IAC-AH-DP-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05146/2014

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 14th November 2014	**On 16th December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

MS PRAVEENA MAHENDRARAJAH
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr N Paramjahy, Counsel
For the Respondent: Mr S Kandola, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 5th November 1992. The Appellant claimed to have arrived in the United Kingdom on 19th September 2011 using a student visa valid from 7th September 2011 to 1st October 2011. She returned to Sri Lanka on 6th August 2012 and came back to the UK on 4th September 2012. On 17th September 2012 she claimed asylum.

2. On 17th July 2012 the Secretary of State refused the Appellant's application stating that it was not accepted that the Appellant was arrested, detained and tortured by the Sri Lankan authorities due to her connection with the LTTE and that she was not considered to be at risk on return.

3. The Appellant appealed and the appeal came before First-tier Tribunal Judge JDL Edwards sitting at Hatton Cross on 4th September 2014. In a determination promulgated the same day the Appellant's asylum appeal was dismissed as was her human rights appeal and the Appellant was found not to be in need of humanitarian protection.

4. On 22nd September 2014 the Appellant lodged Grounds of Appeal to the Upper Tribunal. On 1st October 2014 First-tier Tribunal Judge Landes granted permission to appeal. Judge Landes found that it was arguable as set out at paragraph 2 of the grounds that the judge had not given adequate reasons for finding that the medical report did not fit with the Appellant's account. Judge Landes noted that the Appellant was examined on 1st November 2012 and therefore although the scars would strictly speaking have to be slightly more than eight weeks old if they were inflicted as the Appellant had indicated they could be two months old. The grounds indicate that the judge did not explain why he found that it was unlikely that the Appellant would have been ill-treated shortly before her release.

5. Judge Landes gives a fairly detailed analysis at paragraph 2 and 3 of his grant of permission of the evidence concluding that it was arguable that if the judge's approach to the medical report was wrong in the sense that he did not give adequate reasons for rejecting the causation of scarring before considering the evidence as a whole that his approach to the medical evidence infected his general credibility findings. He further concluded that it was arguable that inadequate reasons were given as set out at paragraph 5 of the grounds. He made a finding that whilst it was right that the judge did not consider the detail about the claim to a family life made by the Appellant and her husband in the light of the fact that the Appellant's husband had not been recognised as a refugee the judge's concluding findings about the proportionality of removal would seem apt in any event in the context of a marriage of short duration after the Appellant had claimed asylum. However for the avoidance of doubt despite those comments Judge Landes did not restrict the grounds which may be argued.

6. On 20th October 2014 the Secretary of State responded under Rule 24. Paragraph 3 of the Rule 24 response sets out succinctly the Secretary of State's position namely that the First-tier Tribunal Judge was entitled to find that the scars were not caused by the alleged torture carried out in Sri Lanka and that the judge gave adequate reasons at paragraph 32(d) for finding that the scars were not for the reason given by the Appellant. Further the Secretary of State relies on paragraphs 33 and 34 of the determination for rejecting the Appellant's credibility.

7. It is on that basis that the appeal comes before me to determine whether or not there is material error of law in the decision of the First-tier Tribunal. The Appellant appears by her instructed Counsel Mr Paramjahy. Mr Paramjahy has experience of this matter in that he is the author of the Grounds of Appeal to the Upper Tribunal. He did not appear before the First-tier Tribunal. The Secretary of State appears by her Home Office Presenting Officer Mr Kandola.

Submissions/Discussions

8. Mr Paramjahy starts by advising that paragraph 6 is withdrawn in the Grounds of Appeal. However his initial thrust is that at paragraph 17 of the determination despite having cited relevant authorities the judge has failed to make any consideration whatsoever of the relevant case law. He submits that this is a "**Robinson** obvious" point. He further submits that the failure of the Immigration Judge to look at the medical evidence completely undermines the credibility of the determination. He refers to the authorities of *GJ (post-civil war returnees) (Sri Lanka) CG [2013] UKUT 00319 (IAC)* and *MP (Sri Lanka) v SSHD [2014] EWCA Civ 829*, considered a considerable amount of the background evidence that relates to former involvement with the LTTE and confirmed in the latter authority that protection can still be claimed despite the end of the war. However he submits that this is not merely a case of disagreement about the medical evidence and that the First-tier Tribunal Judge provided no rationale at all for rejecting Dr Lingam's clinical findings as to the causation and consistency of the Appellant's scars. Further he submits that the judge materially erred in law in his consideration of the medical evidence and that the evidence is clinically corroborative of the Appellant having been ill-treated in Sri Lanka and the clinical findings as to the consistency and the causation of the scars are that they are "typical". He submits that there are no presenting features in the Appellant's evidence that could lead the Tribunal to conclude that the Appellant's scars were caused in any other way other than her having been detained and ill-treated by the Sri Lankan authorities and that therefore it can be concluded that the First-tier Tribunal Judge materially erred in law firstly by commencing his assessment of the Appellant's case by looking at the medical evidence and then assessing the credibility and secondly he has simply failed to engage with the correct legal approach to be taken to an assessment of scarrings in appeals of this nature.

9. Mr Paramjahy takes me to the findings of Judge Edwards in particular at paragraphs 30 and 31. He submits that the approach of the judge is completely wrong therein and that he has failed to look at the medical evidence and thereinafter gone on to assess credibility and that the medical evidence was material because the Appellant's allegation of ill-treatment has been made at an early stage. He further concludes that the Rule 24 reply does not engage with the credibility of the Appellant's account and has to be looked at against the medical and factual background.

10. In response Mr Kandola states that the background evidence was cited at paragraph 17 and 30 of the judge's determination and submits that the judge has considered the medical evidence before making an assessment of credibility. He submits that the judge's reasoning at paragraph 31 is clear and that the findings that the judge has made at paragraph 39 are ones that were open to him. He asked me to find that there is no material error of law and to dismiss the appeal.

11. In response Mr Paramjahy asked me to give very careful consideration to paragraph 31 of the determination and submits that the fourth sentence therein indicates that the judge had got the date wrong when the Appellant saw Dr Lingam and that consequently there was also a factual mistake in the judge's analysis and not just a mere disagreement with the findings in the determination.

The Law

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial consideration, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on the Error of Law

14. The central thrust of the Appellant's submissions are that the First-tier Tribunal Judge provided no rationale at all for rejecting Dr Lingam's clinical findings as to the causation and consistency of findings that he made of the Appellant's scars. Dr Lingam had reached a conclusive opinion as to the age of the scars within his report that the scars were nearly eight weeks old and acknowledged that that is actually inconsistent with the analysis put on them as to the date of the scarring by the judge at

paragraph 31 of his determination. As is pointed out to me Dr Lingam did not see the Appellant on 1st December as appears to have been the submission from which the First-tier Tribunal Judge started his analysis. There is consequently a factual error in the determination which I am satisfied renders it unsafe. As to whether another judge will come to the same conclusion then that clearly is a matter for any re-hearing.

15. Further it is therefore appropriate to conclude that the First-tier Tribunal Judge materially erred in law in his consideration of the medical evidence. On re-hearing of the matter it would be for the judge to determine whether that medical evidence is clinically corroborative of the Appellant having been ill-treated in Sri Lanka and as to whether the clinical findings as to the consistency and the causation of the scars are that they are "typical". Regrettably the judge has failed to give due and full consideration to the medical evidence. Further I agree with the submission made on the Appellant's behalf that the First-tier Tribunal Judge materially erred in law by firstly commencing his assessment of the Appellant's case by looking at the medical evidence and then assessing credibility instead of adopting the proper approach and that he failed to engage in the correct legal approach to be taken on an assessment of scarring in appeals of this nature. For all these reasons I am satisfied that there is a material error of law in the determination and I set aside the decision.

Decision and Directions

16. The correct approach in this matter having found that there is a material error of law is to remit it to the First-tier Tribunal with none of the findings of fact to stand. This I now do. The re-hearing is to be at Hatton Cross on the first available date 28 days hence with an ELH of three hours. The appeal can be before any Immigration Judge other than Immigration Judge Edwards. If the Appellant requires an interpreter it is for the Appellant's instructed solicitors to inform the Tribunal at least ten days pre-hearing.

17. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. No application is made to vary that order and none is made.

Signed Date **16th December 2014**

Deputy Upper Tribunal Judge D N Harris