



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/08569/2017

THE IMMIGRATION ACTS

Heard at FIELD HOUSE
On 20th June 2018

Determination Promulgated
On 26th June 2018

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL G A BLACK

Between

VENUSHAN [A]
NO ANONYMITY ORDER MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bandegani (Counsel)

For the Respondent: Ms Everett (Home Office Presenting Officer)

ERROR OF LAW DECISION AND REASONS

1. This is an error of law hearing. The appellant appeals against the decision of the First Tier Tribunal (Judge C. Broe) ("FtT") promulgated on 30th October 2017 in which the appellant's protection claim was dismissed.

Background

2. The Appellant is a citizen of Sri Lanka. He made a claim for asylum, humanitarian protection and on human rights grounds on the basis that he would be persecuted for political reasons on return to Sri Lanka.

Grounds of appeal

3. In renewed grounds of appeal the appellant argued that the FtT erred by failing to properly consider the new evidence according to guidance from **Devalseelan** and in respect of the appellant's mental health failed to consider the case of **Paposhvili** v Belgium App No 41738/10.

Permission to appeal

4. Permission to appeal to the Upper Tribunal (UT) was granted on renewal by UTJ Finch on 15.3.2018. In granting permission UTJ Finch found arguable grounds that the FtT erred by relying on the previous credibility findings to undermine the new medical evidence, and failed to give adequate reasons for not giving weight to the letters and the opinion from V A Kumar.

Rule 24 Notice

5. The respondent opposed the appeal in a Rule 24 Notice dated 10.4.2018 stating that the appellant simply disagreed with the decision made.

Submissions

6. At the hearing before me Ms Everett for the respondent conceded that the decision was flawed and that it could not stand. Mr Bandegani was not required to address the Tribunal further.

Discussion and conclusion

7. I am satisfied that the grounds of appeal are made out and that the FtT approached the fresh evidence unlawfully by basing its consideration and assessment of the same having regard to the appellant's poor credibility as found by the first Tribunal. In reaching findings as to fact and credibility it is the role of the Tribunal to consider all of the evidence (both internally and externally) in the round in order to establish if the appellant's account is credible. Where there is new evidence that must be considered in order to see if the appellant's claim is credible rather than to proceed on the basis that the credibility findings have been predetermined by the first Tribunal. The FtT erred in this regard and furthermore failed to give adequate reasons for placing no weight on expert evidence from the Freedom from Torture and in a Medical Foundation psychiatric report other than relying on the previous credibility findings.
8. There is a material error of law in the decision which shall be set aside.

Decision

9. The decision is set aside and must be remitted to the Birmingham Tribunal for hearing afresh (excluding Judges Broe & Lal). No findings are preserved.

Signed

Date 25.6.2018

GA Black
Deputy Judge of the Upper Tribunal

NO ANONYMITY ORDER

NO FEE AWARD

Signed

Date 25.6.2018

GA Black
Deputy Judge of the Upper Tribunal