



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

Appeal Number: AA/11819/2014

THE IMMIGRATION ACTS

Heard at Field House

On 15th May 2015

**Decision & Reasons
Promulgated
On 28th May 2015**

Before

UPPER TRIBUNAL JUDGE RENTON

Between

**MUGUNTHAN THARMAPALAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit of Kanaga Solicitors

For the Respondent: Mr N Bramble Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a male citizen of Sri Lanka born on 9th July 1984. He first arrived in the UK on 21st January 2010 when he was granted leave to enter as a Tier 4 (General) Student until 24th October 2011. Thereafter the Appellant was granted successive periods of leave to remain in that and other categories until 16th August 2014. On 8th July 2014 the Appellant applied for asylum. That application was refused on 28th November 2014 for the reasons given in the Respondent's letter of that date. The Appellant appealed, and his appeal was heard by First-tier Tribunal Judge

Butler (the Judge) sitting at Birmingham on 11th February 2015. He decided to dismiss the appeal on asylum, humanitarian protection, and human rights grounds for the reasons given in his Decision dated 5th March 2015. The Appellant sought leave to appeal that decision, and on 7th April 2015 such permission was granted.

2. I must first decide if the decision of the judge contained an error on a point of law so that it should be set aside. According to the Decision, the Judge dismissed the appeal because he found the Appellant's account of events in Sri Lanka lacking in credibility. He found the Appellant's evidence of detention incredible, and that it was highly unlikely that the Appellant's scars were caused by torture. The Judge came to that conclusion because he found the Appellant's evidence to be inconsistent, giving a number of examples. The Judge decided to attach no credibility to the evidence of a witness, Mr Ashok, on the basis that he was a friend of the Appellant and that his evidence appeared "convenient". The Judge considered a medical report by Dr Martin concerning the Appellant's scars and a psychiatric report by Dr Dhumad. The Judge attached little weight to the latter report on the basis that it was based entirely upon the account of the Appellant without considering if that account was true. Finally, the Judge found that the Appellant's account of his diaspora activities was grossly exaggerated. The Judge applied these findings to the country guidance decision of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** and found that the Appellant was not at risk on return to Sri Lanka.
3. At the hearing, Mr Muquit referred to the grounds of application and submitted that the Judge had erred in law in his assessment of the Appellant's credibility. The Judge had given no adequate explanation for his reason to discount the evidence of Mr Ashok. He had also failed to consider all of the evidence in the round. Indeed, he had not dealt with the medical evidence and particularly that of Dr Martin until after he had made a finding as to the Appellant's credibility.
4. In response, Mr Bramble argued that there had been no such error of law. He referred to the Rule 24 response and argued that the Judge had carefully analysed the evidence and in the main had relied upon inconsistencies which had never been satisfactorily explained. The Judge had considered the medical report of Dr Martin relating to the Appellant's scars. The Judge had been entitled to take into account the timing of the Appellant's application for asylum, and had considered all of the relevant evidence, attaching the appropriate weight to it, before coming to his decision.
5. I do find an error of law in the decision of the Judge so that it should be set aside. The decision of the Judge to dismiss the appeal follows from his conclusion that the Appellant's account as to events in Sri Lanka and of his diaspora activities in the UK could not be believed. The Judge gave some valid explanations for that decision, such as the inconsistencies in the Appellant's evidence, and the timing of the Appellant's application for

asylum, but the Judge's reasoning for discounting the corroborative evidence of Mr Ashok is wholly inadequate. Further, the structure of the Judge's analysis of the evidence, making a finding as to credibility before considering the medical report of Dr Martin, indicates that he failed to take into account of all the evidence in the round. The Judge did not explain what weight he attached to Dr Martin's evidence which is particularly significant in that that evidence was that "the scars were highly consistent with the mechanisms of the injuries described by the Appellant."

6. I therefore set aside the Judge's decision. As findings of credibility and as to fact will have to be remade, I remit the appeal to the First-tier Tribunal to be decided again by a Judge other than Judge Butler in accordance with the provisions of paragraph 7.2(b) of the Practice Statements.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the appeal to the First-tier Tribunal to be decided again.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I find no reason to make one.

Signed

Upper Tribunal Judge Renton

Dated