Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00328/2016

THE IMMIGRATION ACTS

Heard at Birmingham Employment Centre	**Decision & Reasons Promulgated**
On 8th June 2017	**On 22nd June 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

[F M]
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paramjorthy (Counsel)
For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge N Asjad, promulgated on 13th February 2017, following a hearing at Birmingham Sheldon Court on 19th January 2017. In the determination, the

judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a female, a citizen of Sri Lanka, who was born on [ ] 1989. She appealed against the decision of the Respondent dated 14th April 2015, refusing her application for asylum and humanitarian leave under paragraph 339C of HC 395.

The Appellant's Claim

3. The Appellant's claim is that she is a Tamil speaking Muslim whose brother, [M], was arrested and detained in 2008 on suspicion of being involved with the LTTE. After he was released in April 2009 he failed to comply with bail conditions. Her father and [M] then left Sri Lanka for Dubai in September 2009. On 26th October 2009 the police came to arrest [M] and her father and because they were not there they arrested instead the Appellant and a younger brother, [Z], and her mother. Although they were then released, the Appellant herself remained in detention and she was beaten. After a bribe had been paid on 9th November 2009 she was released. However, on 7th August 2012 she was again arrested and detained for two months. She claims to have been tortured and raped. She was then released on bail again on 10th October 2012. Her uncle paid an agent to make an application for her for a student visa and this enabled her to leave Sri Lanka and come to the UK.

The Judge's Findings

4. The judge criticised the Appellant for the fact that her brother and father's statement in letters, as to what happened to her in Sri Lanka, makes no mention of the torture, the injuries, or treatment (paragraph 7). The judge also threw doubt on the Appellant's claim that she was kept in detention for two weeks, endured beatings of a severe nature, and yet "she received no medical treatment whilst in detention and no medical treatment once she returned home" (paragraph 9). It is also said by the judge that in her witness statement the Appellant did not mention the physical assaults at all or what injuries she received (see paragraph 12). All in all, therefore, the judge found the Appellant's core claim to be lacking in credibility and she dismissed the appeal.

Grounds of Application

5. The grounds of application state that the judge had made basic factual errors in assessing the evidence. She made findings as to the need for medical treatment which were unsustainable. She made a factual error as to when the Appellant first mentioned her rape. The claim, in short, had been fundamentally misunderstood.

6. On 10th March 2017, permission to appeal was granted on the basis that,

> "In general adverse credibility findings would not raise points of law, but there are important and well established principles that form an exception. Two of these are findings that are not based on evidence; and mistakes of fact (that are clear from evidence that was before the judge)".

Submissions

7. At the hearing before me on 8th June 2017, Mr Paramjorthy, appearing as Counsel on behalf of the Appellant, made the following submissions.

8. First, there was the issue of what the Appellant had been informed as to having happened to her brother, by her family members. The judge held that what she said here in the witness statement (at paragraph 8) was inconsistent with what the Appellant had originally said in her asylum interview at question 78. However, what this is based upon is an entirely truncated reading of the asylum interview. If one looks at the entirety of the questions on this very issue, from question 70 to 78, it is plain that the Appellant is referring to her brother as "he" in response to questions 70, 76, 77, and 78, so that her purpose is in demonstrating that this is what she was told. The Appellant's evidence was that she was not physically at home herself.

9. Second, the judge at paragraph 7 suggests that the letter from the Appellant's brother makes no mention of torture but this is plainly wrong because the Appellant's brother at page 19 of the bundle, in the fifth paragraph, makes it clear that he was tortured by stating, "I was tortured in a bad way in detention and I did not want to remain here now, because it was sensitive and affected me badly".

10. Third, the judge found that the Appellant had only mentioned that she had been raped in detention in her witness statement, but this is factually incorrect because the Appellant had mentioned this at paragraph 13 of her witness statement, which makes clear that, "I was beaten in detention, in that I was punched and slapped with their fists and they then used a long bamboo stick and beat me to my legs ...". Once again, the judge's reading of the interview notes is truncated and selective. She refers to there being no medical treatment whilst in detention or when she returned home (AIR 153 to 155) but neglects to mention that AIR 152 there is a reference to medical treatment. Yet she states that, "after the treatment I was OK". This suggests that the judge had failed to apply "anxious scrutiny".

11. Fourth, the judge states that in her witness statement, the Appellant did not mention the physical assaults at all or what injuries she received (paragraph 19) and that, "she only refers to being raped and sexually assaulted", but this is untrue because at paragraph 19 of the witness statement there is an express reference to such ill-treatment.

12. Fifth, the judge records that, "there is then a 'diagnosis ticket' that is dated October 2012 that appears at page 26 of the Appellant's bundle",

but the judge goes on to say that, "I place no weight on this document" (paragraph 14). The reason that the judge gives is that at paragraph 24 of her witness statement, a medical report was produced by her uncle which led to her release from prison on medical grounds, but that is because this is not the diagnosis ticket. If one looks at question 225 of the interview, there is an express reference to the Appellant having received treatment in detention on the basis of the "diagnosis ticket" (see also question 250 of the interview). There were, submitted Mr Paramjorthy, accordingly, a series of fundamental errors of fact which rendered the entire determination to be unsafe.

13. In reply, Mr Mills, acting as Senior Home Office Presenting Officer, accepted that there were errors in the determination which he could not defend.

Error of Law

14. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. Given what Mr Paramjorthy has set out, it is plain that these errors are such as to attract the strictures of LJ Brooke in **R (Iran) [2005] EWCA Civ 982**, where his Lordship stated that what was required was a decision that was "irrational" or "perverse" for a decision to be set aside, and I conclude that on the basis of the submissions that I have heard, that is indeed the case here.

Notice of Decision

15. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I re-make the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Asjad under Practice Statement 7.2(b) because the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal.

16. An anonymity direction is made.

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 her 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.

Signed Date

Deputy Upper Tribunal Judge Juss 22nd June 2017