



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/04739/2014

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Columbus House, Newport
On 27th November 2014**

**Decision Promulgated
On 2nd December 2014**

Before

Deputy Upper Tribunal Judge Harries

Between

**MISS RAMIYA PATHMAKUMARAN
(NO ANONYMITY ORDER MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr C Lane, Counsel

For the Respondent: Mr P Duffy, Home Office Presenting Officer

DECISION AND REASONS

Details of the Appellant and Proceedings

1. The appellant is a citizen of Sri Lanka born on 4th May 1993. She was refused asylum by the respondent in 2009 but was granted 3 years discretionary leave to remain in the United Kingdom until 4th November 2010 because of her status as a minor. In February 2013 the appellant submitted an application for further leave to remain in the United Kingdom which was refused by the respondent on 24th June 2014.
2. The appellant appealed to the First-tier Tribunal against the decision of the respondent in a hearing before First-tier Tribunal Judge Chohan (the Judge) at Sheldon Court, Birmingham, on 12th August 2014. The Judge dismissed

the appeal under the Immigration Rules, on asylum grounds, humanitarian protection and human rights grounds in a determination promulgated on 11th September 2014. Permission to appeal against the Judge's decision was granted on 29th September 2014 by First-tier Tribunal Judge Shimmin because it was found to be arguable that the Judge failed to make a proper consideration of the appellant's age when assessing her credibility; all grounds were considered to disclose arguable errors of law and were left open.

3. The matter accordingly came before me for an initial hearing to decide whether the making of the decision of the First-tier Tribunal involved the making of an error on a point of law and if so whether the decision should be set aside and remade.

Submissions

4. Mr Lane addressed me for the appellant at the hearing in accordance with his skeleton argument dated 25th September 2014 as follows. He submitted that the Judge failed to make any proper assessment of the appellant's age when assessing credibility, in particular in paragraph 14 of her determination which deals with the issue in a wholly inadequate way. In paragraph 14 the Judge stated that:

“The inconsistencies and discrepancies in the appellant's claim, I find, are so fundamental that they damage her credibility as a whole. I make allowance for the fact that when the appellant first came to the United Kingdom she was only 14 years of age, however that does not explain the fundamental inconsistencies and discrepancies in her account which go to the core of her claim.”

5. Relying on the case of JA (Afghanistan) v SSHD [2014] EWCA Civ 450 Mr Lane submitted that the Judge should have considered in more detail the appellant's age at the date of the screening interview and the Child Assessment; insufficient account was taken of the traumatic nature of events being revisited by the appellant. The Judge had relied too heavily on matters in the screening interview at which there was apparently no appropriate adult present. The screening interview had been conducted contrary to Home Office Guidance that the screening interview is not the place to explore the asylum claim.
6. Mr Lane submitted that the Judge had erred in her reliance upon the content of the Child Assessment which was an assessment for the purposes of securing the well-being of the appellant as a minor and was not concerned with the asylum claim. The Judge had, however, drawn adverse conclusions from its content without assessing it as a piece of evidence. There is nothing to show that an appropriate adult was present for this process although the appellant's carers and brother were present for at least part of it. The Judge had failed to consider the impact of the presence of these people at the assessment. Nor was there any indication

of whether an interpreter was used in the Child Assessment; she may have been interviewed in English, a further matter which the Judge failed to consider.

7. For the reasons fully set out in Mr Lane's skeleton argument it was submitted that the Judge erred in finding a discrepancy in the appellant's evidence in paragraph 14 of the determination. In paragraph 15 of the determination the Judge failed to take account of the fact that the asylum interview dealt only with matters arising since 2006 and the appellant was not asked about abduction of family members other than her father; the appellant should not have been criticised in these circumstances for failing to mention the abduction of her brother; this fact had, however, been mentioned by the appellant at question 62 of the asylum interview. The Judge failed to take account of the likelihood that at her young age the appellant would be unlikely in interview to give information unless she was asked about it. The Judge had failed to take account of whether the appellant's brother had been abducted by the army or the LTTE.
8. Mr Lane submitted that the Judge errs in fact by stating that the appellant made no mention of her boyfriend in Sri Lanka but he is clearly mentioned at both B4 and B6 of the record of the Child Assessment. In totality, the Judge is submitted to have failed in any appropriate context to have considered the appellant's age or vulnerability in assessing the reliability of the evidence or the weight to be attached to it. At this juncture in the hearing before me Mr Duffy interrupted on behalf of the respondent to withdraw the previously indicated opposition to the appeal. He conceded that the determination of the Judge is not safe and that it should be set aside.
9. My finding is that there is merit in the grounds of appeal which show the decision of the Judge to contain material errors of law such that it should be set aside. Taking the final submission first, the Judge has clearly erred in paragraph 15 of the determination in finding that the appellant made no reference to her boyfriend in the Child Assessment; there are two such references. I find that the credibility assessment is flawed for the reasons set out in the grounds of appeal.
10. The remaining grounds of appeal which stand unopposed by the respondent are that the Judge failed properly to consider the risk on return to Sri Lanka to the appellant as a single, un-married, mother with a child born out of wedlock; more should have been done to trace the appellant's family in Sri Lanka and the Judge erred by refusing an adjournment to the appellant to allow her brother to attend as a witness for her. In this respect the Judge is submitted to have been unjust and wrong.
11. The decision of the First-tier Tribunal is set aside. Both parties submitted that the matter should be remitted to the First-tier Tribunal for a complete rehearing, a course which I consider to be appropriate having further considered the Practice Statement on the disposal of appeals in the Upper

Tribunal made by the Senior President of Tribunals on 25th September 2012, particularly in relation to paragraphs 7.2(a) and (b) as follows:

7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) 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.

12. The case is therefore remitted to the First-tier Tribunal for reconsideration on the basis that none of the findings shall stand. The appellant proposes to call her brother as a witness and a Tamil interpreter is required.

Notice of Decisions

13. The making of the decision in the First-tier Tribunal involved the making of material errors of law.

14. The decision of the First-tier Tribunal is set aside and no findings are preserved.

15. The case is remitted to the First-tier Tribunal to be reconsidered.

Directions

16. The case is remitted to the First-tier Tribunal to be reconsidered at the Sheldon Court, Birmingham, Hearing Centre with an estimated hearing time of 3 hours.

17. The hearing date cannot currently be provided but is likely to be in June 2015. The Birmingham Hearing Centre will notify the parties in due course of that date.

18. A Tamil interpreter is required.

19. The case shall not be reconsidered by the same member of the First-tier Tribunal who made the decision that has been set aside, namely First-tier Tribunal Judge Chohan.

ANONYMITY

The First-tier Tribunal made no direction pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (immigration and Asylum Chamber) Rules 2014

Signed

J Harries

Deputy Upper Tribunal Judge

Date: 1st December 2014