



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: PA/07449/2019 (P)

THE IMMIGRATION ACTS

Decided under rule 34

Decision & Reasons Promulgated

On 27 June 2020

On 14th July 2020

Before

UPPER TRIBUNAL JUDGE FINCH

Between

M.K.N.A.

(ANONYMITY ORDER MAINTAINED)

Appellant

-and-

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant was born in Sri Lanka and claimed asylum on 10 October 2012, but this application was refused and she had exhausted her appeal rights by 21 October 2013. She lodged further submissions on 5 June 2019, which the Respondent accepted amounted to a fresh claim for asylum, but her application was refused on 5 August 2019.

2. She appealed against this decision and First-tier Tribunal Judge O'Garro dismissed her appeal in a decision promulgated on 10 January 2020. She appealed against this decision and First-tier Tribunal Judge Chohan granted her permission to appeal to the Upper Tribunal on 19 February 2020. She found that it was arguable that First-tier Tribunal Judge O'Garro relied on adverse findings of First-tier Tribunal Judge Thornton in his decision promulgated on 26 February 2013 but failed to take into account the subsequent findings made by Upper Tribunal Judge Hanson in his decision promulgated on 18 August 2013. She also found that First-tier Tribunal Judge O'Garro had given very few reasons for rejecting the country expert report on which the Appellant relied at the hearing before her.
3. An error of law hearing had been set down for 12 May 2020 but had to be vacated in the light of the Covid-19 Pandemic. Directions made by Upper Tribunal Judge Rimington were then sent to the parties on 24 April 2020. She said that she was minded to decide the error of law hearing on the papers and also decide whether the decision by First-tier Tribunal Judge O'Garro should be set aside.
4. She gave the parties 21 days to object to this course of action. The Appellant lodged her skeleton argument in response to the directions on 11 May 2020 and did not object to decisions being made on the papers. The Respondent replied on 15 May 2020. She said that she did not oppose the Appellant's grounds and also acknowledged the frailty of First-tier Tribunal Judge O'Garro's decision. She also stated that in her opinion the matter should be remitted to the First-tier Tribunal for a *de novo* hearing. Therefore, I have proceeded to decide whether there was an error of law on the papers, as it is in the interests of justice for there to be no further unnecessary delay in this appeal.

ERROR OF LAW DECISION

5. The basis upon which the Appellant made her fresh claim for asylum was different to her previous claim and she relied on a very detailed expert report by Dr. Rachel Seoighe, a lecturer in criminology at the University of Kent. Her PhD addressed the subject of the civil war in Sri Lanka, human rights and collective memory. Her CV also confirmed that she had visited Sri Lanka and keeps in close touch with events there. In a very detailed report covering 62 pages she addressed a number of questions put to her by the Appellant's solicitors about the persecution the Appellant said that she suffered in the past and her future risk of persecution, including the risk which would occur if she returned as the single female head of a household. First-tier Tribunal Judge O'Garro only mentioned this expert report in passing in paragraphs 29 and 30 of her decision. She did not apply anxious scrutiny to it or consider her fresh claim in the light of it. It was not sufficient just to refer in general to reasons given by the Respondent in her decision letter.
6. In paragraph 25 of her decision she treated First-tier Tribunal Judge Thornton's decision, promulgated on 26 February 2013 as her starting point. In doing so she erred in law, as in his decision promulgated on 18 August 2018 Upper Tribunal Judge Hanson reached very different findings of fact in relation to the Appellant's past persecution. In particular, at paragraph 10 he said:

“I accept that the appellant's account is plausible in light of the country information and that if she was detained during the final stages of the conflict and

suspected of LTTE membership or of being an LTTE fighter, she may have been subjected to ill-treatment by the Sri Lankan authorities which could include torture in the manner described by her in evidence”.

7. The fact that First-tier Tribunal Judge O’Garro did not take into account Upper Tribunal Judge Hanson’s decision also undermined her findings of fact in relation to the report by Dr. O’Grady in paragraph 31 of her decision and Dr. Jensen in paragraph 33 of her decision.
8. For all of these reasons, First-tier Tribunal Judge O’Garro’s decision contained material errors of law.

DECISION

- (1) The Appellant’s appeal is allowed.
- (2) First-tier Tribunal Judge O’Garro’s decision is set aside.
- (3) The appeal is remitted to the First-tier Tribunal for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge O’Garro, Chohan or Thornton.

Nadine Finch

Signed
Upper Tribunal Judge Finch

Date 27 June 2020