

**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Number: PA/07492/2017**

**THE IMMIGRATION ACTS**

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| **Heard at Bradford** | **Decision & Reasons Promulgated** | |
| **On 5th June 2018** | **On 12th June 2018** | |
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**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR**

**Between**

**the Secretary of State for the Home Department**

Appellant

**and**

**S P K H D R**

(ANONYMITY DIRECTION made)

Respondent

**Representation:**

For the Appellant: Mr D Mills, HOPO

For the Respondent: Mrs Hashmi of Counsel instructed by Linga & Co

**DECISION AND REASONS**

1. This is the Secretary of State’s appeal against the decision of Judge J Robertson made following a hearing at Birmingham on 13th December 2017. The judge allowed the claimant’s appeal against the refusal of the Secretary of State to grant her asylum and/or humanitarian protection. She had claimed that she had been involved with a Tamil, although she herself was Sinhalese, in aiding the escape of two prominent LTTE leaders following the fall of the LTTE in 2009.
2. The judge set out the burden and standard of proof which she should apply when assessing the evidence of the claimant, whom she found to be a credible witness.
3. The Secretary of State did not believe that she had been involved with the escape of these two men, in part because, according to the information before him, they were either not in Sri Lanka at the time or had renounced violence in 2004 and defected to the Government.
4. The judge’s findings in relation to this aspect of the claimant’s evidence, which is at the core of her claim, is somewhat brief and not very clear.
5. She wrote:-

“It is not inconceivable that he would have traveled (sic) to and from Sri Lanka clandestinely or that he and V may have traveled (sic) together. Although I cannot be sure that it was these two leaders that the Appellant assisted in their escape I am satisfied that sufficient doubt has been cast over the Respondent’s assertions regarding the possibility of her involvement and the timeline.”

1. She then concluded as follows:-

“In light of my findings that the Appellant has been detained and tortured by the Sri Lankan authorities in order to acquire information about those she has assisted and in particular the LTTE leaders who she has admitted aiding and abetting. It is not a question of whether she has such information or if she has, its value. It is a question of the risk that she may be perceived as having useful information. Given her previous detention and the possibility of her involvement with the flight of high ranking LTTE leaders it is not inconceivable that she is on a ‘stop’ or a ‘watch’ list. She is not herself an activist but may still be considered to have useful information by the authorities. Accordingly I accept that, on the lower standard of proof that her imputed political opinion may result in her being at risk of persecution on return.”

1. The Secretary of State sought permission to appeal on the grounds that the judge had applied the wrong standard of proof and had not identified which of the risk categories set out in the guidance given in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).
2. Permission to appeal was granted by Judge Grant-Hutchison on 25th January 2018.
3. Although Mrs Hashmi ably and vigorously sought to defend the decision I am satisfied that, in spite of the fact that the judge in some parts of her decision did set out the correct standard of proof, in a critical area, she appears to have applied the standard of mere possibility rather than substantial grounds for believing. Given the very real credibility issues in this case I am satisfied that, had she applied the correct standard, she would not necessarily have reached the same conclusion.
4. Accordingly, the appeal will have to be reheard. The claimant now lives in Yorkshire and the case will therefore be reheard at the Bradford Hearing Centre.

**Notice of Decision**

1. The original judge erred in law. Her decision is set aside. It is to be remitted to the First-tier Tribunal for the decision to be made afresh.

**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 her or any member of her 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 11 June 2018

Deputy Upper Tribunal Judge Taylor