Upper Tribunal
(Immigration and Asylum Chamber)   **Appeal Number: PA/02715/2018**

THE IMMIGRATION ACTS

Heard at Field House   Decision & Reasons Promulgated
On 12 August 2019   On 24 September 2019

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

S R
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel instructed by A & P Solicitors
For the Respondent: Mr E Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1.   Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 I make an order prohibiting the disclosure or publication of any matter likely to lead members of the public to identify the Appellant. Breach of this order can be punished as a contempt of court. I make this order because the Appellant is an asylum seeker and it entitled to anonymity.

2.   This is an appeal against a decision of the First-tier Tribunal dismissing the appeal of the appellant against the decision of the Secretary of State refusing him recognition as a refugee and/or leave to remain on human rights grounds. Mr Paramjorthy did not represent the appellant in the First-tier Tribunal and did not settle the grounds of appeal. These comments are not addressed to him, but it is right to say that the grounds of appeal

to the Upper Tribunal are not helpful. They complain repeatedly in rather acidic terms about the First-tier Tribunal's delay, but this is not a case where the delay is serious. It took something like four-and-half-months to be promulgated. It should have been done sooner, we all know that, but there was no evidence before me that the delay was the cause of the difficulty in the case.

3.   By way of example the grounds say the judge was "not attentive" and was "not remembering because Counsel was described wrongly as a Presenting Officer. That is clearly a mistake but it is obvious from the contemporaneous note it was a mistake at the time. It is nothing to do with delay. This case has not gone wrong because of delay; it has gone wrong because of a rather odd, erroneous approach to an important strand of evidence.

4.   This is a case where the appellant has produced apparently credible medical evidence of markings on his back which is described as "highly consistent" with him being beaten. Rather than looking at that evidence and the reasons for it and then how those reasons might impact upon any risk the appellant has in the event of return, the First-tier Tribunal Judge has decided to disbelieve the evidence because a complaint was not made consistently about cigarette burns. That does not deal with the scars on the back and the mechanism for them arriving there, and really makes the whole Decisions and Reasons unsatisfactory because the most important part of it has not been addressed.

5.   There is a secondary point which is that the judge has not dealt adequately with the risk on return because of sur place activities. It has merit.

6.   Mr Paramjorthy's third point is that there are signs of carelessness in the Decision and Reasons, the most obvious one being paragraphs 24 and 25. Paragraph 24 is limited simply to the word "Medical" and paragraph 25 to the word "The". I do not know how this came about but at the very least it is indicative of poor proofreading and does not sit comfortably with the duty to have given anxious scrutiny. If there had been nothing else wrong with the Decision I doubt that this error would have undermined it. The real problem here is the failure to engage with the evidence of scarring on the appellant's back and the reasons for it.

Notice of Decision

7.   The parties before me agreed that this is unsatisfactory and is not something that can be appropriately repaired easily in the Upper Tribunal. It has to be reheard and as the appellant's case has not been decided properly I agree with the parties that this is a case that needs to be heard again in the First-tier Tribunal and I so order.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 23 September 2019