



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/01666/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 15 November 2013

Determination sent
on 9 December 2013

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHAMED IRFAN MOHAMED HUSAIN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Ms A Nisbet, of Morton Fraser, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) The appellant is a citizen of Sri Lanka, born on 17 January 1986. He appeals against a determination by First-tier Tribunal Judge D'Ambrosio, promulgated on 5 August 2013, dismissing his appeal against refusal of recognition as a refugee from Sri Lanka.

Grounds and submissions for appellant.

- 2) Ms Nisbet took grounds 1 and 2 together. They complain that the judge made inconsistent findings on a medico-legal report by the Medical Foundation, dated 8 July 2013, and failed to give it adequate weight. At paragraph 56(b) of the determination the judge notes a finding in the report that 3 scars to the appellant's fingers are highly consistent with the attributed cause of defensive wounds sustained during a sword attack. At paragraph 126 the judge returned to the matter, noting that the report says such scarring might also be accidental. The judge overlooked the finding in the report that it would be highly unusual for this to be accidental. Ms Nisbet added that in evaluating the report, the judge applied a standard of proof which was "too high" or "overly burdensome", and this was significant because the judge's other adverse findings were speculative.
- 3) Ground 3 is entitled "overly burdensome standard of proof and unlawful treatment of documents", and complains that the judge failed to take into account, on the authority of RP (Proof of Forgery - Nigeria) [2006] UKAIT 00086, that in judicial proceedings an allegation of forgery needs to be established to a high degree of proof by the person making the allegation. However, I understood Ms Nisbet to accept in course of submissions that this is not a case where the respondent set out to establish that a document is a forgery. She said next that even if the document was forged, the appellant's case should have succeeded on the basis of the medical evidence and the "objective evidence".
- 4) Ground 4 complains that the judge took into account irrelevant and irrational considerations in relation to the appellant's delayed asylum claim. Ground 5 complains that the judge incorrectly found there to be a contradiction between accounts given by the appellant at asylum interview and for his medico-legal report. Ground 6 complains that irrelevant and irrational considerations were applied in assessing plausibility.

Submissions for respondent.

- 5) Mr Mullen said that the judge stated the standard of proof correctly, in particular at paragraph 84, and there was nothing to suggest that he applied any other standard. The judge set out quite fully the findings and conclusions in the medical report at paragraphs 52-57. He did not have to set them out again when reaching his conclusions. He was entitled there to note the report to the effect that such scarring might be accidental. Even if he at that stage overlooked the full terms of the report, that was not of real significance in the context of his overall conclusions. The report at paragraph 58 did not say *why* it would be "relatively unusual to sustain 3 separate scars to the same hand in this way." There was no obvious reason why it might be. The judge reached his conclusion on the appellant's account in the context of the whole evidence and had generally taken a correct and fair approach to the medical report. By itself, it could not be determinative of past persecution. The grounds were misconceived in respect of questioning the amount of weight given by the judge to that

item of evidence. The relative weighing of items of evidence was very much the function of the judge. The third ground misconceived the issue about the documents. The judge correctly directed himself at paragraph 91(i) that he was to assess the reliability of documents which the appellant produced according to the well known approach explained in Tanveer Ahmed v SSHD [2002] UKIAT 00439. At paragraphs 117 and 118 the judge applied that approach, and concluded that the summons which the appellant produced was not a reliable and genuine document.

Reply for appellant.

- 6) Ms Nisbet said that the respondent's refusal letter declined to give weight to the documents produced by the appellant, but there had been no definite proof that the arrest warrant or summons was a forgery.

Discussion and conclusions.

- 7) The grounds of appeal do not accurately reflect the terms of the medico-legal report. The report is cited to the effect that it would be "*highly* unusual" for the scarring to be accidental, but what the report actually says (paragraph 58) is "*relatively* unusual". The report is accurately summarised in the determination. It is not shown that the judge made inconsistent findings on it. The weight to be given to it was a matter for him in the context of the rest of the evidence and of his other findings.
- 8) The respondent's refusal letter says at paragraph 84 that no weight could be given to the appellant's documents, because he failed to provide properly certified translations. At paragraph 85 it is said that by the appellant's own account he had contacts in Sri Lanka who had been able to provide him with fraudulent documentation in the past to make visa applications (as a student) and that the presentation and quality of his documentation is damaging to his credibility.
- 9) It was for the appellant to establish his claim, to the low standard applicable. The real issue is not usually whether a document is a forgery, but whether it is one upon which reliance should properly be placed. Only where the Secretary of State makes a positive assertion of forgery does she assume the burden of proving that. This ground of appeal was badly taken.
- 10) The remaining grounds are only re-statement of the case and disagreement with the judge's conclusions, dressed up partly in language of legal error.
- 11) The determination read fairly and as a whole, more than adequately explains to the appellant and to any other reader why, for a number of good reasons, the evidence for the appellant has been found less than persuasive. The finding, for example, that people carrying cricket stumps towards a cricket ground are likely to have been ordinary citizens going to play cricket rather than government agents is common sense, not speculation.

- 12) The appellant has not shown that the determination of the First-tier Tribunal errs in law in any such respect as to require it to be set aside, and the determination shall stand.
- 13) No anonymity direction has been requested or made.

A handwritten signature in black ink, appearing to read "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

19 November 2013
Judge of the Upper Tribunal