



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

Appeal Number: PA019772016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 20<sup>th</sup> June 2017**

**Decision & Reasons  
Promulgated  
On 23<sup>rd</sup> June 2017**

**Before**

**UPPER TRIBUNAL JUDGE MARTIN**

**Between**

**SM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms H Foot, Counsel instructed by Birnberg Peirce & Partners

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

**DECISION AND REASONS**

1. This is an appeal to the Upper Tribunal by the Appellant, with permission, in relation to a Decision and Reasons promulgated on 22<sup>nd</sup> December 2016 by First-tier Tribunal Judge N M Paul following a hearing at Taylor House on 16<sup>th</sup> December.

2. The Appellant is a citizen of Sri Lanka born in August 1947. She is a person who has visited the UK on numerous occasions to visit her adult son who is now a British resident. The last time she came she did not return and claimed asylum. She did so some four years after a previous human rights application had been refused and some four years after she last came to the UK.
3. The grounds challenge the way in which the judge has approached credibility and they do so with great force and having read the grounds and the Decision and Reasons I find that this decision is not sustainable.
4. The judge sets out at considerable length the Appellant's claim, the Respondent's submissions and the submissions and it is only at paragraph 40 that his reasoning starts. The biggest problem is to be found at paragraph 42 where he says:

“The starting point, in this case, has to be an assessment of the Appellant's credibility because of course if her account as to what treatment she received in Sri Lanka is not correct, it calls into question any of the evidence that has been based on the accounts that she had given. In particular, if the Appellant is not accepted as being a credible witness then of course very little reliance can be placed on what she has said to the psychiatrist and/or psychologist, because of course that would be deemed to be self-serving in support of an unreliable, if not incredible account.”

5. Had that paragraph featured at the end of the findings on credibility rather than at the beginning it may just have survived. However it does not. It is right at the beginning of the credibility findings and flies in the face of guidance, in particular the case of Mibanga [2005] EWCA Civ 367 which confirms that expert evidence should not just be looked at after credibility findings have been made but that credibility must be assessed taking into account that evidence, including any expert evidence. At no point in this judge's reasoning has he considered the medical evidence at all. The Appellant was deemed so mentally unfit that she could not give evidence. She had been diagnosed with post-traumatic stress disorder as well as severe depression. The psychiatrist may have given an explanation as to why the Appellant had difficulty in giving evidence. The psychiatrist may have given an explanation as to why it was the claim was made so late in the day. That may have been a good explanation and it may not. The judge does not consider it at all. That report should have been a central part of the credibility findings. Not only did the judge not consider the expert report, he did not make any findings in relation to what she claimed had happened to her in Sri Lanka either. He did not make any findings in relation to her claimed diaspora activities. The findings that he does make appear to be based solely on the delay.
6. For that reason the Decision and Reasons cannot stand and I set it aside in its entirety with no preserved findings. It is appropriate and agreed by both representatives that this case should be remitted to be re-heard in

the First-tier Tribunal and that is what I do. Accordingly the appeal to the Upper Tribunal is allowed to the extent that the case is remitted for a full re-hearing in the First-tier Tribunal.

7. No anonymity direction was made previously but as it is an asylum case I will make an anonymity direction.

**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 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.

Signed

Date 23<sup>rd</sup> June 2017

Upper Tribunal Judge Martin

**TO THE RESPONDENT  
FEE AWARD**

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 23<sup>rd</sup> June 2017

Upper Tribunal Judge Martin