



IAC-FH-AR-V1

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

Appeal Number: AA/10150/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 21 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**SS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. S. Muquit, Counsel, instructed by A & P Solicitors
For the Respondent: Ms A Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Hussain promulgated on 1 October 2015 in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. I have made an anonymity direction, following that which was made in the First-tier Tribunal.
3. Permission to appeal was granted on the basis that it was arguable that the judge had erred in failing to consider the report of Dr. Lawrence in his

finding that the Appellant was not credible. It was arguable that the credibility findings were flawed.

4. At the hearing I heard submissions from both representatives, following which I announced that I found the decision involved the making of an error of law. I set the decision aside and remitted it to the First-tier Tribunal for rehearing. My full reasons are set out below.

Error of law

5. The judge deals with the credibility of the Appellant in the paragraphs entitled "Discussion" [21] to [39]. The report of Professor Lingam is considered in this context, but this is the only medical evidence which is considered in the discussion of the Appellant's asylum claim. At paragraph [40] the judge turns to addressing the Appellant's claim under Article 8. Paragraph [42] states:

"The appellant produced a medical report from Dr Lawrence, a consultant psychiatrist about the Post Traumatic Stress Disorder he suffered whilst in detention in Sri Lanka. As I have found that he was not detained as claimed, such PTSD as he has, cannot be attributed to that time. In any event, Dr Lawrence's report was prepared some 9 months prior to the hearing. In evidence before me, the appellant was lucid and able to answer questions and withstand cross-examination. I did not consider his mental health problems such as they were, made his removal to Sri Lanka disproportionate."

6. Dr. Lawrence's report is considered by the judge solely in relation to the Appellant's Article 8 claim. It is not referred to at all during the discussion of the Appellant's asylum claim, as accepted by Ms Fijiwala. However, in his report Dr. Lawrence specifically addressed the Appellant's Post Traumatic Stress Disorder by reference to the events which took place in Sri Lanka. The report was not produced solely for the purposes of the Appellant's Article 8 claim, but was produced as evidence by the Appellant in relation to the events which occurred in Sri Lanka, which formed the basis of the asylum claim.
7. Dr. Lawrence's report is found in the Appellant's supplementary bundle prepared for the First-tier Tribunal hearing (pages 15 to 37). Dr. Lawrence, a consultant in general adult psychiatry, addresses in his report the history of what has happened to the Appellant. He then assesses his mental state and comes to his conclusion on page 26. On page 28 he considers whether the trauma that the Appellant describes comes from another possible cause.
8. I was referred to the case of Mibanga (Ethiopia) [2005] UKAIT 00164. Ms Fijiwala submitted that this was a case where the medical report had been considered out of order, and therefore it was not a material error. However, I find that the report of Dr. Lawrence has not been considered at all within the asylum context.

9. I find that all of the evidence provided by the Appellant should be considered in assessing his credibility, and a piece of evidence put forward by the Appellant has not been taken into account at all. Ms Fijiwala submitted that the same finding would have been made regarding asylum as had been made in relation to Article 8 in paragraph [42], i.e. that the Appellant was not detained as claimed. However, had the report of Dr. Lawrence been considered in the round with the other evidence regarding credibility, I find that this would not necessarily be the case. The report is considered discretely in relation to Article 8 when the finding as to credibility has already been made.
10. I find that the judge erred in failing to take account of all the relevant evidence when making his credibility findings. I find that he reached a negative view of the Appellant's credibility without taking account of all of the evidence provided. I find that the report of Dr. Lawrence was evidence which was relevant to the Appellant's asylum claim.
11. In relation to the treatment of Professor Lingam's report (grounds of appeal, paragraph [3] onwards), at paragraph [28] the judge states that Professor Lingam "had gone beyond his remit as identified on page 4 of his report as well as his expertise because he made detailed reference to "mind scars" at the end of his report". However, what the decision does not state is that Professor Lingam specifically states that he has not investigated the possibility of mind scars (paragraph 4, page 36). Further, in the conclusion on page 36 he states: "I have not investigated the mental health issues." He states that he is concerned about the Appellant's mental health, and notes that he is confused, which may be an issue from mind scars. He states that he may be having PTSD. However, this is to be read against the backdrop of the earlier statement that he has not investigated the possibility of mind scars, and that the Appellant may need a full psychiatric assessment. Indeed, the full psychiatric assessment was then carried out by Dr. Lawrence, which report was not considered by the judge in relation to asylum.
12. I find that the decision involved the making of a material error of law in the failure to consider the report of Dr Lawrence in consideration of the Appellant's asylum claim and the assessment of his credibility. I find that it was not correct to state that Professor Lingam was not objective and had gone beyond his remit, as it is clear from Professor's Lingam's report that he did not investigate the Appellant's mental health.

Notice of Decision

The decision involves the making of an error of law. I set the decision aside.

The appeal is remitted to the First-tier Tribunal for rehearing.

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 5 February 2016

Deputy Upper Tribunal Judge Chamberlain