



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

Appeal Number: AA /09588/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 15 January 2015**

**Determination Promulgated
On 12 February 2015**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

JK
(ANONYMITY ORDER CONTINUED)

Appellant

And

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr. S. Muquit, of Counsel, instructed by A & P Solicitors.

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

DETERMINATION AND REASONS

1. The appellant, a national of Sri Lanka, has been granted permission to appeal the determination of Judge of the First-tier Tribunal Prior who, following a hearing on 9 July 2014, dismissed his appeal on asylum humanitarian protection and human rights grounds against a decision of the respondent of 4 October 2013 (served on 8 October 2013) to remove him from the United Kingdom having refused his asylum claim for reasons given in a letter dated 4 October 2013.
2. The appeal heard by Judge Prior had been remitted to the First-tier Tribunal (FtT) by Deputy Upper Tribunal Judge Pickup who found that Judge of the First-tier Tribunal Rowlands had materially erred in law in dismissing the appellant's appeal on asylum, humanitarian protection and human rights grounds in his determination of 18 November 2013.
3. Judge Prior assessed the credibility of the evidence before him at [24-30] of the determination and then said, at [31], as follows:

"31. Having regard to all the evidential considerations identified by me above I concluded that the appellant was totally lacking [*sic*] credibility. It was in the light of that conclusion that I approached the evidence of the medical report of Dr. Martin on the appellant's scarring."

4. It is therefore plain that Judge Prior assessed the credibility of the appellant's evidence about the basis of his asylum claim in isolation from the medical report of Dr. Martin on the appellant's scarring. Furthermore, he considered the medical report in the light of his negative credibility assessment. He should have considered all of the evidence, including the medical report, in the round in order to assess credibility and make his findings of fact (Mibanga [2005] EWCA Civ 367).
5. If Judge Prior had not made this error, he might have taken a different view of the credibility of the appellant's evidence not only about his alleged experiences in Sri Lanka but also about his alleged activities in the United Kingdom.
6. Accordingly, I am satisfied that the determination of Judge Prior involved the making of an error of law such that it falls to be set aside. I set it aside in its entirety.
7. At the hearing, Mr. Tufan accepted that Judge Prior had materially erred in law and that his determination fell to be set aside in its entirety.
8. The parties agreed that this case should be remitted to the FtT for a fresh hearing.
9. I am mindful of the fact that this case was remitted previously to the FtT. Having regard to para 7 of the Practice Statement and the Court of Appeal's judgment in JD (Congo) & Others [2012] EWCA Civ 327, I am satisfied that Practice Statement 7(2)(a) and (b) apply in this case.
10. I therefore remit this appeal to the FtT and direct that the decision on the appeal be re-made by a judge other than Judge Prior, Judge K. Heynes and Judge P. Rowlands.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law such that it falls to be set aside in its entirety. This case is remitted to the First-tier Tribunal for the decision on the appellant's appeal to be re-made by a Judge of the First-tier Tribunal other than Judge Prior, Judge K. Heynes and Judge P. Rowlands.

Signed
Upper Tribunal Judge Gill

Date: 12 February 2015