



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/07016/2013

THE IMMIGRATION ACTS

Heard at Field House
On 18th February 2014

Determination Promulgated
On 19th February 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR PARTHEEPAN RATNAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah (instructed by Aston Bond Law Firm)
For the Respondent: Mr G Jack (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant appeals to the Upper Tribunal against a decision of the First-tier Tribunal (Judge Napthine) by which, in a determination dated 28th November 2013, he dismissed the Appellant's appeal against the Secretary of State's decision to refuse his asylum claim and to return him to Sri Lanka.
2. The grounds upon which permission to appeal was granted are lengthy but in essence argue that the First-tier Tribunal Judge gave insufficient reasons for his findings and failed to engage with the Appellant's evidence.

3. The determination, which Mr Jack sought to argue was sustainable, makes several adverse findings against the Appellant. However, I find that there are numerous errors in the determination.
4. At paragraph 33 the Judge stated that the Appellant had failed to claim asylum upon his return to the UK and had given no reasonable explanation for that failure which the Judge said affected the credibility of his core claim. In so finding the Judge has given no consideration to the explanation given by the Appellant. It would have been open to the Judge to legitimately reject that explanation but he did need to deal with it and he did not.
5. The Judge then goes on from paragraph 34 to 45 to make numerous observations about the Appellant's claim as to what took place in Sri Lanka and then at paragraph 46 found that the Appellant's account of his arrest and mistreatment was incredible. Having so found the Judge went on at paragraph 49 to say that the Appellant was a person without a profile who would be of no interest to anyone. Only after those findings did the Judge, at paragraph 53, start to consider the medical evidence before him. The Judge was provided with a report by Professor Lingam and he was also provided with a report by a consultant psychiatrist with regard to the Appellant's mental state. In making the adverse credibility findings prior to giving any consideration to the medical evidence the Judge erred. It is trite law that it is a Judge's duty to look at all of the evidence together before reaching any findings.
6. Furthermore, the Judge at paragraph 57 notes that Professor Lingam did not address the question of whether the scars may have been inflicted since the Appellant's arrival in the UK. However, this was never suggested by the Secretary of State nor raised as an issue. There was no evidence to support such a conclusion and no reason for the experts to have dealt with it. In speculating that this may have been the cause of the scars the Judge erred.
7. I find the way in which the Judge approached the assessment of credibility in this determination to be flawed and indeed so flawed as to render all of the credibility findings unsafe. I therefore set aside the determination in its entirety. The appeal will need to be reheard. I preserve no findings whatsoever.
8. Given the nature of the rehearing I agree with both representatives that it is, unusually, an appropriate case to be remitted for rehearing before the First-tier Tribunal before a Judge other than Judge Naphtine.
9. Accordingly the appeal to the Upper Tribunal is allowed to the extent that the determination is set aside. The appeal is remitted to the First-tier Tribunal for a full rehearing on all matters.

Signed

Date 18th February 2014

Upper Tribunal Judge Martin