



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/08538/2016**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> February 2018**

**Decision & Reasons  
Promulgated  
On 20<sup>th</sup> March 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE GRIMES**

**Between**

**MISS KN  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Gajjar, Counsel, instructed by Lova Solicitors  
For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sri Lanka, appealed to the First-tier Tribunal against a decision of the Secretary of State dated 2<sup>nd</sup> August 2016 to refuse to grant her asylum and humanitarian protection. First-tier Tribunal Judge Lucas dismissed the appeal in a decision promulgated on 9<sup>th</sup> May 2017. The Appellant now appeals to this Tribunal with permission granted by Deputy Upper Tribunal Judge Pickup on 19<sup>th</sup> December 2017.
2. The main thrust of the Grounds of Appeal, as identified by Deputy Upper Tribunal Judge Pickup in his grant of permission to appeal, is that it is

argued that the First-tier Tribunal Judge made a material mistake of fact at paragraphs 43 and 44 of the decision. There the judge considered that the Appellant had claimed that she was detained in February 2014 whereas, as identified by the judge himself at paragraph 13, in her witness statement and asylum interview the Appellant asserted that she had been arrested on 24<sup>th</sup> January 2014.

3. At paragraph 43 the judge said;

“The problem for the Appellant is that her presence in India in February 2014 throws the credibility of her entire claim into disarray. Her presence in India in 2014 is inconsistent with her assertion that she was stopped at the airport in Sri Lanka on 28<sup>th</sup> February 2014, kept for ten days by the security forces and subjected to rape and torture.”

4. It is clear from this extract that the judge’s understanding that the Appellant’s claim was that she had been detained in February 2014 undermined the Appellant’s entire claim. However it is not clear on what evidence this conclusion was based. In fact the evidence in the asylum interview and witness statement is that the Appellant claimed to have been detained on 24<sup>th</sup> January 2014 and to have left Sri Lanka on 11<sup>th</sup> March 2014 (Q30 Asylum Interview).

5. In the Rule 24 response the Secretary of State indicated that the Appellant’s application for permission to appeal was not opposed on this issue. At the hearing before me Mr Wilding accepted that this was the Secretary of State’s position.

6. In my view it is clear that the First-tier Tribunal Judge made a mistake of fact as to a material matter. In these circumstances I consider it appropriate to set the decision of the First-tier Tribunal aside.

7. In considering remaking the decision Mr Gajjar suggested that it was appropriate to remit the appeal given that no findings of fact had been preserved in light of the fundamental mistake of fact. Mr Wilding agreed with this approach.

8. In these circumstances, in light of the view of the parties and in light of the fact that I was unable to preserve any findings of fact, I consider it appropriate for the appeal to be remitted to the First-tier Tribunal for the appeal to be heard afresh.

### **Notice of Decision**

The decision of the First-tier Tribunal contained a material mistake as to fact which amounts to a material error of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted to the First-tier Tribunal to be heard afresh.

**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 her or any member of her 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

Date: 6<sup>th</sup> March 2018

Deputy Upper Tribunal Judge Grimes

**TO THE RESPONDENT**  
**FEE AWARD**

No fee is paid or is payable, therefore there can be no fee award.

Signed

Date: 6<sup>th</sup> March 2018

Deputy Upper Tribunal Judge Grimes