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

Appeal Number: AA/05529/2015

**THE IMMIGRATION ACTS**

**Heard at Taylor House  
On 23 December 2015**

**Decision & Reasons Promulgated  
On 6 January 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE A M BLACK**

**Between**

**P K S  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Paramjorthy, Counsel

For the Respondent: Mr Duffy, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka born on 3 April 1987. He appealed against the decision of the respondent dated 13 March 2015 to refuse him asylum and humanitarian protection. His appeal was dismissed by Judge of the First-tier Tribunal Clemes ("the FTTJ") who, in a decision promulgated on 1 September 2015, dismissed his appeal on asylum and human rights grounds and under the Immigration Rules.
2. The appellant sought permission to appeal. This was granted by First-tier Tribunal Judge Fisher on 25 September 2015 who concluded that it was

arguable the findings of the FTTJ were unsafe and that he had erred in law; all matters raised were arguable as they went to the issue of credibility.

3. Thus the appeal came before me.

### **Submissions**

4. I summarise Mr Paramjorthy's grounds of appeal and oral submissions as follows. There were a number of pivotal paragraphs in the decision (paragraphs 18-20) which had been included under the heading "the hearing"; there was reference to the appellant's evidence being confused but this had not been particularised. There was little reference to the appellant's detailed witness statement which engaged with the challenges of the respondent. The FTTJ's treatment of the expert evidence of Dr Dhumad and Professor Lingam was inappropriate in that the FTTJ had made findings in each case without considering the evidence on credibility in the round. The FTTJ had focussed on some of Professor Lingam's qualifications but not those of relevance to the issues in the appeal. He submitted that the FTTJ had been hampered in dealing with the appellant's presenting features because he had failed to identify how he had addressed the conflicts in the evidence. Mr Paramjorthy summarised by saying that the FTTJ had put the cart before the horse insofar as the expert evidence was concerned: he had dismissed that evidence before assessing the appellant's own evidence. He noted that the FTTJ had referred to the starting dose for Sertraline, apparently drawing conclusions from his own knowledge without putting this to the parties. The FTTJ, he submitted, should have applied the principles in **Danian v SSHD [2002] IMM AR 96** if he had found that the appellant had engaged in TGTE activities in the UK for the purpose of furthering his asylum claim. He considered that the FTTJ had confused "Tamils" and the "LTTE" in his reference to the appellant's engagement with the diaspora, apparently treating them as one and the same (paragraph 9). Finally, Mr Paramjorthy submitted that the FTTJ's conclusion about the lack of risk due to the appellant's ability to leave the country through normal channels was contrary to the guidance in **GJ & Ors (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
5. Mr Duffy, for the respondent, submitted that he would struggle to persuade me that the FTTJ's decision was "up to standard". He accepted that he was in difficulties challenging the appellant's position that there were material errors of law.

### **Discussion**

6. The decision makes confusing reading because findings of fact are mixed with other matters. By way of example, under the heading "The hearing", there are various findings in relation to the appellant's oral evidence and the reports of the two experts within paragraphs 18 - 20. There are conclusive findings in relation to the expert evidence at the end of paragraphs 19 and 20 but no conclusive findings with regard to the

appellant's evidence; the FTTJ's conclusive findings on the appellant's credibility are provided under the subsequent heading "Conclusion and Determination".

7. The FTTJ concludes at paragraph 26 that he does not find "the appellant is a credible witness who might face persecution or even harassment from the government arising from his claimed LTTE and/or TFTE following." Having made this finding, he then goes on to consider the "background evidence" finding that it does not provide "real support for the appellant's claim especially after [his] finding that he is not someone who is likely to pique the interest of the Sri Lankan authorities".
8. The FTTJ's treatment of the two medical experts' evidence is at odds with the guidance in **HE [2004] UKIAT 00321** in which the Tribunal said "where the report is specifically relied on as a factor relevant to credibility, the adjudicator should deal with it as an integral part of the findings on credibility, rather than just as an add on, which does not undermine the conclusions to which he would otherwise come". The same can also be said of his treatment of the background material. In **Mazrae [2004] EWCA Civ 1235** the Court of Appeal said that the Adjudicator's approach to credibility was flawed in that she appeared to have reached an adverse finding on credibility based solely on the appellant's own account, a finding which she went on to say was not shaken by the background material and an expert report, having considered them separately. Although the application was refused for various reasons, Lord Justice Sedley admitted to having grave doubts about the Adjudicator's reasoning in this respect and said that the Adjudicator should have considered and evaluated all the evidence together - the appellant's account, the medical report and expert report, rather than dismissing each in isolation from each other.
9. The FTTJ considered and rejected the two expert reports before making an assessment of the credibility of the appellant's evidence. Having made that assessment of the appellant's credibility, he then went on to consider the background material. His approach to the analysis of the witness, including expert, evidence and the background material is fundamentally flawed and undermines his adverse findings on the appellant's credibility. That credibility is at the heart of the appellant's claim.
10. In any event, the FTTJ should have made findings with regard to the appellant's claimed attendance at demonstrations in the UK (irrespective of the appellant's motive) and the impact of this on the risk on return (**Danian v SSHD [2002] IMM AR 96**).
11. The FTTJ failed to take into account the guidance in **GJ** when making his adverse credibility findings at paragraph 25 with regard to the appellant's ability to leave Sri Lanka undetected with the assistance of an agent.
12. Given these failings, the adverse findings of the FTTJ with regard to the credibility of the appellant are inadequate and unsustainable. These

findings are at the crux of the appeal and the decision must be set aside in its entirety. The parties' representatives agreed that, in circumstances, it was appropriate for the appeal to be decided afresh in the First-tier Tribunal.

**Decision**

13. The making of the decision of the First-tier Tribunal involved the making of material errors on points of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from FTTJ Clemes.
14. The anonymity direction made in the First-tier Tribunal is maintained.

***A M Black***

Deputy Upper Tribunal Judge

Dated: 1 January 2016

**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.

***A M Black***

Deputy Upper Tribunal Judge

Dated: 1 January 2016