



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

Appeal Number: PA/10938/2017

THE IMMIGRATION ACTS

**Heard at Glasgow
on 7th December 2018**

**Decisions & Reasons
Promulgated
on 11th January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DEANS

Between

**MU
(Anonymity direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr E MacKay, McGlashan MacKay, Solicitors
For the Respondent: Mrs M O'Brien, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against a decision by Judge of the First-tier Tribunal Debra Clapham dismissing an appeal on protection and human rights grounds.
2. The appellant is a national of Sri Lanka. He claims to be at risk from the authorities in Sri Lanka because of his brother's connection with the LTTE. His brother had a shop in Sri Lanka where he and his

business partner bought gold from members of the LTTE. The appellant claims that he was detained twice, in December 2008 and July 2009, and was tortured. The Judge of the First-tier Tribunal did not believe the appellant's evidence.

3. Lengthy grounds seeking permission to appeal were lodged. Permission was granted on the general grounds that the judge arguably did not have regard to the totality of the evidence and did not give adequate reasons when making her adverse credibility finding.
4. At the hearing before me the focus was on the 7th and 8th grounds of the application. The 8th ground concerned the judge's finding at paragraph 132 of her decision that it was not credible that, if the appellant had escaped from detention as he claimed, he would have been able to walk through the airport in Sri Lanka with a passport in his own identity. For the respondent, Mrs O'Brien rightly acknowledged that the judge failed to take into account the explanation given by the appellant at paragraph 27 of his witness statement to the effect that his father had paid a substantial bribe through an agent to facilitate the appellant's travel to the UK.
5. The 7th ground concerned the judge's finding at paragraph 130 of her decision to the effect that there was no indication that the person who helped the appellant escape from detention in August 2009 was seeking a bribe. This finding did not take into account paragraph 27 of the appellant's witness statement, where he said the man wanted a bribe, which was paid by the appellant's father. Mrs O'Brien again acknowledged that in making her finding the judge failed to have regard to this evidence.
6. It is not necessary for me to examine in further detail the grounds of the application. Mr MacKay made the general point that although in her decision the judge gave a detailed account of the hearing, she did not give reasons for rejecting the evidence before her. I am satisfied that in relation to the two instances examined above the judge failed to have regard to relevant evidence and because of this did not give adequate reasons for her adverse credibility findings. These findings concerned matters which were central to the appellant's claim, namely his escape from detention and his departure from Sri Lanka. The findings made by the Judge of the First-tier Tribunal are unsafe and should not be allowed to stand. The decision of the First-tier Tribunal is accordingly set aside.
7. Both parties were agreed that the appeal should be remitted to a differently constituted First-tier Tribunal with no findings preserved. Because the findings made by the Judge of the First-tier Tribunal cannot be relied upon, remittal is the proper course, in terms of paragraph 7.2(b) of the Practice Statement.

Conclusions

8. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.
9. The decision is set aside.
10. The appeal is remitted to the First-tier Tribunal with no findings preserved to be reheard before a differently constituted Tribunal.

Anonymity

The First-tier Tribunal did not make a direction for anonymity. In order to preserve the positions of the parties until the appeal is finally decided, I consider an anonymity direction should be made. Until a court or tribunal directs otherwise no report of these proceedings shall directly or indirectly identify the appellant or any member of his family. This direction applies to the appellant and the respondent. Failure to comply with the direction may lead to contempt of court proceedings.

M E Deans
December 2018
Deputy Upper Tribunal Judge

24th