



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

Appeal Number: AA/12961/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 16 May 2017**

**Decision & Reasons Promulgated
On 24 May 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

K A

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Whitwell, Home Office Presenting Officer.

For the Respondent: Ms F Alan, Counsel.

DECISION AND REASONS

1. The Appellant in this case is the Secretary of State for the Home Department. However, for the sake of clarity, I shall use the titles by which parties were known before the First-tier Tribunal with the Secretary of State referred to as "the Respondent" and K A as "the Appellant".
2. The Appellant is a citizen of Sri Lanka who appealed against a decision of the Respondent granting him asylum and to remove him from the United Kingdom by way of directions under paragraphs 8-10 of Schedule 2 of the Immigration Act 1971. The Appellant also relied on human rights grounds.

3. The Appellant's appeal was heard by Judge of the First-tier Tribunal Fletcher-Hill who in a decision promulgated on 23 December 2016 dismissed it on asylum, humanitarian protection and human rights grounds.
4. The Respondent sought permission to appeal which was granted by Judge of the First-tier Tribunal Saffer on 6 April 2017. His reasons for so doing were:-
 - "1. The Respondent seeks permission to appeal against a decision of First-tier Tribunal Judge Fletcher-Hill promulgated on 23 December 2016 whereby the appeal against the decision to refuse to grant asylum or ancillary protection was allowed.
 2. I am satisfied that the application is in time as it was received on 6 January 2017.
 3. It is arguable that the Judge did not engage with the Respondent's credibility attack when considering the account. This arguably also undermines the findings regarding risk on return. All grounds may be argued."
5. Thus the appeal came before me today.
6. In making his submissions Mr Whitwell relied upon the grounds seeking permission to appeal. He also relied on the authority of **Mibanga [2005] EWCA Civ 367** and submitted that in the appeal before me the Judge erred in considering the medical evidence and then immediately finding the Appellant to be politically active in Sri Lanka. Thereafter, he explained that his strongest argument was in relation to the second ground. The Judge has failed to engage with all of the evidence and in particular issues raised in the refusal letter relating to the Appellant's credibility at paragraphs 22 to 28 thereof. Finally the Judge has failed to give adequate reasons for holding that the Appellant is a refugee sur place.
7. Ms Alan resisted these grounds. She urged me to accept that it was necessary to look at the totality of the decision. The Judge had, contrary to the grounds, connected with Respondent's reasons for refusal letter. This is referred to in the Judge's decision at paragraph 2.1 where the Judge details the documentation she has taken into account prior to making her decision and at paragraph 5.1 where she records the representations of both advocates as to the issues that were in play. Further references were made to the refusal letter at paragraph 7.1 and again the representations of the advocates at 7.2. The decision sets out fully the issues raised by the Respondent and at paragraphs 9.2 to 9.9 there is a credibility assessment including consideration of Section 8 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004. Paragraph 25 of the refusal letter asserts that the Appellant has provided no independent evidence of his alleged arrest, torture and detention or his claim to have been severely beaten or of any injuries. This was met by the expert medical reports submitted at the hearing which the Judge properly took into account when carrying out her credibility assessment. Beyond that the Judge has taken

into account the Appellant's own evidence including at paragraph 9.11 of the decision that in relation to his sur place activities.

8. I accept the totality of the submissions made by Ms Alan. Mr Whitwell indicated that ground (b) was his strongest. On any reading of the decision the Judge has given adequate reasons for coming to the conclusions that she did and has fully taken into account the totality of the arguments raised in relation to the Appellant's credibility contained within the Respondent's refusal letter. Further ground (a) is simply factually incorrect. The Judge has not leapt from a consideration of the medical evidence to reach an immediate finding that the Appellant was politically active in Sri Lanka. Paragraph 9.10 of the Judge's decision is nothing more than a recital that it was incumbent upon the Judge to take into account the authority of **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013]** and other background material.
9. This is a careful decision where the Judge has taken into account the totality of the evidence that was before her before coming to findings that were open to be made on that evidence. She has not materially erred as asserted by the Respondent. She was entitled to find that the Appellant was a credible witness and taking into account the evidence not only from him but also contained within the medical report. In so doing she has engaged with the totality of the Respondent's concerns regarding the Appellant's credibility. Those concerns were met not only by the Appellant's own evidence but also by that from the medical expert. The Judge has not simply relied upon the medical evidence before coming to her conclusions. This is an adequately reasoned decision dealing with all issues in the appeal and does not contain material errors as asserted by the Respondent.

Conclusions

10. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.
11. I do not set aside the decision.

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 23 May 2017

Deputy Upper Tribunal Judge Appleyard

TO THE RESPONDENT
FEE AWARD

No fee was paid or payable as the Appellant was fee exempt.

Signed

Date 23 May 2017

Deputy Upper Tribunal Judge Appleyard