



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

Appeal Number: AA/08658/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd June 2014**

**Determination Sent
On 2nd June 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**SS
(Anonymity Direction Made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paramjorthy instructed by Vasuki Solicitors
For the Respondent: Mr J Parkinson, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Sri Lanka born on 25th December 1987 and he appealed against a decision dated 30th August 2013 to remove him as an illegal entrant further to Section 10 of the Immigration and Asylum Act 1999 following a refusal to grant her asylum, humanitarian protection and protection under the European Convention.

2. On 31st March 2014 First-tier Tribunal Judge Beach dismissed the appellant's appeal on grounds of asylum, humanitarian protection and protection under the European Convention.

Application for Permission to Appeal

3. An application for permission to appeal was made by the appellant and asserted that the judge had erred in law in the following ways.
4. First, by finding that the appellant's account was vague and lacked detail. The judge failed to engage with the evidence in his witness statement.
5. The judge failed to particularise why the mental health issues as stated in the Psychiatric report did not support his account of being unable to remember the name of the camp he claimed he was kept in for 5 years.
6. The judge had failed to give weight to the clinical findings in the medical report on scarring as to causation and consistency with the appellant's account.
7. The judge failed to engage with counsel's submissions on the background evidence including the country of origin information report.
8. The judge had made an adverse credibility finding and yet failed to engage with various aspects of the appellant's evidence, background evidence and counsel's submissions and there was insufficient consideration of the **GJ and others (Post civil war returnees) Sri Lanka CG [2013] UKUT 00319** regarding risk categories and the appellant's profile when assessing the risk to the appellant on his return.

The Hearing

9. At the hearing, Mr Paramjorthy essentially relied on the grounds for submission but emphasised that the judge had failed to take into account the appellant's psychiatric condition when assessing credibility.
10. Mr Deller submitted that there was force in the judge's finding that the appellant claimed he had only been tortured in 2008 and yet was held in detention for 5 years but noted that there appeared to be little reference to the psychiatric evidence and no reference to placing the credibility findings in the context of that evidence.
11. Neither representative could locate any reference to the witness statement in the judge's findings.

Conclusions

12. The judge made an adverse credibility finding against the appellant and, in large part, based those findings on the lack of detail and the vagueness of the appellant's account. The judge recorded that an appellant's bundle

was submitted and Mr Paramjorthy confirmed that his witness statement ran to numerous paragraphs. Not only was this witness statement not in the file but was not referred to in the judge's findings of the determination. Although the judge may have taken this into account it was not reflected in the determination. The lack of reference suggests that a key document was not taken into account and this is an error of law particularly in the circumstances where the judge made an adverse finding based on the lack of detail.

13. The judge did record that there was a psychiatric report from Dr Balasubramaniam dated 25th November 2013 which is detailed as referring to the appellant's post traumatic stress disorder, low mood, sleep disturbance and poor concentration and that he scored greater than 33 on the impact of event scale revised supporting the diagnosis. However, when assessing the evidence the judge made no reference to this report. It appeared that the judge considered this evidence in the light of possible medical treatment on return but did not place the evidence in the context of the mental health evidence. I find that the lack of reference to the psychiatric report when considering the appellant's own evidence and thus his credibility, is an error of law which goes to the heart of the findings. Much rested on the appellant's own evidence particularly with regard the details of his detention and thus when assessing the evidence in the round his mental health presentation was of significance. Further Mr Paramjorthy specifically raised before the judge, the issue of the consideration of mental health issues when assessing the reliability of the appellant's evidence and this is in fact recorded in the determination.
14. The errors with regard credibility will have an impact, in turn, on the assessment of the further medical evidence on scarring and assessment of the .the background country material when assessing risk.
15. I find that there are errors of law in the determination and that it should be set aside. As the errors are fundamental to the assessment of credibility, I find that the matter should be reheard before the First Tier Tribunal in a hearing de novo and I preserve none of the findings.

Signed

Date 2nd June 2014

Deputy Upper Tribunal Judge Rimington