



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

Appeal Number: PA/08639/2019

THE IMMIGRATION ACTS

**Done without a Hearing at Field
House
On 2 February 2021**

**Decision & Reasons Promulgated
On 16 February 2021**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

**TS
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS

1. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker. It is surprising the First-tier Tribunal did not order anonymity.
2. This is an appeal by a citizen of Sri Lanka against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State refusing his claim for international protection.
3. I have decided to make the decision without a hearing. I have reminded myself of the decision of the Administrative Court in **JCWI v The Upper Tribunal (Immigration and Asylum Chamber) [2020] EWHC 31013 (Admin)**. Nevertheless Rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008

provides for a decision to be made without a hearing provided regard is had for views expressed by the parties. I also remind myself that Rule 5A was introduced with effect from 10 April 2020 under the heading "Coronavirus temporary Rule (decisions without a hearing)" which expands the power of the Tribunal to make a decision without a hearing. I do not regard this matter as "urgent" but it is high time it was resolved and indeed part of the delay is attributable to awaiting the outcome of the litigation leading to the decision named above. The parties were given notice of the possibility of a disposal without a hearing. The appellant responded with detailed submissions which I have noted and according to the Tribunal's records the Secretary of State did not respond at all. I took the precaution of checking with the Tribunal clerk before I started dictating this decision and there is no record to indicate there has been any response to directions. In those circumstances I see no need to set out the history of the directions being given. They followed what has now become the standard form in cases that are thought to be possibly suitable for disposal without a hearing. Such a disposal is suggested and the parties are given an opportunity to respond and notice taken of any response that is made. The Secretary of State has not taken advantage of the opportunity of responding. I have to say that does not surprise me. Her resources, like the Tribunal's, are very limited and this would have been a difficult decision to defend.

4. I see no point in giving a long and detailed judgment. The essential point is that the judge is said to have made unlawful adverse credibility findings. The fundamental problem, identified in the grounds, is that in fact, if not as a matter of direction, the judge has not taken a view of the evidence as a whole before reaching credibility conclusions but has made adverse credibility findings and then reflected on them in the light of further evidence which she found to be unsatisfactory at least in part because it did not support the already made adverse credibility findings.
5. The most troublesome paragraphs, as they ought to be, are identified in the grounds. Paragraphs 43 and 44 of the Decision and Reasons are particularly troublesome. There the judge said:

"43. I therefore reject the entirety of the appellant's claim regarding the events that he claims occurred in Sri Lanka. I am not persuaded that he has ever been of interest to the Sri Lankan authorities. Consequently I dismiss his evidence regarding his detention and torture. Although I am aware that he has been diagnosed with PTSD and depression I am not satisfied that these were caused by the treatment described by the appellant. I find that Dr Zapata also acknowledges in his report that the appellant's adjustment disorder could be attributed to him living in a foreign country.

44. With regards to the scars on his body Dr Martin is clear that there is other possible causation for Scars 2 and 3. Although he finds Scars 1 are typical of unwillingly and deliberately caused injuries he does not entirely rule out accidental causes. In any event, given the concerns that I have regarding the appellant's credibility, I am not satisfied that Dr Martin's conclusions can outweigh these."
6. Paragraph 43 rather suggests that the judge did not have Dr Zapata's evidence in mind when she made her adverse credibility findings. Paragraph 44 shows

without doubt that the judge did not consider the medical evidence before determining credibility. Given that the scars are identified with a high recognition of “typical” this is a concerning error.

7. There are other grounds but I do not see any point in saying any more. This case turned on credibility and without in any way seeking to suggest that the appellant is credible or incredible the reasons for disbelieving him are unsound in law. I set aside the decision of the First-tier Tribunal. Further, given that this is fundamental to the case and has not been done properly I find it just to return to the matter to the First-tier Tribunal to be heard again. No findings are preserved.

Notice of Decision

8. This appeal is allowed. I set aside the decision of the First-tier Tribunal and direct the case be heard again in the First-tier Tribunal.

Jonathan Perkins

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 4 February 2021