



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

Appeal Number: HU/00059/2019

THE IMMIGRATION ACTS

**Heard at : Field House
On : 25 June 2021**

**Decision & Reasons Promulgated
On 06 July 2021**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

GOWRY RAMALINGAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Zapata Besso, instructed by MTC Solicitors

For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka, born on 7 October 1972. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her human rights appeal.

2. The appellant arrived in the UK on 29 September 2000 and claimed asylum. Her claim was refused and an appeal against that decision was dismissed on asylum grounds but allowed on human rights grounds on 13 March 2003. Her

case was reconsidered on human rights grounds and was refused again on 24 March 2003. The appellant was subsequently issued with an EEA residence card as the dependant of her EEA brother, valid until 11 April 2010, but a further application for a permanent residence card was refused on 11 October 2010 and an appeal against that decision was dismissed on 10 January 2011. On 20 July 2012 the appellant applied for leave to remain on family and private life grounds, but her application was refused on 14 August 2013. A subsequent human rights claim was considered and refused on 23 October 2014 and an appeal against that decision was dismissed on 21 May 2015.

3. The appellant then made written representations on medical and mental health grounds on 9 July 2015 and submitted in support a psychiatric report dated 30 April 2015 and evidence of anti-psychotic medication. Further evidence and information was provided in May 2016 and July 2016, including evidence of the appellant having taken an overdose of paracetamol. The representations were rejected under paragraph 353 of the immigration rules on 9 January 2018 as not amounting to a fresh claim. However the appellant, in a section 120 statement of additional grounds dated 8 November 2018, set out a further human rights claim, accompanied by another psychiatric report from the same Consultant Psychiatrist, Dr Krishna Balansubramaniam, dated 26 October 2018, and evidence from her GP confirming that she suffered from various mental health problems including post-traumatic stress disorder, schizophrenia and depressive disorder, arising from her experiences in Sri Lanka, and confirming that she was dependent upon anti-psychotic medication.

4. The appellant's claim was treated as a fresh human rights claim but was again refused, on 5 December 2018. The decision gave rise to a right of appeal which the appellant exercised.

5. The appeal was heard by First-tier Tribunal Judge Paul on 11 November 2019. It was submitted before the judge that the appellant's circumstances had changed since the previous appeal as the psychiatric report confirmed that her mental health had significantly deteriorated, she had attempted suicide and had been admitted to hospital under section 2 of the Mental Health Act 1983. The appellant's sister, who had been appointed as her litigation friend in her absence and owing to her lack of capacity, also gave evidence that her (the appellant's) relationship with her partner had broken down in January 2019 because of her deteriorating mental health, and that she (the sister) was now her full-time carer and guardian. It was claimed that she could not return to Sri Lanka as a single woman with mental health problems and at risk of committing suicide.

6. The judge made adverse credibility findings, concluding that the appellant would have support and access to medication in Sri Lanka and that the situation was no different to that before the previous Tribunal which dismissed her previous appeal. The judge concluded that the respondent's decision was a proportionate one and did not breach the appellant's human rights and he dismissed the appeal.

7. Permission was sought by the appellant to appeal to the Upper Tribunal and was granted on the basis that there was an arguable failure by the judge to carry out a thorough analysis of the medical evidence and to consider and make findings on paragraph 276ADE(1)(vi).

8. The matter then came before me.

9. Mr Tufan helpfully conceded that there was a material error of law in Judge Paul's decision in that the judge had failed adequately to deal with the medical evidence. He accepted that the decision had to be set aside. In addition, Mr Tufan agreed that the appellant's human rights appeal could be re-made by allowing it without a further hearing, on the basis that she had now been living in the UK for a continuous period of over 20 years for the purposes of paragraph 276ADE(1)(iii). Mr Tufan pointed out that it was accepted in the refusal decision that the appellant met the suitability requirements of the immigration rules and he submitted that she now met the requirements of the immigration rules on the basis of her private life.

10. Ms Zapata Besso advised me that if I was minded to allow the appeal for that reason there was no need for a further hearing and she was content for the decision to be re-made on that basis.

11. I am entirely in agreement with both parties that Judge Paul's decision has to be set aside in its entirety - not least because of the inadequate consideration of the medical evidence, but also on the basis of the challenge in the second ground of appeal to the judge's adverse credibility findings. I am grateful to Mr Tufan for the concession he made. In accordance with that concession I set aside the judge's decision and I re-make the decision by allowing the appellant's appeal on Article 8 human rights grounds on the basis that the requirements of paragraph 276ADE(1)(iii) of the immigration rules are met, that the public interest does not, therefore, require her removal and that it would be disproportionate for her to be required to return to Sri Lanka.

DECISION

12. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The decision is re-made by allowing the appeal on Article 8 human rights grounds.

Signed: S Kebede
Upper Tribunal Judge Kebede

Dated: 25 June 2021