



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/03656/2017

THE IMMIGRATION ACTS

Heard at Field House
On 24 July 2018

Decision & Reasons Promulgated
On 31 July 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

PJUR
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. A. Kaihira, instructed by Samuel Louis Solicitors
For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Sweet, promulgated on 2 November 2017, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. As this is an asylum appeal I make an anonymity direction.
3. Permission to appeal was granted as follows:

"It is however arguable, on a Robinson obvious basis, that the decision errs for failure to explain why the extensive medical evidence and the detailed witness statement did not add to the credibility of the claim, and it is arguable that there

has been a failure to balance these positive aspects going to the credibility of the claim with the negative ones (delay and incomplete initial disclosure at interview) and thus to consider all of the evidence in the round.”

4. I heard oral submissions from both representatives following which I stated that I found the decision involved the making of a material error of law. I set the decision aside and remitted it to the First-tier Tribunal.

Error of Law

5. The findings are set out from [30] to [42]. There is a reference to witness evidence at [33]. At [34] to [36] there is reference to the medical evidence. At [37] and [38] the Judge states:

“The appellant was somewhat tearful during the giving of some of his cross-examination evidence, but overall I found the appellant was able to answer the questions put to him. Applying the lower standard of proof, I have not found him a credible witness. I do not accept that he was not able to provide full details of the two alleged arrests and mistreatment during his screening or asylum interview. He confirmed that the evidence he had given at those interviews was truthful and complete. Nor was I persuaded that he gave limited evidence during the interviews because of advice from his then solicitors.

I was not persuaded that his late application for asylum was justified by the evidence that he had existing leave to stay as the dependant on his wife’s spousal visa until 2015. If he was really at risk on return, he should have claimed asylum at the earliest possible opportunity (though there is a suggestion that he may have earlier claimed asylum in Canada, albeit without success). I treat his late application for asylum as affecting his credibility under s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.”

6. At [39] the Judge refers to the lack of evidence regarding the Appellant’s claim to have given evidence to the LLRC. At [40] he finds that the Appellant’s credibility is damaged by the claimed sur place activity. However, there is no consideration at all of the Appellant’s account of events in Sri Lanka. The Judge has found that the Appellant is not credible but he has not examined the Appellant’s account in any detail. There is no reference to the detailed witness statement. The Appellant’s account is dismissed due to his failure to provide details of the arrests and mistreatment at his interviews, and due to his failure to claim asylum earlier, without proper consideration of the evidence of his account.
7. Further when finding the Appellant not to be credible, there is no reference to the medical evidence. Given that the medical evidence indicated that the Appellant was suffering from PTSD and depression, the Judge should have applied the Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance. There is no indication that the Judge was asked to consider this by the Appellant’s representative, but it is a judge’s duty to consider the guidance note when an appellant is vulnerable. The evidence must be treated in accordance with the guidance. The failure to do so is an error of law.
8. I find that the Judge has given inadequate reasons for finding the Appellant not credible. He has failed to consider the evidence in the round, notably the medical

evidence and the Appellant's witness statement. Inadequate reasons have been given for dismissing the Appellant's appeal, and there has been a failure to treat the Appellant's evidence in accordance with the guidance.

9. I find that the decision involves the making of material errors of law. I have taken account of the Practice Statement dated 10 February 2010, paragraph 7.2. This contemplates that an appeal may be remitted to the First-tier Tribunal where the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for the party's case to be put to and considered by the First-tier Tribunal. Given the nature and extent of the fact-finding necessary to enable this appeal to be remade, having regard to the overriding objective, I find that it is appropriate to remit this case to the First-tier Tribunal.

Decision

10. The decision of the First-tier Tribunal involves the making of a material error of law and I set the decision aside.
11. The appeal is remitted to the First-tier Tribunal to be re-heard.
12. The appeal is not to be heard by Judge Sweet.

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 his 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
Deputy Upper Tribunal Judge Chamberlain

Date 25 July 2018