



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/06727/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 17th January 2018

Promulgated

On 15th February 2018

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MR AS S D G
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy instructed by Loshana Solicitors
For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Sri Lanka of Sinhalese ethnicity born on 13th March 1981 and is married and has one child born in the UK on 14th September 2016. He appealed a decision of the Secretary of State dated 14th June 2016 refusing his claim for asylum. His appeal was dismissed before the First-tier Tribunal on 6th July 2017 by First-tier Tribunal Judge Griffith.

2. The appellant claimed he had worked in a bank in Sri Lanka and that he had assisted the LTTE having opened more than 100 accounts. He was at risk of return, he claimed, from the authorities in Sri Lanka because of his connection with the LTTE. The Secretary of State refused to accept that he had any issues with the Sri Lankan Authorities but even so pointed out the appellant had left the country on his own passport rendering his account that he left Sri Lanka on a false document implausible. If he had been of any interest to the authorities there was ample opportunity for him to be apprehended on legal exit.
3. The application for permission to appeal challenged the decision on two grounds: (i) the credibility assessment and (ii) the assessment of the evidence by the judge. It was also asserted that the judge materially erred in law by making a material mistake as to fact. It was not the appellant's evidence that he opened bank accounts with bogus ID cards and secondly the judge failed to engage with Counsel's submissions pertaining to the reason that the appellant was not arrested at the airport was due to the fact that he was not on the stop list though he may have been on a watch list which is why he encountered problems later on with the Authorities. The judge materially erred in law by failing to give the appellant the benefit of the doubt in relation to his account of using an agent to avoid checkpoints and to leave Sri Lanka unhindered with the assistance of an agent.
4. On ground (ii) in his assessment of the psychiatric evidence the judge did not engage with any of the clinical findings of Dr Dhumad but further the judge failed to make any findings in relation to the appellant's wife's evidence notwithstanding her being tendered to give evidence and also being cross-examined and asked questions by the judge.
5. At the hearing before me Mr Paramjorthy also identified that the appellant had handed in a letter from his father written in English and this too had not been taken into account by the judge.
6. At the hearing Mr Paramjorthy emphasised the importance of the wife's evidence because she had returned in 2014 to Sri Lanka and gave evidence of the appellant's father informing her of the arrest and the methods used for his release together with the information with regards the agent by passing the checkpoints on departure from Sri Lanka.
7. Ms Willocks-Briscoe conceded that the judge had nowhere addressed the evidence of either the wife or the letter.

Conclusions

8. I am persuaded that there are indeed errors of law in this decision which are material. There was specific evidence put before the judge which was not addressed. The judge made findings on credibility and yet failed to address the evidence of the wife which was relevant to the appellant's his exit from Sri Lanka, which was germane to credibility, and failed to address the evidence of the father. Where a witness account is corroborated by another witness' account this can add to its credibility **SA**

Iran [2012] EWHC 2575 and thus should have been assessed. In addition **AK Turkey** [2004] UKIAT 00230 confirms that *'save in those exceptional cases where the material facts are not in issue between the parties, it is an essential part of an adjudicator's responsibility to make clear findings of fact on the material issues and to give proper intelligible and adequate reasons for arriving at those findings'*.

9. The absence of the assessment of this evidence which was relevant and material is a fundamental error in the decision which goes to the heart of the adverse credibility finding.

10. The judge made adverse credibility findings against the appellant on the basis of his activities in the bank and that he returned to Sri Lanka for a holiday in 2014. At the end of the conclusions on credibility the judge stated

"I have read the report of the consultant psychiatrist dated 15th June 2017. The narrative is based on what the appellant told Dr Dhumad, which I have found to be lacking in credibility".

11. This assessment appears to be an appendix as opposed to part of the overall findings on credibility. Contrary to the guidance in **Mibanga [2005] EWCA Civ 367** the judge appears to have merely added on his findings in relation to the medical report following on from the assessment in relation to credibility without addressing the medical report itself.

12. The findings on the evidence and credibility are fundamental. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

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 Helen Rimington
2018

Date 12th February

Upper Tribunal Judge Rimington