



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

Appeal Number: AA/05386/2014

**THE IMMIGRATION ACTS**

**Heard at Newport**

**On 2 November 2015  
Prepared 2 November 2015**

**Decision & Reasons  
Promulgated  
On 11 December 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**PAK  
(ANONYMITY DIRECTION CONTINUED)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Muquit, Counsel instructed by Kanaga Solicitors  
For the Respondent: Mr Owen Richards, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sri Lanka, date of birth 6 February 1977, appealed against the Respondent's decision to refuse to extend leave to remain and to make removal directions on 14 July 2014. The relevant application had been made on 10 December 2012. The adverse decision

[D] was subject of an appeal which was heard by First-tier Tribunal Judge McLachlan (the judge) whose decision on 9 February 2015 dismissed the appeal on asylum, human rights grounds and under the Immigration Rules.

2. Permission to appeal that decision was given by Upper Tribunal Judge Allen on 8 June 2015 with reference to the potential error of the judge made in the assessment of the medical evidence and its materiality to the issue of the Appellant's credibility and thus to the issue of risk on return.
3. By a letter, dated 30 July 2015, the Secretary of State made a response under Rule 24.
4. The grounds supporting the renewed application are in substitute for the original grounds that were refused by First-tier Tribunal Judge Frankish on 9 March 2015. Those grounds were not settled by Mr Muquit, his grounds are dated 20 March 2015.
5. Mr Muquit touched upon a number of issues but essentially the only challenge went to the core of the Refugee Convention and Article 3 ECHR claim in terms of the judge's assessment of the medical evidence.
6. At [D5] of 9 February 2015 the judge said "I have considered the evidence in the round in the light of all the relevant circumstances judged against the situation as at the time of the hearing of the appeal". Assuming that is not simply a pro forma statement, what then transpired was that the judge heard the evidence in the usual way, received skeleton argument and a submission filed on behalf of the Appellant as well as heard the representations on behalf of the Respondent.
7. Unfortunately the judge then at [D17] started her findings by stating "I find that the core of the Appellant's account is a fabrication to enable him to enter into and remain in the UK. I reach this conclusion because of the contradictions, inconsistencies and implausibility in the evidence".

Between [D18 and 24] the judge proceeded to set out a range of findings in relation to the Appellant's personal credibility.

8. The judge also then went on to consider the injuries claimed by the Appellant. Aspects of his claim, for example that he had been sexually abused, were really not dealt with as such but at [D25 - 34] more evidence was considered. Ultimately and from [D35] and onwards to [D40] there was the consideration of the medical evidence]. The evidence particularly of Dr Izquierdo-Martin, dated 9 August 2014, made reference to photographs of injuries, originally provided of photos taken in December 2012, also considered the injuries sustained and their potential timescale. Dr Dhumad wrote an expert report on the Appellant's mental health issues. At the conclusion of those considerations by the judge, the judge said [D 41] "although I note the contents of the medical reports, it does not alter my finding that the Appellant is not credible and his account is a fabrication".
9. It seemed to me that if the judge was, as she said she was going to do, considering all the evidence in the round then at the outset of [D17] she would have said that her assessment of the Appellant's account was taken in the context of all the evidence in the round. She did not do so and the wording of [D47] appears almost unequivocally to suggest that the medical reports have not been considered in the round but considered after the assessment of the Appellant's credibility: Accordingly they were discounted.
10. I take the view that the assessment of the Appellant's credibility went to the very core of the claim as to past ill-treatment, risk on return and what might follow thereafter in terms of the Appellant's background being looked into or considered and/or further investigated on a return. In the light of the case law particularly GJ and Others Sri Lanka [2013] UKUT 00319, irrespective of what the assessment might be made or have been made of his refugee sur place type activities insofar as they might be claimed also to be a basis of real risk on return.

11. In those circumstances it is unfortunate these errors should have been made which undermined what was otherwise a carefully written decision addressing the evidence before the judge.

### **Notice of Decision**

The original Tribunal's decision cannot stand. The decision will have to be remade in the First-Tier Tribunal.

### **Directions**

- (1) No findings of fact to stand other than those conceded by the Secretary of State in the reasons for refusal letter, dated 14 July 2014. List for hearing in the First-tier Tribunal but not before Judge McLachlan or Judge Frankish.
  - (2) Time estimate three hours.
  - (3) Tamil interpreter required.
  - (4) Further directions relating to documents to be considered at a CMR in the First-tier Tribunal.
  - (5) List for hearing at Columbus House, Chepstow Road, Langstone, Newport, NP18 2LX.
12. Although it is by no means obvious why an anonymity order was made for which the judge gave no reasons, I am satisfied in view of the allegation of sexual abuse that it would be appropriate to continue the order.

Signed

Date 2 December 2015

Deputy Upper Tribunal Judge Davey