



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/13472/2016

THE IMMIGRATION ACTS

Heard at Field House
On 11 May 2018

Decision & Reasons Promulgated
On 22 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

Mrs MARTINA STEFFI VELANTINA FERNANDO
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss K Wass (counsel) instructed by David Benson Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Ghani promulgated on 14 August 2017, which dismissed the Appellant's appeal on all grounds.

Background

3. The Appellant was born on 25 November 1987 and is a national of Sri Lanka. On 21 November 2016 the Secretary of State refused the Appellant's protection claim.

The Judge's Decision

4. The Appellant appealed to the First-tier Tribunal. First-tier Tribunal Judge Ghani ("the Judge") dismissed the appeal against the Respondent's decision. Grounds of appeal were lodged and on 26 January 2018 Upper Tribunal Judge Plimmer gave permission to appeal stating

1. It is arguable that the errors of fact identified in the grounds of appeal may have caused unfairness. It is also arguable that the First-tier Tribunal engaged in speculation entirely unsupported by any evidence in giving credence to the possibility that the appellant's scars were caused with the assistance of her husband
2. All grounds are arguable.

The Hearing

5. Ms Wass, for the appellant moved the grounds of appeal. She took me to [22] and [31] of the decision and told me that, there, the Judge made a fundamental error of fact. She told me that in both paragraphs the Judge sets out a chronology from which the Judge finds that the appellant delayed in making a claim for asylum and that the appellant's husband's claim for asylum (which was unsuccessful and came to an end in 2010) is devoid of an account of the appellant's own fear of return to Sri Lanka.

(b) Ms Wass told me that the Judge's error is that the appellant is her husband's second wife. The appellant did not meet her husband until January 2011, so that none of the facts and circumstances of her claim could have featured as part of her husband's claim. In addition, the appellant's fear only crystallised in April 2016 when (the appellant says) her brother was arrested in Sri Lanka. The appellant claimed asylum in May 2016. Ms Wass told me that the chronology that the Judge sets out at [24] places undue emphasis on the chronology of the appellant's husband's unsuccessful asylum claim.

(c) Ms Wass took me to [35] of the decision and told me that the Judge's treatment of the medical evidence was inadequate. She told me that, there, the Judge makes a speculative finding that the appellant's husband helped the appellant to intentionally scar the appellant to bolster her claim. She told me that finding clearly ignored the conclusions of Dr Martin in the medical report which was placed before the First-tier Tribunal. Ms Wass told me that the finding is drawn solely from the Judge's speculation and has no evidential basis.

(d) Ms Wass turned to [30] of the decision and told me that the Judge has misinterpreted paragraph 170 of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and placed undue reliance on the appellant's ability to

leave Sri Lanka through an airport. He told me that the Judge places undue weight on the appellant's ability to leave Sri Lanka, and closed his mind to the existence of corruption in Sri Lanka.

(e) Ms Wass turned to [35] decision and told me that the Judge has taken an incorrect approach to a letter from the Sri Lankan MP relied on by the appellant. Ms Wass relied on PJ (Sri Lanka) v SSHD [2014] EWCA Civ 1011 and argued that the respondent had adequate time to carry out any authenticity checks on the letter, and that the Judge did not consider whether or not further investigation was required.

(f) Ms Wass took me to [34] of the decision and told me that the Judge has taken an incorrect approach to evidence of mental illness. She told me that the Judge's conclusion that the appellant's depressive illness is linked to the possibility of return to Sri Lanka fails to take account of the diagnosis of PTSD made by Dr Dhummad. She urged me to set the decision aside and to remit this case to the First-tier for a hearing *de novo*

6.(a) For the respondent, Ms Everett accepted that the Judge had made errors of fact by failing to appreciate that the appellant first met her husband in 2011. She accepted that the error of fact was a significant portion but told me that at [33] the Judge gives reasons for finding that the central aspects of the appellant's claim are unreliable. She told me that the Judge gives cogent reasons for finding that the appellant has delayed in making her claim.

(b) Ms Everett told me that notwithstanding what was said on the rule 24 response for the respondent, the Judge's treatment of the Sri Lankan MP's letter was a "tricky area", but reminded me of Tanveer Ahmed 2002 UKIAT 00439. She told me that the Judge considered the documents in the round. She told me that there is no requirement on the respondent to verify documents and that the Judge had simply given little evidential value to a document rather than made a finding that the document is a forgery.

(c) Ms Everett turned to the Judge's treatment of the medical evidence and his findings in relation to scars at [35] of the decision. Ms Everett told me that the Judge is not making a positive finding that the appellant's scarring is from assisted self-inflicted wounding, instead the Judge's finds that there are a number of alternative explanations for such scarring. She told with [35] contains findings that the Judge was entitled to make. She urged me to dismiss the appeal and to allow the decision to stand.

Analysis

7. It is common ground that the Judge repeated an error made by the respondent in the reasons for refusal letter. The appellant did not meet her husband until 2011. They met in the UK. At [31] the Judge finds that the appellant's husband's claim (which came to an end before the appellant met her husband) makes no mention of

the appellant's claim & so leads to an adverse credibility finding because of section 8 of the Immigration and Asylum (Treatment of Claimants etc) Act 2004.

8. The error at [31] is compounded by what the Judge says at [32]. There, the Judge quotes from the decision in the appellant's husband's unsuccessful appeal, and in the final sentence of [32] says

This casts serious doubts on the appellant's claim of her arrest and detention....

9. At [35] the Judge considers scarring report prepared by Dr Martin. Dr Martin's conclusion is that the scars on the appellant's hand are highly consistent with injuries intentionally and unwillingly caused by a third party. Those same scars are highly consistent with the appellant's account of torture. None of the appellant scars are suggestive of self-infliction. In his report Dr Martin considers each of the appellant's scars and considers other possible intentional causes of scarring apart from torture, and concludes that none of the scars self-inflicted.

10. Dr Martin does not say in his report that the scars may be from wounds inflicted by the appellant's husband. The conclusion that the Judge reaches at [35] is that Dr Martin says that there are many other alternative courses of scarring and

The inference that the scars were caused with the assistance of the appellant's husband I find cannot be discounted.

11. The Judge does not say where that inference comes from. The Judge's finding that there are other alternative courses of scarring ignores the conclusions of Dr Martin, which discard those possible causes and find that the scarring is consistent with the appellant's account of torture.

12. Associating the appellant with her husband's asylum claim, which ended before the appellant met her husband, undermines the Judge's credibility assessment; it leads to an error of fact. When that error of fact is placed next to what appears to be the preference of an unidentified inference over the conclusion of Dr Martin in his scarring report, the Judge's credibility assessment is unsafe. The Judge's treatment of the chronology of the appellant's claim, the incorrect association of the appellant's claim with her husband's earlier asylum claim and the treatment of the medical evidence amount to a material error of law.

14. Because of the nature of the material error of law I set the decision aside. Parties agree that if I find a material error of law, none of the Judge's findings of fact can stand and a new fact-finding exercise is required. I consider whether or not I can substitute my own decision but find that I cannot do so because of the extent of the fact-finding exercise necessary.

Remittal to First-Tier Tribunal

15. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25th of September 2012 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

16. In this case I have determined that the case should be remitted because a new fact-finding exercise is required. None of the findings of fact are to stand and a complete re-hearing is necessary.

17. I remit this case to the First-tier Tribunal sitting at Birmingham to be heard before any First-tier Judge other than Judge Ghani.

Decision

The decision of the First-tier Tribunal is tainted by material errors of law.

I set aside the Judge's decision promulgated on 14 August 2017. The appeal is remitted to the First-tier Tribunal to be determined of new.

Signed *Paul Doyle*

Date: 17 May 2018

Deputy Upper Tribunal Judge Doyle