



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11650/2014

THE IMMIGRATION ACTS

Heard at Field House
On 31 July 2015

Decision and Reasons Promulgated
On 14 August 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE ZUCKER
DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

MR KK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Singer, counsel instructed by S Satha & Co
For the Respondent: Mr P Naith, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of FTTJ E B Grant, promulgated on 11 May 2015, in which she dismissed the appellant's appeal against a decision to refuse to grant him asylum.

Background

2. The appellant unsuccessfully applied for an entry clearance as a Tier 4 migrant on 29 December 2009. A further application was granted on 14 September 2010, valid until 10 August 2011. The appellant entered the United Kingdom on 3 October 2010. He extended his leave in the same capacity until 31 May 2013, however it was subsequently curtailed until 24 May 2012. The appellant sought asylum 10 July 2014. The basis of his claim, expressed briefly, was that he was wanted owing to a bomb being found by the Sri Lankan authorities at his workplace.
3. During the course of the hearing before the First-tier Tribunal, the appellant did not give evidence as a psychiatric report indicated that he was unfit to do so. A witness attended the hearing on the appellant's behalf, a former work colleague who had been recognised as a refugee in the United Kingdom.
4. The FTTJ rejected the appellant's claim in its entirety on credibility grounds. She also found that the appellant could receive medical treatment in Sri Lanka.

Error of law

5. The grounds of appeal submit that the FTTJ failed to take into consideration a significant number of subjective documents relied upon by the appellant; that the FTTJ failed to engage with the medical evidence; there was no consideration of the risk to the appellant on return to Sri Lanka in line with paragraph 441-456 of GJ & Others and that there was no or inadequate consideration of GJ generally.
6. Permission to appeal was granted on 5 June 2015, as it was considered arguable that the lack of reference to the appellant's documents amounted to a material error of law. All grounds were considered arguable.
7. The Secretary of State's response of 16 June 2015 stated that the respondent did not oppose the application for permission to appeal with respect to there being no consideration of the documentary evidence that the appellant provided. The Tribunal was invited to determine the appeal afresh.

The hearing

8. At the outset, Mr Naith confirmed what was said in the respondent's reply and that he agreed with Mr Singer that the decision of the FTTJ contained material errors of law. Both representatives consented to this matter being remitted back to the First-tier Tribunal for a de novo hearing.
9. As it was we were of the view that the concession was properly made because we also considered that the FTTJ had materially erred in her failure to have regard to the appellant's substantial quantity of subjective evidence, as well as failing to provide reasons for rejecting the appellant's account, which was supported by a witness who had been granted refugee status on precisely the same facts.
10. In these circumstances we were satisfied that there are material errors of law such that the decision be set aside to be remade. None of the findings of the FTTJ are to stand.

11. No anonymity direction was made by the FTTJ. In view of sensitive aspects of the appellant's case, we consider it appropriate to make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) we make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

12. Further directions are to follow below.

Conclusions

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

We set aside the decision to be re-made.

Directions

- This appeal is remitted to be heard de novo by any First-tier Tribunal Judge except FTTJ EB Grant.
- The appeal should be listed for a hearing at Hatton Cross.
- A Sri Lankan Tamil interpreter is required.
- Time estimate is half a day.

Signed

Date: 1 August 2015

Deputy Upper Tribunal Judge Kamara