



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/06661/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 23 October 2015**

**Decision & Reasons Promulgated
On 13 November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE KAMARA

Between

**SP
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Turner, counsel instructed by Greater London Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. This is an appeal against a decision of FTTJ McIntosh, dated 24 December 2014, in which she dismissed the appellant's appeal against a decision to refuse to grant her asylum.

Background

2. The appellant left Sri Lanka during February 2013, remained in India for 5 weeks before travelling to the United Kingdom with the assistance of an

agent. The basis of the appellant's asylum claim is that two of her siblings were members of the LTTE. In February 2014, the appellant's sister was abducted by soldiers and returned to the family home. Two days later, the appellant and her sister were abducted by soldiers. The appellant was separated from her sister and an attempt was made to rape her. The appellant heard a gunshot and her sister returned armed with a gun and thwarted the soldier's assault on the appellant. The appellant saw the soldier who abducted her sister lying dead on the ground. Her sister urged the appellant to flee, which she did immediately with the assistance of her uncle. The appellant's application was refused on credibility grounds. An earlier appeal against that decision was dismissed by FTTJ Brennells on 27 December 2013; however that decision was set aside and the matter remitted to the First-tier Tribunal for a de novo hearing.

3. During the course of the de novo hearing before the First-tier Tribunal, FTTJ McIntosh heard evidence from the appellant alone. A psychological report was also submitted on the appellant's behalf along with other evidence including that of a witness, SA. The FTTJ dismissed the appeal on credibility grounds as well as concluding that none of the requirements of the Rules, in relation to the appellant's private life had been met and that Article 8 was not engaged, outside the Rules.

Error of law

4. Permission to appeal to the Upper Tribunal was sought on the basis that it was arguable that the FTTJ applied an excessively high burden of proof; failed to have regard to the expert psychological report of Dr Halari in reaching her findings and overall decision; erred in her assessment of the appellant's credibility and failed to provide sufficient reasons.
5. FTTJ Pooler granted permission on the basis that it was arguable that the FTTJ misdirected herself in failing to take Dr Halari's report when assessing credibility. The other grounds were said not to disclose an arguable error of law, however permission was not expressly refused in relation to those grounds.
6. The Secretary of State's response of 25 September 2015 robustly defended the FTTJ's decision, describing it as "*carefully crafted and well reasoned*" and containing "*adequate sustainable reasons.*"

The hearing

7. This appeal was initially listed before Deputy Upper Tribunal Judge Zucker on 23 October 2015, who heard partial submissions on the error of law issue before recusing himself. I obtained a transfer order from the Principal Resident Judge and therefore proceeded to hear the case myself. There was no objection to this course of action from either representative.
8. Mr Turner argued that the appellant was a vulnerable woman who had made a suicide attempt. There was a need for a comprehensive decision.

The FTTJ's decision was not properly reasoned or structured. The credibility findings made no reference to the evidence in the witness statements before the FTTJ; the law was poorly expressed and there was reference to irrelevant or non-existent case law.

9. Mr Avery submitted that the FTTJ had regard to Dr Halari's report at [10] of the decision, where a reasonable summary of the doctor's findings could be seen. The FTTJ's citation at [13] was an immaterial typographical error in a case where the fundamental issue was the appellant's credibility. It was apparent from [14] of the decision that the FTTJ had taken into account submissions made on the appellant's behalf. She had correctly directed herself regarding the case of JL. The FTTJ made legitimate points regarding credibility issues present in the original evidence and the challenge amounted solely to disagreement with her findings. The FTTJ did not err at [16] in finding that there would not be a record of the appellant's details given her case that she was not officially detained. With regard to the FTTJ's reference to the former country guidance case of LP, Mr Avery stated that it did not matter, because the appellant would not meet any of the criteria in GJ. Finally, the FTTJ did not err in finding that Article 8 was not engaged, given the judgment in GS, regarding the need for some other basis to an Article 8 claim in addition to a medical claim.
10. In reply, Mr Turner stressed that LP was decided in 2007; that there was no known case of "Hogarth" referred to at [13] of the decision; if the former was a reference to Horvath, it was misplaced and that JL was an irrelevant authority in that the headnote is directed at report writers rather than decision makers. In any event, Dr Halari had followed the guidance in JL.

Decision on error of law

11. The FTTJ made material errors of law. Her decision is set aside, in its entirety, for the following reasons.
12. The decision of the FTTJ is 5-pages long and only a page, in total, is devoted to the FTTJ's "Decision with Reasons," relating to the protection claim. While the FTTJ summarised Dr Halari's report at [10], she failed to assess that report or indicate whether or not she was prepared to accord any weight to it.
13. Dr Halari's report is 21-pages in length and concludes that the appellant suffers from symptoms of PTSD and makes reference to her re-enactment of the memory of her trauma while recalling it. In that report, Dr Halari devotes several paragraphs to addressing whether the appellant could be attempting to bolster her claim or was malingering and provided a number of reasons for concluding that she was not.
14. Dr Halari was of the view that the appellant's symptoms of PTSD were impacting on her concentration and memory in terms of her ability to accurately recall events. Reference was made to the appellant's overdose

and the view of the author that the appellant's removal would "*significantly*" impact her mental health, negatively and would increase the risk of suicide. The FTTJ did not indicate whether she accepted the diagnosis of PTSD; that the appellant's mental state affected her recall of events or that the appellant was suicidal. Nor did the FTTJ indicate whether she accepted that the appellant's mental state would deteriorate if faced with removal.

15. The FTTJ's lack of adequate consideration of the psychological report amounts to a material error of law.
16. In addition, the FTTJ provided wholly inadequate reasons in support of her negative credibility findings and further erred in this regard.
17. At [14] the FTTJ finds that it would be implausible that the appellant would know whether her sister had been raped. However, this finding does not take into account the appellant's acceptance, at [15] of her witness statement that she made an assumption regarding the soldier's treatment of her sister and accordingly she did not know for a fact whether her sister had been raped.
18. At [15] the FTTJ criticised the appellant for leaving it to the son of an associate to confirm her safe arrival in the United Kingdom. Putting aside the question of whether this amounts to an issue which could be said to be central to the appellant's claim, this finding makes no reference to the witness statement of SA, which was contained at [S5] of the appellant's appeal bundle and which at paragraph [7] addressed this particular issue as well as the appellant's mental state at the time of her arrival. In addition, the appellant's witness statement, at paragraph [17] also provided an explanation regarding this matter and again the FTTJ did not take this explanation into consideration.
19. At [17] the FTTJ points to an apparent discrepancy as to when the appellant left Sri Lanka, but neglects to take into consideration the fact that the appellant corrected that account and promptly clarified the matter in response to questions posed during the course of her asylum interview.
20. Finally, the FTTJ's definition of a refugee was incomplete; she erroneously referred to a case of "Hogarth" for which no citation was provided and she relied upon the previous country guidance case of LP instead of GJ. Mr Avery's submission was that it was irrelevant which Country Guidance decision was applied given the facts of the appellant's case. However, if the appellant's account were accepted, it would mean that she was a close relative of two LTTE members and was implicated in the death of army personnel, which would arguably carry a risk of her coming to the adverse attention of the Sri Lankan authorities.
21. In these circumstances I am satisfied that there are errors of law such that the decision be set aside, to be remade. None of the findings of the FTTJ

are to stand.

22. I considered listing this matter to be heard in the Upper Tribunal, in view of practice statement 7 of the Senior President's Practice Statements of 10 February 2010 (as amended), however the appellant has yet to have an adequate consideration of her asylum appeal at the First-tier Tribunal and it would be unfair to deprive her of such consideration.
23. Further directions are set out below.
24. An anonymity direction was made by the FTTJ. I consider it appropriate for anonymity to be continued and therefore make the following anonymity direction:

"Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. "

Conclusions

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 to be re-made.

Directions

- This appeal is remitted to be heard de novo, by any Designated Judge or experienced First-tier Tribunal Judge (except FTTJ McIntosh).
- The appeal is to be listed for a hearing at Taylor House.
- An interpreter in the Tamil language is required.
- Time estimate is 4 hours.

Signed

Date: 1 November 2015

Deputy Upper Tribunal Judge Kamara