



IAC-FH-NL-V1

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

Appeal Number: AA/05799/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 23 February 2016**

**Decision &
Promulgated
On 8 April 2016**

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE L J MURRAY

Between

**V B
(ANONYMITY DIRECTION MADE)**

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Coleman, Counsel instructed by S Satha & Co
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant in this appeal is a Sri Lankan asylum seeker born on [] 1983. He applied for asylum on the basis that he had a well-founded fear of persecution in Sri Lanka on grounds of political opinion. The Secretary of State refused his application in a letter dated 20 March 2015.

2. The Appellant appealed against that decision and the appeal was heard on 10 September 2015 by First-tier Tribunal Judge Taylor and in a decision promulgated on 30 September 2015 he dismissed the appellant's asylum appeal. He also found that he did not qualify for humanitarian protection and dismissed the claim under the European Convention on Human Rights.
3. The Appellant appealed against that decision and permission was initially refused by the First-tier Tribunal but granted on renewal to the Upper Tribunal by Upper Tribunal Judge McWilliam on 6 December 2015 on the basis that it was arguable that the Judge erred in relation to the expert medical evidence, particularly with reference to paragraph 16 of the decision.

The Grounds

4. The grounds drafted by Counsel assert that the First-tier Tribunal erred in law in the approach to the documentary evidence which corroborated significant parts of the Appellant's claim. It further asserted that the Judge erred in his approach to the medical evidence in reaching conclusions on the Appellant's credibility before assessing the medical evidence. It is said that that approach was unlawful. Psychiatric evidence is asserted by the grounds of appeal to have been inadequately dealt with on the basis that no findings were made on the diagnosis therein or the impact on the removal of the applicant to Sri Lanka.
5. With regard particularly to the documentary evidence it is said that the First-tier Tribunal lumped all the documents together and rejected them due to the adverse findings. It is asserted that there was in fact a considerable amount of documentary evidence corroborating the Appellant's arrest in Sri Lanka emanating from various sources and that the First-tier Tribunal did not engage with any of this evidence or make any findings on it. Specific items of the evidence are then set out in the grounds which it is said that the First-tier Tribunal failed to have regard to. It is asserted overall therefore that in the light of the errors made the First-tier Tribunal erred in the assessment of whether the Appellant was at risk of persecution on return both in the light of the errors in the credibility assessment and in terms of the assessment of his attendance at demonstrations.
6. The appeal therefore comes before the Upper Tribunal in order to determine whether or not there was an error of law in the decision of the First-tier Tribunal and if so what to do about it.

The Hearing

7. I heard from both representatives at the hearing and Mr Jarvis on behalf of the Secretary of State conceded that the First-tier Tribunal's rejection of the documentary evidence and failure to deal with the documentation provided did amount to an error of law and that in consequence the

matter should be remitted to the First-tier Tribunal for re-hearing. Mr Coleman had no objection to that course of action. In the circumstances, having had regard to the decision of the First-tier Tribunal and in particular the reasoning set out at paragraph 16, I concluded that there was an error of law in the reasoning of the First-tier Tribunal.

Discussion

8. In paragraph 16 the First-tier Tribunal, having made in the preceding paragraphs 12 to 15 a series of adverse credibility findings, rejects both the medical evidence and the documentary evidence provided by the Appellant on the basis of the prior credibility findings.
9. There is substantial case law on the proper approach to experts' reports and in the case of **Ex parte Virjon B [2002] EWHC 1469** Mr Justice Forbes found that an adjudicator had been wrong to use adverse credibility findings as the basis for rejecting medical evidence without first considering the medical evidence. Similarly, in the case of **Mazrae [2004] EWC Civ 1235** the Court of Appeal concluded that the Adjudicator's credibility was flawed in that she appeared to have reached an adverse credibility finding on the basis of the appellant's account and that was not shaken by the background material and an expert's report having considered them separately.
10. In paragraph 16 of the decision the First-tier Tribunal states that:

"As stated in the above paragraphs I am not satisfied that the events occurred as claimed and the further medical report was only able probably to link the conditions to the claimed events. Given my adverse credibility finding in the above paragraphs I attach little weight to the submitted supporting documents which were alleged to come from Sri Lanka."
11. The Appellant had submitted substantial corroborative evidence in the form of supporting documents allegedly from Sri Lanka and the First-tier Tribunal failed to deal with these documents individually or collectively other than to say that they were rejected on the basis of prior credibility findings. That approach is prohibited on the basis of the case law cited and amounted to an error of law. It was clearly a material error because it was a core finding in relation to credibility and therefore the decision as a whole cannot stand. For that reason therefore I set aside the decision of the First-tier Tribunal. Having regard to Part 7.2 (a) of the Practice Statements for the Immigration and Asylum Chamber of the First-tier Tribunal and Upper-Tier Tribunal, the extent of judicial fact finding is such that this matter should be remitted to the First-tier Tribunal for rehearing.

Notice of Decision

The decision of the First-tier Tribunal contained a material error of law and I set it aside.

The appeal is remitted to the First-tier Tribunal for rehearing with no findings of fact preserved.

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