**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: AA/01562/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 24 July 2013**

**Determination Promulgated**
**On 1 August 2013**
…………………………………

**Before**

**UPPER TRIBUNAL JUDGE KING TD**

**Between**

**MR U K**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr B Hawkin, Counsel, instructed by Ravi Solicitors
For the Respondent: Mr G Saunders, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant was born on 7 September 1983 and is a citizen of Sri Lanka. He arrived in the United Kingdom on 7 September 2008 with a valid student visa which was extended until 2 February 2013.

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2. It was the case of the appellant that having returned to Sri Lanka in December 2012 he had been arrested by the CID on 12 December, being beaten and subjected to torture, being released on 24 December 2012. He returned to the United Kingdom on 27 December 2012 and claimed asylum on 4 January 2013.

3. The respondent in a decision made on 4 February 2013 refused the claim. Thus is it that the appellant sought to appeal against that decision, which appeal came before First-tier Tribunal Judge Turquet on 11 April 2013. The determination is a lengthy one but for the reasons as set out therein the Judge dismissed the appellant's appeal in all respects.

4. Grounds of appeal were lodged against that decision and permission to appeal was granted on 31 May 2013. Thus the matter comes before me in pursuance of that grant.

5. Although there are a number of matters raised in the grounds of appeal Mr Hawkin, who represents the appellant, relies primarily upon the criticism made in those grounds concerning the approach which the Judge has taken to the medical evidence. He invites my attention to the case of **Francois Mibanga [2005] EWCA Civ 367** and submits that the approach taken by the Judge to the medical evidence is precisely the approach which was criticised by the Court of Appeal in that decision.

6. The respondent in a written response of 14 June 2013 contended that the reasoning of the Judge did not fall foul of the principles as set out in **Mibanga**.

7. The decision in **Mibanga** is well known to this jurisdiction. Essentially the Judge made a number of credibility findings arising from the facts of the case. Having made such findings of the Judge then went on to consider the medical report.

8. The Court of Appeal held that a fact finder must not reach his or her conclusion before surveying all the evidence relative thereto. What the fact finder does at his or her peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.

9. It was made clear particularly at paragraph 24 of the judgment that where a report is specifically relied on as a factor relevant to credibility, the adjudicator should deal with it as an integral part of the findings on credibility rather than just as an add on, which does not undermine the conclusions to which he would otherwise come.

10. The error identified in **Miganba** was that the adjudicator addressed the medical evidence only after articulating conclusions that the central allegations made by the appellant were not credible. The court was of the view that if the Judge had considered the evidence more in the forefront of

her mind, particularly given the nature and location of the scarring, that may have led her to reach a different conclusion.

11. To quote Lord Justice Buxton in the course of his judgment at paragraph 30,

> "The adjudicator's failing was that she artificially separated the medical evidence from the rest of the evidence and reached conclusions as to credibility without reference to that medical evidence; and then, no doubt inevitably on that premise, found that the medical evidence was of no assistance to her. That was a structural failing, not just an error of application."

12. Mr Hawkin on behalf of the appellant submits that is precisely what has been done in this case. He draws my attention particularly to paragraphs 69 and 77 of the determination.

13. The relevant passage at paragraph 69 is as follows:

> "For the above reasons I do not find that the appellant's account of being arrested and detained to be credible. I do not find that he was arrested, detained and ill-treated as claimed. However I have given consideration to the events as described."

14. This is a comment made before the Judge deals with the medical evidence and having dealt with the medical evidence the conclusion at paragraph 77 is in these terms.

> "However in considering whether the appellant is at risk of persecution, I do not find that the fact that he has given an account of his treatment to medical personnel is evidence per se that it happened as claimed, taking into account my previous findings."

15. He submits that the Judge has made firm conclusions as to credibility in advance of considering the medical report.

16. Mr Saunders, on behalf of the respondent, invites me to come to the opposite conclusion. In that connection he invites my attention to paragraph 57 of the determination in which it is clear that the Judge is concerned as to the order in which the findings should be made. The Judge says in terms:

> "In coming to my decision I have set down my findings in some sort of order. The order does not indicate that some considerations are more important than others. There are accounts given by the appellant himself in his interviews, the statement, oral evidence and medical evidence."

17. He submits that the Judge proceeds in a very detailed determination to highlight matters of concern as they arise making findings on such matters as she went. When there are a large number of issues to be considered and factors which require some finding, it is necessary as the Judge had indicated, to adopt some order to express them. The fact that the medical evidence was not considered first was no indication that it was considered last.

18. In that connection he invites my attention to paragraph 78 of the determination which reads as follows:

> "In respect of the scars, having considered the reports and all the evidence, I find that the scars on the back were done deliberately. However the appellant's case is so weak that I do not accept that they were inflicted as claimed by the appellant. Having considered the report in the round with all the evidence and my findings in respect of this appellant's credibility, the appellant has not satisfied me on the lower standard of proof that the injuries were inflicted, whilst detained by the authorities in December 2012."

19. Mr Saunders invites me to find that that passage clearly illustrates that the Judge has followed the advice as set out in **Mibanga**, namely having taken a holistic view to the evidence as a whole but then making findings upon that evidence.

20. Mr Hawkin also relies on that particular paragraph but to the opposite effect, namely that reinforces the point which he wishes to make, that the findings of credibility had already been made prior to the consideration of the report.

21. In the case of **Mibanga** it was said that a broad and not a technical approach should be taken to the adjudicator's decision and to the reasons that he or she sets out.

22. The fundamental issue is of course that, having considered the evidence, how should the findings upon that evidence be structured and expressed. Is it the case that the Judge first considered credibility and thereafter rejected the report based upon such findings or was what the Judge was seeking to say little more than a sequential consideration of matters for and against the appellant. Central to such consideration was a medical report prepared by Mr Martin a consultant in emergency medicine conducted on 12 February 2013.

23. The photographs of the appellant's back reveal long scars which were said by the doctor to have been typical of injuries caused by an intentional blunt trauma with a long narrow blunt implement. The scars were immature and consistent with the time span described by the claimant of injuries having been occurring in the last few months.

24. Although the Judge makes a number of comments about that report, comparing and contrasting it with a report of Dr Gram, it was common ground that these were non accidental injuries intentionally inflicted upon the appellant. The real issue in the case was whether they were inflicted on the occasion that has been described in the process of being tortured or whether the appellant had those injuries made upon him presumably in order to further an asylum claim. In **Mibanga** the question arose as whether the injuries were accidental or from some other cause. It is not suggested in this case. It is the sharp decision to be made as to whether the appellant asked another to inflict those injuries upon him or whether it was done in the way that he has described.

25. In order to determine that issue the overall context of the claim fell to be considered.

26. Thus leaving aside words and phrases the task which I have before me is to consider the determination and whether the findings made in respect of the medical evidence are more an afterthought to other findings or whether they are integral to the findings. It seems to me that the comment made by the Judge herself in paragraph 57 fo the determination is helpful.

27. The evidence has been set out in some detail in the paragraphs preceding paragraph 57. There after the time has come for the Judge to express herself as to the findings which she makes and why. She has to start somewhere. She reminds herself that the order in which she makes her findings do not necessarily indicate that some considerations are more important than others.

28. At paragraph 58 she indicates that “There were a number of inconsistencies and implausibilities in his account which have led me to be unable to rely on the veracity of the account”. Thereafter the Judge at paragraphs 58, 59 and 60 considers the recruitment of the appellant and his claimed activities with the LTTE and finds that they lacked credibility for the reasons as set out.

29. At paragraphs 61, 62 and 63 the Judge goes on to consider the activities with the LTTE which he claims to have conducted and, for the reasons set out therein, concludes that they lack credibility.

30. The Judge goes on at paragraphs 64 to 66 to consider further matters in connection with the appellant's circumstances in Sri Lanka, particularly to the interview letter inviting him to the interview in Sri Lanka ,which for reasons as set out in paragraph 66, was not accepted as being credible or reliable.

31. The Judge then moves on to consider how the appellant came to be arrested and questioned, indeed how he came to be released. That is

considered at paragraphs 67 to 70. She finds inconsistencies in the account such as to lead to a lack of credibility.

32. Mr Hawkin relies upon the first few lines of paragraph 69 which have already been quoted, to indicate that by that stage the Judge has come to the conclusion that the appellant's account of being arrested and detained lacks credibility. It seems to me however that that is not to do justice to the full text of paragraph 69 and in particular to the expression "however I have given consideration to the events as described". The Judge then goes on to describe those events in paragraphs 69 and 70, namely his escape and in paragraphs 71 to 78 looks at the medical evidence and finds for various reasons that that cannot be relied upon to substantiate the truth of the appellant's account.

33. The Judge does not stop there but continues upon the fact finding programme at paragraph 79 where a photograph is considered. At paragraph 80 the nature of the airline ticket purchased was considered. At paragraph 89 the issue of the payment of a bribe was considered. The circumstances of the time spent before leaving Sri Lanka were considered in paragraph 82 and the lack of an arrest warrant was considered in paragraph 83. The failure of the appellant to claim asylum upon arrival as undermining credibility was considered in paragraph 84.

34. I find it significant that in all those aspects the Judge is making a finding as to credibility. The findings of credibility did not stop in paragraph 69 but continued to be made with reference the evidence that is then being considered.

35. It seems to me and I so find that the considerations of the medical evidence was conducted as part and parcel of the overall consideration of the many facts and issues.

36. I find that that is what the Judge said in terms in paragraph 78.

37. The methodology seemingly adopted by the Judge is to consider an area of evidence and come to findings upon it and move to another and come to findings upon that in a structure approach. The Judge however at paragraph 78 speaks of considering the medical report in the round with all the evidence and the findings in respect of credibility. For my part it is difficult to see how else the matter could have been differently considered.

38. The fact that the appellant has noticeable scars is not a matter which stands upon its own right to trump all other considerations but falls to be considered with other findings taken as a whole. At some stage the Judge has to express herself as to those findings and if there are many findings to be made, the order in which they come to be made is of importance, as was recognised by the Judge in her self-direction.

39. It is clear that the Judge has followed a chronological sequence of analysis of the evidence and of the findings. She has placed the medical report within that chronology and has not sought to leave it to the end. It is difficult to imagine how what was a complicated fact finding exercise could have been done differently.

40. It may be that other Judges would deal with the medical evidence first but clearly whether or not the injuries were inflicted at the request of the appellant to deceive or were inflicted unwillingly upon him by the Sri Lankan authorities depends very much on the other findings in the determination concerning credibility. The report falls to be considered in the light of all findings and I find that that is what has happened in this case.

41. There are many specific challenges to the evidence, particularly to the fine distinction which the Judge seeks to make between the two doctors, a distinction which it is submitted was one without much difference, namely whether the distinction between "immature" and "superficial" was very helpful. What the Judge does say, however, in particular in paragraph 74 was that there was no explanation of there being a relatively small number of scars compared with the number of claimed beatings. It seems to me that it is that comment that is open to be made.

42. Whether the injuries were caused by wire or by blunt instrument perhaps is of less significance, given the conclusion which was accepted by the Judge that these were not accidental injuries but were clearly injuries inflicted on the appellant by another. The nature of the report does not assist the Judge in determining how they were inflicted and by whom. It is only by looking at the circumstances overall in assessing the account given by the appellant that that answer could be given.

43. It is a structured determination and many issues are made and findings upon those issues expressed with reasons. It is to be acknowledged that certain of the findings by themselves perhaps are less strong than others but that cumulatively there is a clear understanding as to credibility overall.

44. A matter that lies behind the grounds of appeal is the suggestion that the Judge was devoting her efforts to finding reasons to reject the appeal rather than finding reasons to accept it. Clearly if that were the case it would call into question the quality of the judgment and fairness. It seems therefore, that that is a matter which I must take into consideration in my consideration of the determination. I do not find that to be reasonably likely in this case. The evidence is fully and fairly set out and considered in a structured way. Understandably the grounds seek to suggest that an alternative viewpoint can be made on certain matters but that is not an error of law except and insofar that the view of the Judge was not **Wednesbury** unreasonable or perverse in all the circumstances.

45. I recognise that this is not a straightforward case and that certain expressions by the Judge, particularly those at the conclusion of paragraph 77, may have given the impression of a Judge having formulated certain views as to credibility long before the approach to the medical evidence.

46. For the reasons that I have set out, however, I find that it has been a structured approach in which findings of credibility are being made throughout on the basis of that consideration.

47. That approach can be shown at paragraph 83 where the Judge looks at the issue of an arrest warrant and states:

> "There are no details of this. He submitted a letter purporting to come from his mother stating that the Kopay police came three times, threatening that they would kill the appellant if he returned. There is no envelope showing how the letter was received from Sri Lanka. However considered the letter in the round with all the evidence and the comments in **Tanveer Ahmed**, I place little weight on it as evidence that this appellant is wanted by the authorities."

48. It seems to me that that is suggestive of a holistic approach, that the mind is being focussed upon wider issues at each stage of the determination. Findings of fact have to be expressed and it is the order and way in which they are expressed which is of importance in this case.

49. For the reasons as set out above I do not find that this is a case which mirrors that of **Mibanga**.

50. Accepting that some of the factual complaints made in the grounds may have some substance overall I find that the approach of the Judge was not unfair or unreasonable and that a proper balancing exercise as to what the evidence said and how it should be interpreted was properly open to be made.

51. In the circumstances therefore the decision of the Judge shall stand. The appeal of the appellant is thus dismissed.

Signed Date

Upper Tribunal Judge King TD