



IAC-FH-AR-V1

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

Appeal Number: AA/02095/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 13 October 2015**

**Decision & Reasons Promulgated
On 6 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**M S M H
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Wamadi, M & S Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka. His application for international protection was refused by the Respondent on 22 January 2015. He appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Stott in a determination promulgated on 15 April 2015. Permission to appeal to the Upper Tribunal was refused by the First-tier Tribunal but subsequently granted on renewal to the Upper Tribunal. Permission to appeal was granted by Upper Tribunal Judge Coker on 28 July 2015.

2. Permission to appeal was granted on the basis that it was arguable that the First-tier Tribunal failed to consider the evidence in the round when making its findings of fact. The grant of permission specifically cites paragraph 19 of the determination where the First-tier Tribunal stated “Consequently in view of my view of my findings as to the Appellant's credibility I do not accept the validity of the arrest warrant or the evidence of the second solicitor”.

The Grounds

3. The Appellant advanced a number of grounds in the application for permission to appeal. Those grounds allege that there was a failure to make reasoned findings in respect of the country guidance in **GJ and Others (post-civil war: returnees)** (2013) UKUT 319; there was a failure to consider the relevance of the appellant's diaspora activities by reference to established case law; there were erroneous credibility findings and an erroneous credibility assessment; there was a failure to place appropriate weight on supporting documents in the Appellant's claim; a failure to substantially consider the claim for humanitarian protection and a failure to make findings in relation to Article 3.

The Rule 24 Notice

4. The Respondent drafted a response to the grounds of appeal under Rule 24 contending that the First-tier Tribunal directed itself appropriate and that although the determination was brief the Judge had at paragraphs and 17 adequately considered the evidence in the round.

The Hearing

5. I heard from both representatives. Mr Nath asked for time at the hearing to discuss the grounds with Mr Wamadi. Mr Nath then said he agreed with the Appellant that there were erroneous credibility findings and an erroneous credibility assessment. The First-tier Tribunal's treatment of the arrest warrant was erroneous and the error was material.

Findings and conclusions

6. I have come to the conclusion that there was a material error of law in the determination of the First-tier Tribunal for the following reasons. The findings of fact are at recorded at paragraphs 12 to paragraph 19 of the decision. It is clear from the reasoning in those paragraphs that the First-tier Tribunal concluded that the Appellant's immigration history rendered his claim incapable of belief without any assessment of the material facts of his claim in relation to the risk in Sri Lanka. The First-tier Tribunal found at paragraphs 15 and 16 that the Appellant had only made a claim after being caught in Tesco whilst in possession of a forged visa. The First-tier Tribunal then concludes at paragraph 16 that the Appellant did not make a claim at an earlier stage because the events on which he relied did not take place. In paragraph 17 the Judge states that in view of that finding he

does not attach weight to the documentation that has been produced and at paragraph 19 that in view of his findings in relation to the Appellant's credibility that he does not accept the validity of an arrest warrant or the evidence of the Appellant's second solicitor. This leads him to conclude that the Appellant's name will not be on a stop list which would result in him being detained and handed to the authorities on return to Sri Lanka.

7. The First-tier Tribunal concluded that the Appellant's failure to claim asylum earlier meant that his account was incredible. The First-tier Tribunal then rejected the documentation, including an arrest warrant on this basis. This approach was unlawful. Although paragraph 15 and 16 of the decision do not make explicit reference to section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 it is clear that the Tribunal takes the behaviour described in section 8 (5), namely the failure to make an asylum or human rights claim before being notified of an immigration decision, as fatal to the Appellant's credibility. In **SM (Section 8 judge's process) Iran** [2005] UKAIT 00116 the Upper Tribunal held that the evidence must be assessed in the round and that section 8 should not be the starting point for the assessment of credibility. The behaviour identified in that section is a factor to be taken into account in the overall assessment of credibility and its importance will vary from case to case. Although section 8 requires the deciding authority to treat certain aspects of the evidence in a particular way it was not intended to and does not otherwise affect the general process of deriving facts from evidence.
8. The First-tier Tribunal did not assess the evidence in the round and treated section 8 as a starting point for the assessment of credibility. The First-tier Tribunal's approach to credibility discloses a material error of law.

Notice of Decision

In those circumstances I conclude that there was a material error of law in the determination. All the findings in relation to credibility are vitiated by that error and the extent of judicial fact finding is such that this matter should be remitted to the First-tier Tribunal for complete rehearing.

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 him or any member of their 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

Deputy Upper Tribunal Judge L J Murray