



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

Appeal Number: PA/02906/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 28 March 2019**

**Decision & Reasons Promulgated
On 02 April 2019**

Before

**LORD UIST
UPPER TRIBUNAL JUDGE KAMARA**

Between

**JS
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, counsel instructed by Duncan Lewis & Co
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge E B Grant, promulgated on 6 March 2018. Permission to appeal was granted by the Vice President of the Upper Tribunal on 18 February 2019.

Anonymity

2. An anonymity direction was sought and granted in view of the appellant's vulnerability as an asylum-seeker.

Background

3. On 30 September 2006 the appellant entered the United Kingdom with entry clearance as a student. He overstayed and came to light after he was arrested for affray in October 2011. At that point he applied for asylum. There followed convictions for assault occasioning actual bodily harm, theft, criminal damage, being drunk and disorderly and affray between 2011 and 2014. The appellant absconded from immigration control and in 2012 his asylum claim was treated as being withdrawn.
4. On 13 July 2015 the appellant was convicted of assault occasioning actual bodily harm and sentenced to 14 months' imprisonment. He also received an additional 16 weeks' imprisonment for breaching a suspended sentence. The Secretary of State served the appellant with notice of a decision to deport him on 28 July 2015, following which the appellant resurrected his asylum claim.
5. The deportation order was signed on 9 March 2016. In refusing the appellant's protection and human rights claim, the Secretary of State rejected, for want of credibility, the appellant's claim that he was a member of the LTTE and that he was detained and ill-treated for spying on a Sri Lankan Army officer for the LTTE. Nor was it accepted that his attendance at a single demonstration in the United Kingdom would create a real risk of persecution. A decision was also made to exclude the appellant from a grant of Humanitarian Protection under paragraph 338D(iii) of the Immigration Rules owing to his most recent conviction and imprisonment. Regarding the free-standing Article 3 claim owing to the claim that the appellant suffered from PTSD, it was noted that he had not shown he was receiving medication in the United Kingdom and that treatment was available in Sri Lanka. As for the Article 8 claim, the respondent noted that the appellant could meet none of the exceptions to deportation set out in paragraphs 399a and 399A of the Rules and there were no very compelling circumstances.

The hearing before the First-tier Tribunal

6. Following the hearing before the First-tier Tribunal, the judge found that the appellant had fabricated his entire account owing to his poor immigration history, inconsistencies and that his account was implausible or incredible in several respects. The judge did not accept that the medical evidence amounted to credible, corroborative evidence of the appellant's claim.

The grounds of appeal

7. The grounds of appeal argued that there had been two instances of a failure by the First-tier Tribunal to assess the evidence in the round. The

first arguable error was in respect of the country expert report and the second was in respect of the medico-legal report. In addition, it was said that the judge failed to take into consideration various aspects of the medical evidence.

8. The appellant was refused permission to appeal by both the First-tier Tribunal and the Upper Tribunal. His application for judicial review of that decision was refused by the Administrative Court on 30 January 2018.
9. The appellant was granted permission by the Court of Appeal to judicially review the refusal of permission by the Upper Tribunal on 14 December 2018. The reasons provided by Henderson LJ were that it was arguable that the decisions of the First-tier Tribunal and Upper Tribunal were wrong in law. The First-tier Tribunal had arguably failed to take the medical evidence into account as part of a holistic assessment of all the evidence and the Upper Tribunal had failed to appreciate this fundamental error in the approach of the First-tier Tribunal.
10. The matter was remitted to the Administrative Court and on 1 February 2019 the decision of the Upper Tribunal to refuse permission to appeal was quashed.
11. Permission to appeal was granted by the Vice President of the Upper Tribunal in light of the comments of Henderson LJ.
12. Directions were issued by the Principal Resident Judge on 1 March 2019 stating that the respondent must file and serve a Rule 24 response or, if already filed, a skeleton argument and any Rule 15(2A) notice. The appellant was similarly directed to file a skeleton argument, Rule 15(2A) notice and trial bundle.
13. The respondent's Rule 24 response, received on 14 March 2019, stated that the appeal was opposed. In summary, it was argued that the judge was entitled to consider the evidence in the order chosen and her findings did not amount to a concluded view on the entirety of the claim, HH (Ethiopia) v SSHD [2007] EWCA Civ 306 applied.

The hearing

14. Mr Bandegani and Mr Walker both advised the panel that they agreed that the First-tier Tribunal made material errors of law in failing to adequately consider the expert reports. They further agreed that the appeal should be remitted to the First-tier Tribunal for a de novo hearing.
15. We advised the representatives that we consented to the proposed course of action.

Decision on error of law

16. Given the agreement of the legal representatives, we can be brief.

17. The First-tier Tribunal erred in considering the medical report from Freedom from Torture separately and only after arriving at a firm conclusion on the credibility of the appellant's claim. The medical evidence was not considered in the round, AM (Afghanistan) v SSHD (EWCA) Civ 1123 considered. Furthermore, the judge erred in finding that the appellant's scarring was merely consistent with his account of torture whereas the medical evidence was that overall the scarring was "highly consistent" with that account. The First-tier Tribunal took no account of the impact of the appellant's diagnosis of PTSD, significant depression and alcohol use on his ability to provide a consistent account.
18. There was no reference to the content of the expert country evidence of Dr Chris Smith in the First-tier Tribunal's decision and reasons. Nor was there any assessment of the expert's conclusions. If the judge rejected the expert evidence, no reasons were provided for doing so. The expert evidence addressed issues pertaining to the plausibility of the appellant's account, which the judge did not take into consideration in reaching her findings.
19. In these circumstances we are satisfied that there are errors of law such that the decision must be set aside and remade. None of the findings of the First-tier Tribunal Judge are to stand.
20. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration.

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

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

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard at Hatton Cross, with a time estimate of 4 hours by any judge except First-tier Tribunal Judge E B Grant

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 28th March 2019

Upper Tribunal Judge Kamara