calls to her, but she did not answer. On an evening in October, she was driving home with her husband when another vehicle blocked their way. The men from that vehicle were armed and wore the usual dress of politicians' security personnel. They beat her husband unconscious and dragged her towards their vehicle. A crowd gathered and the men ran away, issuing threats to kill. M was hospitalised for several days. In her statement to the police, the appellant disclosed the earlier incident. She also now told her husband. She believed the assailants to be B's bodyguards. Towards the end of November 2018, several men attacked the home of the appellant and her husband at night, but they escaped to a neighbour's house. Again, she suspected B's bodyguards, and reported to the police. The appellant and her husband did not feel safe at home. In late December 2018 and in January 2019 men, again suspected to be B's bodyguards, tried to locate the appellant at the house of her husband's parents, and at the house of her parents, where they had been staying. They threatened the appellant's mother, with a gun to her head, over a newspaper article concerning the appellant and B. This was also reported to the police. She believes they took no action, due to B's position of influence. The appellant and her husband travelled to the UK, with visas, on 11 - 12 February 2019. She sought asylum on 12 March 2019.
7. I deal with matters by reference to the grounds (G), followed by reference to the decision (D).
8. G1, D10 - 10.8. This ground blandly disagrees with the judge's analysis that the claim does not fall within a Refugee Convention category, but it does not arrive at error on a point of law. In any event, such error would

not be material, unless error is found also in the adverse credibility findings.

9. The rest of the grounds are directed against the credibility findings.
10. G2, D9.2. The judge observes (accurately) that the expert report describes numerous cases against B, but not of the present nature. The ground says that does not detract from credibility, and that the judge “appears to be making an assumption that absence of such previous conduct ... means that B could not be guilty of such conduct towards the appellant”.
11. The grounds read something into the decision which is not expressly stated at 9.2; but the passage appears under the heading, “Conclusions on the facts: ... summary”; which does suggest that a conclusion is drawn.
12. At D11(1) under a further heading, “Conclusion”, the judge states that the appellant’s allegations are not shown to be of the same nature as other complaints against B and his bodyguards.
13. It might be thought that evidence of other wrongdoing by B, and of his impunity, tends at least to some extent to support the appellant’s account. The decision leaves the impression that absence of evidence of wrongdoing of the same specific nature is not merely negative but actively adverse to the appellant’s credibility.
14. G3, D9.3 [and 9.4]. This ground, around the appellant and her mother giving their home addresses to the police, complains of the judge making assumptions and of lack of fair notice. The judge thought that reporting to the police was “not illustrative of a fear of persecution” from the state or non-state actors, who might readily access those addresses.
15. This was not a matter raised by the respondent in the refusal letter or in submissions.
16. I do not see that the appellant had anything further of importance to say about it. However, while unfairness is not established, there is force in the appellant’s argument that it is not much of a basis for rejecting credibility.
17. Any report to the police inevitably required noting of addresses. It seems unlikely those addresses would have been hard for a prominent politician with a large and loyal staff to discover, whether stated in police reports or not.
18. To found adversely on this point goes rather far, when the background evidence and expert report were to mixed effect. There is corruption and impunity, but action does follow on some complaints.
19. The decision lacks a basis for finding that reporting matters to the police was adverse to credibility.

20. G4, D9.6, debates the finding that allegedly taking refuge with family and friends was adverse to credibility, because of the ease with which the appellant and her husband might be traced. The ground says that this overlooks the escalating chain of events, and affordability.
21. G5, D9.8 and 9.21, debates the judge's view that it was adverse that A in an email would not mention the risk to him.
22. G6-8, D9.10 (and other grounds) allege failure to consider the appellant's explanations.
23. G10, D9.15 debates the judge's view that the appellant's assailants in the alleged incident of October 2018 would not so readily have desisted from her attempted kidnap. The appellant's account is said not to be "beyond the realms of possibility".
24. That may be so; but it does not identify an error on a point of law.
25. G11-14, D9.17-19, debate the findings on the credibility of the appellant's alleged disclosure to the police.
26. G15, D9.20, debates the availability of hospital records.
27. G16-18, D9.22-31, debate the judge's finding on the alleged ease of escape from the incident in November 2018.
28. G19-20, D9.32-34, allege misinterpretation of the evidence about reporting to the police, and possible discovery by B.
29. G21, D9.35-37, allege that the judge overlooked evidence explaining how the appellant knew about the incident in December 2018.
30. G22, D9.39, debates the finding about the January 2019 incident.
31. G23, D9.41-46, says that the judge overlooked the appellant's evidence explaining why she produced no evidence of an alleged newspaper article.
32. G24, D9.47-50 argues that the judge's views about bodyguards wearing identifiable uniforms placed "too high an onus on the appellant".
33. G25, D9.62-67, argues that the expert report should have been found to be more supportive of the case.
34. G26, D9.68, adds nothing.
35. G27 says the judge overlooked evidence about delay in claiming after arrival in the UK; but the appellant has specified nothing which might place the judge's assessment outside his lawful scope.
36. G28 is a summary.

37. No decision on a claim such as this, no matter how meticulous, can ever close off all debate on the facts. Mr Ruddy fairly stated that the decision was a notably thorough attempt to analyse the claim. The decision does not overlook the appellant's evidence and explanations. Rather, it is largely concerned with evaluating them.
38. G4-28, in my view, do not rise above re-argument and a demand for ever greater detail. They disclose no errors on points of law. The findings reached are of varying strength, but that is inevitable.
39. G2 and G3 are established. The extent to which that undermines the decision as a whole is a matter of degree. Although the judge gave several other reasons, he found both those matters of some importance. It cannot safely be said that the outcome must have been the same.
40. The decision of the FtT is set aside. Parties agreed that if so, the case should be remitted for a fresh hearing, not before Judge Buchanan.
41. An anonymity direction remains in place.

Hugh Macleman

23 March 2021
UT Judge Macleman

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.