



IAC-FH-NL-V1

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

Appeal Number: AA/10709/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 August 2015**

**Decision & Reasons Promulgated
On 7 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

S _ S _

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Ms S Jegarajah, Counsel instructed by Vasuki Solicitors

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Adio which was promulgated on 2 April 2015. The appellant is the Secretary of State and the grounds of appeal are narrowly stated.
2. Ground 1 which was not pursued with any vigour before me was that the First-tier Tribunal Judge failed to take into account the appellant's behaviour as was required by the statutory provision under Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 as

expanded judicially in the judgment of **Y v Secretary of State for the Home Department [2006] EWCA Civ 1223**.

3. Ground 2 was where Mr Walker, Presenting Officer for the Home Office, concentrated his argument. It maintains that the judge failed to give adequate reasons for the findings which he made and at paragraph 32 there is reference to the appellant facing problems with his first interview, a matter which the judge accepted. That point is repeated in the determination at paragraph 36. The written ground ran as follows:

“It is respectfully submitted that the Judge fails to identify what these problems were seen to be and what they were accepted as such. Whilst it is accept that the Judge does not have to give reasons it is respectfully submitted that in the absence of any explanation, however brief, the Respondent is unable to understand why the propriety of the first interview, something of some significance, was seen to be materially diminished.”

4. When permission to appeal was granted by First-tier Tribunal Judge Cruthers on 28 April 2015, the judge specifically made reference to the fact that the initial determination had used the expression “problems with his first interview” on more than one occasion without explaining what that problems may have been. The short reasons for permission concluded as follows:

“The grounds are arguable. It may be that the judge would have reached the same result irrespective of the matters referred to in the respondent’s current grounds. But because I cannot be sufficiently confident that the same result would have been reached, it is appropriate to grant permission at this stage.”

5. The facts of this case can he shortly stated. The individual concerned is a Sri Lankan citizen, born on 11 July 1985. The determination sets out his history both in Sri Lanka and subsequent to coming to the United Kingdom. I need not read into this determination any of that factual history. The determination at paragraph 15 records the evidence put before the First-tier Tribunal at that hearing. It makes reference to the respondent to this appeal confirming his name and address, to relying on his witness statement and interview records, and to “the corrections made to the interview record”.
6. In opening this matter before me this morning, Mr Walker properly indicated that it may well have been that whoever settled the grounds of appeal may not have had complete access to the paperwork which was before the First-tier Tribunal. I have been taken to that paperwork and I have been assisted by Counsel for the respondent to this appeal in directing me to a number of relevant pages.
7. As Mr Walker quite properly indicates the record of interview which appears at page B1 and following of the Secretary of State’s bundle of documentation that was before the First-tier Tribunal records a number of questions during the answering of which the respondent to this appeal became visibly upset and distressed and reference is made to the

interpreter not properly communicating the answers given in Tamil in an accurate English translation. Comments to that effect appear in the answers to questions 16 and 17 in particular as well as in the answer to question 20 overleaf. In fact the answer to question 20 states in clear terms: “applicant is crying I want a different interpreter”.

8. It would appear that shortly after the completion of that interview the solicitors then acting for the respondent to this appeal wrote to the Home Office indicating their disquiet with the record of the asylum interview and the quality of the translation. There is a letter signed by the respondent to this appeal bearing a date 12 June 2013 which states that there were mistakes in the interview statement and that the translations were not correct and that various matters had not properly been dealt with.
9. It seems to me, and I think it is accepted by Mr Walker, that that letter amounts to the corrections made to the interview record which the First-tier Tribunal Judge accepted as part of the appellant’s case as is recorded at paragraph 15 of the determination. In paragraph 32 of the determination, the First-tier Tribunal Judge makes reference to the interview and says:

“I am prepared to accept that the appellant faced problems with his first interview and that there have been a number of points made in the refusal letter concerning this interview which the appellant has attempted to correct in the statement that he has provided.”

Similarly, in paragraph 36 of the determination it is stated:

“All in all the appellant has given a credible account with regards to his past activities and in view of the problems faced during his first interview I am not willing to attach much weight to the consistencies found by the respondent in this case.” [I think that should probably read ‘inconsistencies’ but it matters not].

10. Clearly in the ideal world the First-tier Tribunal Judge would have made more detailed reference to the interview questions and to the corrected statement which I have been taken to this morning but when the determination is read the context in which the First-tier Tribunal Judge came to his conclusion is clear. The context in which the First-tier Tribunal Judge made findings as to weight, credibility and consistency is equally clear.
11. Mr Walker has quite properly advanced this appeal with circumspection and with moderation, he not having instructions to abandon it. But on my reading of those additional papers, no error of law is apparent on the face of the determination either in relation to ground 2 which I have summarised at some length or ground 1 which was not separately argued.
12. I can find no fault with the manner in which the First-tier Tribunal Judge reviewed the evidence, applied the law and came to the conclusions which he did and in all of those circumstances the appeal brought by the Secretary of State must be dismissed.

Notice of Decision

The appeal is dismissed.

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 *Mark Hill*

Date 4 September 2015

Deputy Upper Tribunal Judge Hill QC