



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

Appeal Number: PA/01179/2020

THE IMMIGRATION ACTS

Heard remotely at Field House

**Decision & Reasons
Promulgated**

On 22 February 2021 via Skype for Business

On 3 March 2021

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

**LD
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S. Anzani, Counsel, instructed by L & L Law Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS (V)

This has been a remote hearing which has been consented to / not objected to by the parties. The form of remote hearing was V (video). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents that I was referred to are contained in the appellant's two First-tier Tribunal bundles, the respondent's bundle, the appellant's asylum interview transcript, and the grounds of appeal, the contents of which I have recorded.

The order made is described at the end of these reasons.

The parties said this about the process: they were content the proceedings had been conducted fairly in their remote form.

1. The appellant appeals against a decision of First-tier Tribunal Judge Verghis promulgated on 2 April 2020, in which she dismissed his appeal against a decision of the Secretary of State dated 30 January 2020 to refuse his fresh claim for asylum.
2. It was common ground before me that the judge's credibility assessment involved the making of an error of law, and that the appeal should be allowed. This decision sets out the respondent's concession to that effect, and my reasons for accepting it.

Factual background

3. The appellant is a citizen of Sri Lanka born in October 1988. He arrived in this country as a student in 2011, with a visa valid until January 2013. He claimed asylum in February 2014. That claim was refused in March 2015, and an appeal against the refusal was dismissed. The decision under challenge in these proceedings was taken following a fresh claim made by the appellant in September 2019.
4. The appellant claimed to be sought in Sri Lanka on account of his pro-Tamil political opinion, having been detained and tortured by the authorities there. Before the First-tier Tribunal in these proceedings, the appellant's case was he was tortured, including through being beaten on his feet. The judge had significant credibility concerns. Those concerns included the fact he had not mentioned being tortured in that way in his asylum interview, conducted in February 2015. She said, at paragraph 48:

"The appellant did not mention in his initial or asylum interview that when he was held in detention, he was beaten on his feet to the extent that he had difficulty walking for three months. The tribunal finds there was no reason why this important point was not mentioned and an injury that impacted the appellant's mobility for three months is noteworthy... The tribunal draws an adverse inference from the failure to mention this earlier and concludes that the appellant was not giving a truthful account."

5. In the appellant's asylum interview dated 25 February 2015, he was specifically not asked about the torture methods used against him. See question 76:

"I don't need to know how you were tortured. I won't be asking those questions."

Grounds of appeal

6. There are two grounds of appeal. The first concerns the judge's analysis of the medical evidence. In light of the consensus concerning the second ground of appeal, this ground does not fall to be considered and I need say no more about it.
7. The second ground of appeal contends that it was 'unreasonable' for the judge to reject a key plank of the appellant's narrative on the basis he did not mention something during his asylum interview in circumstances when the interviewing officer specifically declined to engage with that very topic.

Discussion

8. Mr Tufan realistically concedes that the judge made an error of law going to the heart of her credibility assessment, with the effect that the entire credibility assessment was tainted and must be set aside. That was a concession that was validly made, and one which was open to the Secretary of State.
9. It was not reasonably open to the judge to hold against the appellant the fact that he did not mention the foot-based torture allegations during his asylum interview, given the interviewing officer specifically said that questions on that issue would not be asked.
10. I accept both parties' submissions that the judge's overall credibility assessment was tainted such that it must be set aside in its entirety, with no findings preserved. In light of the extent of the fact finding required, I consider that it is appropriate for this matter to be reheard in the First-tier Tribunal, by a different judge.
11. The appeal is allowed.
12. I maintain the anonymity order already in force.

Notice of Decision

The decision of Judge Verghis involved the making of an error of law and is set aside.

The matter is remitted to the First-tier Tribunal to be heard by a different judge, with no findings of fact preserved.

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 *Stephen H Smith*

Date 22 February 2021

Upper Tribunal Judge Stephen Smith