



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04943/2015

THE IMMIGRATION ACTS

Heard at Field House
On 13th September 2017

Decision & Reasons Promulgated
On 15th September 2017

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

N S
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel instructed by Vasuki Solicitors

For the Respondent: Mr S Kotas, a Senior Home Office Presenting Officer

DECISION AND REASONS

Anonymity

The First-tier Tribunal made an order pursuant to Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. I continue that order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008: unless the Upper Tribunal or a court directs otherwise, no report of these proceedings or any form of publication thereof shall identify the original appellant, whether directly or indirectly. This order applies to, amongst others, all parties. Any failure to comply with this order could give rise to contempt of court proceedings.

1. The appellant appeals with leave granted by the Court of Appeal against the decision of the First-tier Tribunal dismissing his appeal on asylum grounds against the respondent's refusal to grant refugee status, humanitarian protection or leave to remain on human rights grounds.
2. The appellant's history is summarised as set out in his core account at paragraphs 14 to 16 of the First-tier Tribunal decision and I note in particular that the appellant says that he became a volunteer assistant for the TGTE, which is a banned organisation in the United Kingdom, and that he has demonstrated in the United Kingdom in 2009, 2010, 2011, 2012, 2013 and 2014 and involved himself in the TGTE's Signature Campaign.
3. The appellant's account is that he was the subject of persecution on his return to Sri Lanka in 2014 based on that activity. He produced a report from Professor Sundaralingam, who found eleven scars on the appellant's back and upper arms which were Istanbul Protocol consistent with being burnt with a heated metal rod more than a year earlier and therefore potentially in 2014 when the appellant says he returned to Sri Lanka. Professor Sundaralingam found those scars to be clinically diagnostic of the incident but could not of course state whether the appellant had requested that they be inflicted.
4. The First-tier Judge made two errors of law, the first being his finding at [25] that there was no evidence to show that agents of the Sri Lankan authorities had infiltrated proscribed organisations in the United Kingdom, which is contrary to country guidance given by this Tribunal in *GJ* (post-civil war: returnees) Sri Lanka CG (Rev 1) [2013] UKUT 319 (IAC).
5. The second error relates to the Tribunal's erroneous application of its negative credibility conclusion to the reliability of Professor Sundaralingam's expert report. In *Mibanga v Secretary of State for the Home Department* [2005] EWCA Civ 367 in the Court of Appeal, Mr Justice Wilson said this at [24]:

"24. It seems to me to be axiomatic that a fact-finder must not reach his or her conclusion before surveying all the evidence relevant thereto. Just as, if I may take a banal if alliterative example, one cannot make a cake with only one ingredient, so also frequently one cannot make a case, in the sense of establishing its truth, otherwise than by combination of a number of pieces of evidence. ... What the fact-finder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence. Mr Tam has drawn the court's attention to a decision of the tribunal dated 5 November 2004, namely [HE \(DRC - Credibility and Psychiatric Reports\) \[2004\] UKIAT 00321](#) in which, in paragraph 22, it 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."

That is precisely the error into which the First-tier Tribunal fell in this appeal.

6. On the basis of these two errors this determination cannot stand and the appeal will be remitted to the First-tier Tribunal for remaking afresh. No findings of fact or credibility are to be preserved.

Conclusions

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

I set aside the decision. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Signed: *Judith A J C Gleeson*
Upper Tribunal Judge Gleeson

Date: 14 September 2017