



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

Appeal Number: PA/01160/2017

THE IMMIGRATION ACTS

Heard at Field House, London

**Decision & Reasons
Promulgated**

On 17 April 2018

On 10 May 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCARTHY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS

(ANONYMITY DIRECTION CONTINUED)

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer

For the Respondent: Mr R Spurling, instructed by Nag Law Solicitors

DECISION AND REASONS

1. The appellant Secretary of State alleges that the decision and reasons statement of FtT Judge Seifert that was issued on 22 December 2018 contains legal error because he failed to make findings on material matters and because he failed to give adequate reasons. Permission to appeal to the Upper Tribunal was granted on 22 February 2018 by FtT Judge Boyes on all grounds.
2. At the start of the hearing, the representatives clarified that there were two issues in the grounds. First, whether the credibility findings could be upheld. There were a number of challenges. Second, whether Judge

Seifert had properly applied the country guideline case, *GJ (post-civil war: returnees) Sri Lanka CG* [2013] UKUT 319.

3. I deal first with the credibility challenges.
4. Mr Bramble did not seek to amplify the grounds of appeal.
5. Mr Spurling began his submissions by examining paragraphs 49 and 58 of the decision and reasons statement, which contained Judge Seifert's findings of credibility. At paragraph 49 the judge recorded he assessed credibility based on all the evidence and having heard from the respondent. At paragraph 58 Judge Seifert was satisfied that the evidence supported Ms Harris's submissions; Ms Harris represented the respondent in the First-tier Tribunal. Mr Spurling reminded me of first principles. It was for Judge Seifert to assess credibility. It was open to him to find that none of the Secretary of State's allegations undermine the core account.
6. Mr Spurling took me to the second issue, which is whether Judge Seifert resolved the conflict over the respondent's chronology. The respondent alleged that the respondent's account to have been detained in 2004 was not possible because of his entry clearance application made at that time. Mr Spurling took me to question 11.1 of the screening interview, where the respondent said he was detained for a week in August 2004. Next, we went to question 34 and 35 of the substantive interview record. The respondent stated that he was arrested one night (i.e. in the evening) at the end of August 2004. The evidence was consistent in that the respondent was detained for one week. Mr Spurling took me to paragraph 12 of the witness statement, wherein the respondent said he applied for a visa on 31 August 2004. Mr Spurling submitted that there was no glaring inconsistency and the issue is whether the imprecise reference to the end of August 2004 in question 35 could not include 24 August 2004, that is, a week before the end of August.
7. Mr Spurling also submitted that focusing on the detention in 2004 was misplaced because the core factors relied on later detentions, that is, those after 2008.
8. Mr Spurling submitted that the Secretary of State was wrong to draw adverse conclusions from different transliterations of names into the Latin alphabet. There was no standard transliteration system and such differences were attributable to different interpreters being used.
9. Mr Bramble reminded me that the Secretary of State took issue with the incident in 2004 and believed it undermined the respondent's general credibility. The failure of Judge Seifert to engage with the issue or to make findings on it meant it was left unresolved. Mr Bramble took me to paragraph 44 of Judge Seifert's decision and asked me to note that the presenting officer had made specific reference to the reasons for refusal. This was not a case where the judge could infer the Secretary of State no longer pursued the issue.
10. As to the issue of names, as indicated at paragraph 53, Judge Seifert recognised the concern went further than mere transliteration. The

problem involved the assessment of official documents in Sri Lanka. Ms Harris made various assertions which the judge took to be evidence.

11. I have found this a straightforward case to decide. It is obvious that Judge Seifert did not engage with the issues relating to the 2004 detention. This is obvious because Mr Spurling had to take me to the interview records and not to what was recorded in the decision and reasons statement. Judge Seifert failed to make a finding that the incident was not part of the core account. Judge Seifert failed to make a finding that any discrepancy was immaterial to general credibility. Judge Seifert failed to make a finding that there was no inherent inconsistency in the chronologies given in the interviews as to whether the detention was at the end of August 2004, which was when the respondent applied for entry clearance. Although the failure to make relevant findings explains why no reasons are given, the failure to engage with the issues raised means a full assessment of credibility has not been carried out. This is a legal error.
12. The same problem derives from Judge Seifert's failure to consider the respondent's names in the documents and whether that undermined the reliability of those documents. Merely to accept counsel's explanation is insufficient; a finding had to be made as the evidence was contested. It is trite law that counsel cannot give evidence.
13. The legal errors are such that I must set aside Judge Seifert's decision and reasons statement. This is because without a sound assessment of the respondent's credibility, it is impossible to assess the risks he faces on return to Sri Lanka. This also means there is no need for me to make a detailed assessment of the second ground; the fact the credibility findings are unsound means that the application of *GJ (Sri Lanka)* could not be properly considered.
14. I have considered whether the appeal can be retained in the Upper Tribunal but the extent of the failures it is appropriate to remit the appeal to the First-tier Tribunal for a fresh decision. To do otherwise would deny the respondent further appeal rights.

Notice of Decision

The appeal is allowed.

Judge Seifert's decision and reasons statement contains legal error requiring it to be set aside.

The appeal is remitted to the First-tier Tribunal for a fresh hearing before any judge other than Judge Seifert.

Anonymity

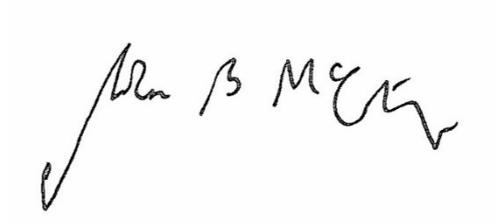
I make the following order. I prohibit the parties or any other person from disclosing or publishing any matter likely to lead members of the public to identify the respondent. The respondent can be referred to as "MS".

Signed

Date

3 May 2018

Judge McCarthy
Deputy Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read "JUDGE B MCCARTHY". The signature is written in a cursive style and is located in the lower-left quadrant of the page.