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Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/01773/2015

THE IMMIGRATION ACTS

Heard at Taylor House
On 23 December 2015

Decision & Reasons Promulgated
On 5 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

T S
(ANONYMITY DIRECTION MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Ahluwalia, counsel, instructed by Birnberg Peirce & Partners.
For the Respondent: Mr Duffy, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 11 October 1980. She appealed against a decision of the respondent dated 16 January 2015 to refuse her asylum and human rights claims and to remove her under s10 of the Immigration and Asylum Act 1999. Her appeal was refused by Judge of the First-tier Tribunal Afako (“the FTTJ”) who in a decision promulgated on 6 July 2015 dismissed her appeal on asylum and human rights grounds.

2. The appellant sought permission to appeal. This was granted by Upper Tribunal Judge Finch on 16 September 2015 in the following terms:

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> "As found in *Mibanga v Secretary of State for the Home Department [2005] EWCA Civ 367* and *R (B) v Special Adjudicator [2002] EWHC 1469 (Admin)* the First-tier Tribunal judge should have considered the totality of the evidence, including the evidence provided by Dr Dhumad, when considering whether the Appellant's account was credible. He did not do so and, instead, at paragraph 36 of his decision and reasons, he found that "it is not for me to speculate as to what the true causes of her symptoms might be, it is sufficient that I have not been able to find that the account of the targetting of the appellant is [not] credible.
>
> The First-tier Tribunal Judge also failed to consider whether it was the Appellant's *sur place* activities which may have led to the Sri Lankan authorities' interest in him; thereby indicating an enhanced risk on return."

3. Thus the appeal came before me.

<u>Submissions</u>

4. At the outset, Mr Duffy indicated that he was in difficulties with regard to this appeal; he agreed that the decision of the FTTJ contained material errors of law.

5. Mr Ahluwalia helpfully outlined the appellant's position as regards those errors of law, as follows. He submitted that, with regard to paragraphs 27 and 28 the FTTJ had not identified any additional elements of appellant's husband's case which would have raised his profile in the current climate. The FTTJ had failed to take into account the appellant's activities in the UK and her history in reaching his conclusions. Paragraph 28 demonstrated that the FTTJ had misunderstood the evidence: whereas he says that a direction to produce the appellant had been made upon the appellant's husband's release in 2010, that was factually inaccurate. The appellant's witness statement (paragraph 24) made it clear that there had been no such instruction at that time.

6. With regard to paragraph 30 of the decision, Mr Ahluwalia submitted that, whereas the FTTJ found it was not clear why the authorities would wish to persecute the appellant and her husband after no interest in the family for some 9 years (2002-2010), this was to ignore the evidence of the appellant in her witness statement, paragraph 25, which gave the reason for the risk of persecution. The FTTJ should have considered this explanation and explained why he had rejected it.

7. He also submitted that the FTTJ's findings with regard to the appellant's profile had been made without consideration of a range of factors, such as the appellant's brother being a fighter for the LTTE (paragraph 3 of the appellant's statement), the family being told they were LTTE supporters by the army (paragraph 13), the appellant's support for the LTTE whilst at university (paragraph 14-17), the appellant and her husband being refused permission to live in Colombo because of her LTTE connections, the appellant's husband's detention in a camp known to accommodate suspected LTTE members, the harassment of the appellant's in-laws, the appellant's activities in the UK from 2011, the appellant's evidence to the Internal Centre for the Prevention and Prosecution of Genocide and the appellant's husband's arrest and continued reporting to the authorities.

There appeared to be a complelte absence of consideration of these factors and if they had been rejected, this should have been made clear and reasons given.

8. As regards the medical evidence, Mr Ahluwalia submitted that the failure of the FTTJ to take into account evidence (appellant's bundle, pages 35-53) of the appellant's counselling from July 2012 was an error of law.

9. He further submitted that the FTTJ had made findings of fact on credibility rather than making it part of the rounded assessment of all the evidence, including the medical evidence. Furthermore, the appellant's activities in the UK were at the crux of her appeal.

10. Mr Ahluwalia concluded that these failures amounted to material errors of law. Mr Duffy indicated that he had did not challenge Mr Ahluwalia's submissions that the decision contained material errors of law.

Discussion

11. I share the analysis of the two representatives. I find that the FTTJ's decision contains material errors of law, particularly with regard to the assessment and treatment of the evidence of relevance to credibility, including the medical evidence. The FTTJ has failed to follow the guidance in *Mibanga* and *R(B)* and this infects his analysis of the appellant's credibility. That error is compounded by the FTTJ's failure to understand the appellant's case, particularly the impact of her *sur place* activities which he appears to treat as an afterthought in his analysis of the risk. It is also relevant in this context that he treats other factors (see paragraph 27) as the key triggers of the risk of persecution when it is the appellant's case that it is principally her *sur place* activities which put her at risk on return. There is insufficient reasoning as to why those activities would not "come close to triggering persecution by the Sri Lankan state".

12. Taken together, these errors undermine the reliability of the FTTJ's findings and render them unsustainable. None can be preserved. The decision must be set aside in its entirety. All parties were agreed, that in the circumstances, it was appropriate for the appeal to be considered and all matters decided afresh by the First-tier Tribunal.

Decision

13. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to Section 12(2)(b)(i) of the Tribunal Courts and Enforcement Act 2007 and Practice Statement 7.2(v), before any judge aside from Judge Afako.

14. The anonymity direction made in the First-tier Tribunal is maintained.

A M Black
Deputy Upper Tribunal Judge　　　　Dated: 23 December 2015

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A M Black
Deputy Upper Tribunal Judge Dated: 23 December 2015