UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBERS:
AA/04960/2014
AA/04961/2014
AA/04962/2014

THE IMMIGRATION ACTS

–

Heard at: Field House

On: 2 October 2014

Determination Promulgated
On: 19 November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

DARSHANI NISANASALA HENDAWITHARANA (1)
MOHAMMED FAIZAL MOHAMMED THAHA (2)
MOHAMMED HAMZAH FAIZAL (3)
NO ANONYMITY DIRECTION MADE

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation
For the Appellants: Mr N Paramjorthy, counsel (instructed by Dasuki Solicitors)
For the Respondent: Ms S Sreeraman, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellants are nationals of Sri Lanka. The first appellant is married to the second and they have a child, born on 31st July 2011, who is a dependant on the claim.

2. In a determination promulgated on 11th September 2014, First-tier Tribunal Judge Burns dismissed the appeals against the respondent's decision to refuse to grant asylum and to remove the appellant.

3. On 2nd October 2014, First-tier Tribunal Judge Andrew granted the appellants permission to appeal. He was satisfied from reading the determination that the Judge did not engage with all the evidence that was before him. In particular, it was asserted that he did not in his findings engage with the appellants' medical records, the court proceedings and documentation and a letter from an MP. Further, he gave inadequate reasons for his findings.

4. Mr Paramjorthy, who prepared helpful grounds of appeal, stated at the outset that there was “a consensual agreement” between the parties. It is conceded on behalf of teh respondent that there were material errors of law such that the determination should be set aside and re-made “de novo”.

5. Ms Sreeraman confirmed that the respondent did not seek to uphold the determination.

6. The parties submitted that this was an appropriate case for the appeal to be remitted to the First-tier Tribunal as the “core documents” had not been considered. The findings would not be preserved. The appellants had accordingly not had the benefit of a determination based on all the evidence, including the documentary evidence and reports.

7. I have had regard to the grounds in the application for permission, and in particular paragraphs 5, 6 and 9 (iv).

8. The appellant provided a detailed witness statement which had engaged with and particularised her response to adverse paragraphs in the respondent's refusal letter.

9. Her witness statement had not been available at the date that the refusal letter was written. Her husband's detailed witness statement was not available. Nor were the report of Dr Dhumad, the Court summons, the Court proceedings and translations available.

10. It was thus contended that the Judge had materially erred by simply relying upon the “rationale” of the respondent in dismissing the appeal without regard to the further evidence.

11. Further, the respondent in the refusal letter had criticised the appellant for not producing court documents at the time of her full interview. However, she did in fact produce the documentation at the date of the appeal hearing. In her witness statement, she explained the provenance of the documentation. However, the Judge at paragraph 72 of the determination placed no weight on the arrest warrant on account of its late production and his adverse credibility findings that he had already made.

12. It is contended in particular that the Judge failed to consider the Court proceedings and documentation set out at pages 53-72 of the appellant's bundle. Further, the Judge had not had regard at all to the appellant's own NHS medical records. Those were important as they particularised PTSD symptoms and accordingly the Judge's findings that the report of Dr Dhumad was “overblown” and not objective had not been considered in the context of the core NHS assessment from 2012, showing that the appellant had presented with various symptoms; that she had been prescribed Citalopram and was diagnosed with PTSD. The assertion by the Judge that there was no body of supporting evidence to justify the claim and diagnosis made is accordingly not tenable in the light of the evidence as a whole.

13. I find for the above reasons that the decision of the First-tier Tribunal Judge did involve the making of material errors of law.

14. I accordingly set aside the determination. The parties submitted that there will have to be a full re-hearing. None of the findings of fact made by the First-tier Tribunal are preserved. All the live issues identified from the refusal decision ‘are in play’.

15. I have had regard to the Senior President's practice statement regarding the remitting of an appeal to the First-tier Tribunal for a fresh decision. In applying that approach, I am satisfied that the extent of judicial fact finding which is necessary in order for the decision to be re-made is extensive. There will be a complete re-hearing with no findings preserved. I have also had regard to the overriding objective and conclude that it would be just and fair to remit the case.

16. In the circumstances, I direct that the appeal be remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made. The agreed hearing date is the 28th April 2015.

Decision

The determination of the First-tier Tribunal Judge involved the making of material errors of law and is set aside. The appeal is remitted to Hatton Cross for a fresh decision.

Signed Date 10 November 2014

Deputy Upper Tribunal Judge Mailer