



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)**

APPEAL NUMBER: AA/02873/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2 February 2016**

**Decision and Reasons Promulgated
On 24 February 2016**

Before

Deputy Upper Tribunal Mailer

Between

**MS LASHEETHA DEVARAJAN
NO ANONYMITY DIRECTION MADE**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr P Toal, counsel (instructed by Birnberg Pierce and Partners)

For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

- 1.** The appellant is a national of Sri Lanka, born on 25 May 1987. Her appeal against the decision of the respondent to refuse her asylum claim and to return her to Sri Lanka was dismissed by the First-tier Tribunal Judge in a decision promulgated on 16 July 2015.
- 2.** On 20 October 2015, Upper Tribunal Judge Coker granted her permission to appeal on the basis that it is arguable that the Judge placed “inordinate weight” upon the additional detail provided in a witness statement as opposed to the asylum interview. She stated that it is arguable that the purpose of a witness statement is to provide additional information where in response to the decision letter, gaps are identified. If

additional evidence is not required or is discounted, it is arguable that there would be no need for a witness statement. She stated that it is arguable that the Judge has started from a position of disbelief and looked to evidence to displace that, rather than considering and assessing the evidence before him. Permission was granted on all grounds.

3. The appellant relied on extensive grounds of appeal. It is contended that the approach by the Judge to the medical evidence and in particular the failure to have regard to the psychiatric evidence when assessing her claim to have scars arising from being the victim of torture, demonstrated a failure properly to assess all the relevant evidence. In that respect, it was contended that the error identified by the Court of Appeal in Mibanga v SSHD [2005] EWCA Civ 367 applied in this appeal as well.
4. At the commencement of the hearing, Mr Walker accepted that the Judge made a material error of law arising from paragraph 38 of the decision. The Judge stated at [38] that "... it is not clear from Dr Goldwyn's report what, if any, documents she was given for the preparation of her report, e.g. the interview records, reasons for refusal letter which I find is contrary to the guidance given by the Upper Tribunal in JL (Medical reports – credibility) China [2013] UKUT 00145 (IAC) ...".
5. In fact, as is clear from her report, Dr Goldwyn has set out in detail the documents which she relied on when preparing her report and assessing the appellant. This included the interview records and reasons for refusal, namely the documents referred to at [38]. At page 1 of her report, Dr Goldwyn referred to all the documents that were provided and which she read.
6. Mr Walker accepted that this constituted "a clear error" and that it "coloured the rest of her decision."
7. Apart from that submission, it was also contended that the fact that the appellant did not assert that she was suffering from PTSD in her statement was no basis for rejecting the reasoned conclusion of an expert. The fact that she might have stated that she was "fit and well" to be interviewed cannot be relied on to reject a diagnosis of PTSD. The appellant did not state that she was "fit and well" other than stating that she was fit and well to be interviewed. This was accordingly entirely consistent with her diagnosis.
8. Further, Mr Toal submitted that the Judge was ought to have had regard to the assessment of this serious mental health condition, corroborating her account of being the victim of torture, when assessing the credibility of her claim, as part of the assessment as a whole. It was wrong to reach a conclusion by reference to her evidence and then, if in the negative, to ask whether the conclusions should be shifted by the expert evidence – Mibanga, supra.

Assessment

9. I found that Mr Walker's concession regarding the material error of law referred to was properly made. In addition, I have also had regard to the other grounds of appeal which also have merit.

10. The Judge accordingly wrongly undermined the effect and significance of Dr Goldwyn's report which in turn affected his approach to the assessment of the appellant's credibility.
11. The parties submitted that in the circumstances the decision as a whole should be set aside and remitted to the First-tier Tribunal for a fresh decision to be made. It was accepted that there would have to be a complete re-hearing. Both parties submitted that this was an appropriate case for the appeal to be remitted to the First-tier Tribunal.
12. I find, having regard to the Senior President's guidelines in this respect, that this is an appropriate case to be remitted. There will be substantial fact finding involved.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside.

The appeal is remitted to the First-tier Tribunal (Hatton Cross) for a fresh decision to be made before another Judge.

No anonymity direction is made.

Signed

Date 23 February 2016

Deputy Upper Tribunal Judge Mailer