



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/08333/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 18 June 2018**

**Decision & Reasons Promulgated
On 25 June 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE A M BLACK

Between

**R S W
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms D Revill, counsel
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 2 October 1985. She claimed asylum on 11 February 2016. Her claim was refused by the respondent. The appellant appealed to the First-tier Tribunal and First-tier Tribunal Judge L Mensah (“the FTTJ”) dismissed her appeal on all grounds.
2. Permission to appeal was granted by First-tier Tribunal Judge J K Swaney in the following terms:
“...
2. The grounds assert that the Judge erred in failing to have regard to material evidence; in failing to assess credibility in the round; and in failing to properly consider the appellant’s claim under article 3 of the ECHR on medical grounds.

3. It is arguable that the judge’s assessment of credibility is flawed, as although the judge accepts that the appellant suffers from PTSD and has self-harmed in the past and states that this has been taken into account in the assessment of credibility, there is no further finding or reasons as to the potential impact of the appellant’s mental health on her credibility.

4. The grounds of appeal disclose an arguable error of law. The grant of permission is not limited. ...”

3. At the outset of the hearing before me, I observed that the FTTJ had made a positive finding at [13] that the appellant had been diagnosed with Post-Traumatic Stress Disorder (“PTSD”) and had “taken this into account when considering her overall credibility”. I referred the parties to the expert psychiatric evidence, Dr Chiedu Obuaya’s report, before the FTTJ. This makes no such diagnosis. Indeed Dr Obuaya specifically states that the appellant did not describe core symptoms of PTSD [38]. He diagnosed a mild depressive episode and stated at [41]: “she does not, in my clinical opinion, meet the diagnostic criteria for a separate diagnosis of PTSD ... in its own right”. Thus the FTTJ made a mistake of fact as to the appellant’s mental health and had regard to that unsustainable finding when assessing the appellant’s overall credibility.
4. Mr Tarlow, for the respondent, conceded that, in light of this mistake, he could not defend the findings of the FTTJ. He accepted the FTTJ’s decision contained a material error of law.
5. The parties were in agreement that the decision of the FTTJ should be set aside and the matter remitted to the First-tier Tribunal for a fresh decision to be made, without any findings of fact being preserved. That is the appropriate course because the the decision of the FTTJ contains a material error of law. The assessment of credibility is flawed because it is based, in part, on that mistake of fact. The decision is not sustainable on the evidence.

Decision

6. The making of the decision of the First-tier Tribunal involved a material 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 FTTJ L Mensah.
7. The appellant is entitled to anonymity in these proceedings and I make a direction accordingly.

A M Black

Deputy Upper Tribunal Judge

Dated: 18 June 2019

Anonymity Direction – 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 her 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: 18 June 2019