



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/02710/2015

THE IMMIGRATION ACTS

Heard at Field House  
On 9 April 2018

Decision & Reasons Promulgated  
On 18 April 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

SS  
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mackenzie, of Counsel, instructed by York Solicitors  
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a citizen of Sri Lanka, born on 6 January 1992 appeals against a decision of Judge of the First-tier Tribunal O'Garro who, in a determination promulgated on 22 January 2018, dismissed her appeal against a decision of the Secretary of State made on 30 June 2016 to refuse to grant her asylum and humanitarian protection under paragraphs 336 and 339F of HC 395.
2. At the hearing of the appeal before me both representatives agreed that there was a material error of law in the determination of the First-tier Judge. The judge had considered the appellant's claim in detail and I consider that she properly took into account the background evidence before her, as well as the evidence of the appellant

and that she again correctly stated what she believed and what she did not. However, the concern of both representatives was that the judge had before her medical evidence which she did not consider until after she had made strong findings of fact that the appellant was not credible.

3. The grounds of appeal referred to the judgment of the Court of Appeal in **Mibanga v SSHD [2004] EWCA Civ 367** where Wilson J had said:-

“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.”

4. The grounds also referred to the judgment in **SA (Somalia) v SSHD [2006] EWCA Civ 1302** and **R v Special Adjudicator, ex p Virjon [2002] EWHC 1469 (Admin)** where it was stated that:-

“The Adjudicator uses her adverse findings of credibility with regard to the claimant and his wife as a means whereby to reject the important significant evidence of [two doctors]. That was putting the cart before the horse.”

5. Moreover, the judge had not made any findings regarding the risk to the appellant as a lone woman returning to her home area in Sri Lanka and it was asserted that the judge had erred in her consideration of the evidence of the supporting witness, as well as failing to make sustainable findings on suicide risk. The parties agreed that those grounds of appeal had merit and indicated a material error of law in the determination.
6. I agree with the joint submissions made to me by both representatives and I set aside the decision of the First-tier Judge. Although Mr Mackenzie asked that I preserve the positive findings of the judge I do not consider that that is appropriate and I consider that the appropriate action is for the appeal to be heard afresh on all grounds.
7. I consider it appropriate to remit the appeal to the First-tier Tribunal taking into account the guidance in the Practice Directions of the Senior President of Tribunals where findings of fact are required.

### **Notice of Decision**

The decision of the First-tier Judge is set aside.

### **Directions**

The appeal is to proceed to a hearing in the First-tier Tribunal at Hatton Cross. Time estimate, three hours. A Tamil interpreter is required.

**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: 13 April 2018

Deputy Upper Tribunal Judge McGeachy