



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/07783/2018

THE IMMIGRATION ACTS

Heard at Field House
On 6th November 2018

Decision & Reasons Promulgated
On 23rd November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

[P T]

~~(ANONYMITY DIRECTION NOT MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramorthy, Counsel

For the Respondent: Ms Brocklesby-Weller, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on [~] 1987. The Appellant claimed to have arrived in the United Kingdom on 20th June 2011 on a student visa valid until 23rd September 2012. The Appellant claimed asylum on 3rd October 2012. That claim was refused on 2nd November 2012 and his appeal against the decision dismissed on 2nd January 2013. Further submissions were made and raised and these eventually led to a Notice of Refusal being issued on 13th June 2018.

2. The Appellant appealed against that decision and the appeal came before Judge of the First-tier Tribunal Oliver sitting at Hatton Cross on 20th July 2018. In a decision and reasons promulgated on 20th August 2018 the Appellant's appeal was dismissed on all grounds.
3. The Appellant lodged Grounds of Appeal to the Upper Tribunal on 31st August 2018. On 13th September 2018 Designated First-tier Tribunal Judge McCarthy granted permission to appeal. The grant of permission succinctly set out the basis of the Appellant's grounds.
4. Judge McCarthy noted that the first ground argued that Judge Oliver failed to make findings on the evidence he recorded at paragraphs 15 to 20 and other evidence that was before him at the hearing. Judge McCarthy found that that ground was made out because it was arguable that Judge Oliver erred by failing to make findings on the wealth of the evidence submitted in support of the second appeal.
5. The second ground argued that the First-tier Tribunal Judge had failed to give appropriate weight to the expertise of the medical examiner who reported on the Appellant's scars and injuries.
6. The third ground contended that the judge had failed to give adequate reasons for rejecting the written evidence of the Appellant's father and the oral evidence of the Appellant's TGTE witness to the extent that the finding might be perverse. Finally it was submitted – and acknowledged that this ground could only succeed if Ground 3 was made out – that the judge had erred by failing to make findings that the Appellant would be at risk in Sri Lanka because of his involvement in the TGTE in the UK.
7. It is on that basis the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by his instructed Counsel, Mr Paramorthy. The Secretary of State appears by her Home Office Presenting Officer, Ms Brocklesby-Weller.
8. The matter is greatly assisted by the approach adopted by Ms Brocklesby-Weller. She accepts the submissions made in Ground 1 of the Grounds of Appeal, namely that the judge has erred in law in his approach to, and consideration of, whether the Appellant's claim to have been detained and tortured in Sri Lanka in 2010 was credible despite a previous judge concluding that his account was incredible. There was, she acknowledges, before the First-tier Tribunal a second bundle and there is no reference made to the documentation therein and no recognition of material set out within that bundle, including a letter from the Appellant's attorney. She acknowledges that it would be inappropriate for the Secretary of State to argue against the finding that the First-tier Tribunal Judge has not looked at the evidence available and indeed may not have even given proper or full consideration to the evidence to be found in the Appellant's bundle at all. She concedes that in such circumstances such a finding must constitute a material error of law.

9. So far as the other grounds are concerned Mr Paramorthy submits that the evidence has been produced to impugn the adverse findings made by previous judges on the Appellant's credibility and clearly that if that has not been looked at, (and he endorses the view expressed by Ms Brocklesby-Weller,) that the inevitable fact is that the finding on credibility is unsustainable and that the evidence must be revisited and reheard.

Findings on Error of Law

10. I have had the benefit of considering the bundles that were produced and cross-referencing them to the judge's decision. It is difficult to conclude that the judge has not looked at the evidence, on the other hand it is clear that there is no reference to it. It is a material error of law for a judge to rely on evidence which is of paramount importance and not to make reference to it. I acknowledge that a judge does not need to refer to every piece of evidence but he certainly needs to make reference and consider and make findings on documentary evidence that is relevant and it is incumbent upon a judge to consider all the evidence when making findings of credibility.
11. Consequently I am satisfied that the decision of the First-tier Tribunal Judge contains a material error of law and that the submissions made by Mr Paramorthy and supported by Ms Brocklesby-Weller are ones that are sustainable and I consequently set aside the decision of the First-tier Tribunal Judge and give directions hereinafter for the rehearing of this matter.

Notice of Decision and Directions

- (1) The decision of the First-tier Tribunal Judge contains material errors of law and is set aside with none of the findings of fact to stand.
- (2) That the appeal is remitted to the First-tier Tribunal sitting at Hatton Cross on the first available date 28 days hence with an ELH of three hours.
- (3) That the appeal is to be before any Judge of the First-tier Tribunal other than Immigration Judge Oliver.
- (4) That there be leave to either party to file and serve an up-to-date bundle of such subjective and/or objective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That a Tamil interpreter do attend the restored hearing.

No anonymity direction is made.

Signed

Date 16 November 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 16 November 2018

Deputy Upper Tribunal Judge D N Harris