



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

Appeal Number: AA/08566/2011

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Determination  
Promulgated**

**On 9 July 2013**

**Before**

**UPPER TRIBUNAL JUDGE MOULDEN**

**Between**

**MR A P  
(Anonymity direction made)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M Sowerby of counsel instructed by S Satha & Co solicitors

For the Respondent: Ms M Tanner a Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka who was born on 17 September 1985. His appeal has been remitted to the Upper Tribunal by the Court of Appeal for reconsideration.
2. The respondent's original decision, to give directions for the appellant's removal from the UK following the refusal of asylum, was

made on 19 July 2011 with a detailed explanation in the reasons for refusal letter of 15 July 2011.

3. The appellant appealed and his appeal was heard by First-Tier Tribunal Judge Halliwell on 22 August 2011. He found the appellant not to be credible and concluded that he would not be at risk on return to Sri Lanka. He dismissed the appeal on asylum, humanitarian protection and human rights grounds. The appellant then sought permission to appeal to the Upper Tribunal which was granted.
4. On 17 January 2012 Deputy Upper Tribunal Judge Wood TD heard the appeal, concluded that Judge Halliwell had not erred in law and upheld his determination.
5. The appellant then made a misconceived application for further permission to appeal to the Upper Tribunal which was rejected on the basis that the application should have been for permission to appeal to the Court of Appeal.
6. The appellant applied for permission to appeal to the Court of Appeal which was refused by an Upper Tribunal judge. The appellant renewed his application to the Court of Appeal. On 18 December 2012 Lloyd Jones LJ granted permission to appeal stating; "there was a great deal of evidence here supporting the view that AP would not be at risk on return to Sri Lanka. However, as in RS (Sri Lanka), the proper approach to the medical evidence which conflicts with the other evidence justifies a second appeal."
7. The respondent took the view that the appeal should be "remitted to the Upper Tribunal for reconsideration" and a consent order was made by Davis LJ on 11 April 2013 the relevant portions of which state; "1. The decision of the Upper Tribunal (Immigration and Asylum Chamber) promulgated on 17 June 2012 be quashed; 2. The appeal is remitted to a different immigration judge at the Upper Tribunal (Immigration and Asylum Chamber) for reconsideration." There is an agreed Statement of Reasons accompanying the order.
8. The appeal came before me for mention on 5 June 2013. Both parties were represented. The question arose as to which decision was to be quashed as there was no decision of either the First-Tier or Upper Tribunal promulgated on 17 June 2012. The decision of Judge Wood followed a hearing on 17 January 2012 and was promulgated on 13 February 2012. However, as the decision of Judge Halliwell was in the First-Tier Tribunal and the decision of Judge Wood was the only substantive decision in the Upper Tribunal and the Order refers to an Upper Tribunal decision it was agreed with the representatives that there must have been a typographical error and that the decision quashed was that of Judge Wood. It was then common ground that my task was to decide whether there was an error of law in the decision of Judge Halliwell such that it should be set aside and

if so whether I should remake the decision or decide how and when this should be done.

9. On 30 December 2008 the appellant was granted a student visa to undertake a PhD course in computing at a London College. He arrived in the UK on 19 January 2009 using his own passport. His period of leave expired on 30 April 2011. He did not study at the college he had indicated but went to another where he did not complete his studies. He claimed asylum on 26 May 2011.
10. The appellant claimed to have been a supporter and helper of the LTTE but not a member. He had collected funds, arranged accommodation for members, collected and passed on information about military movements and checkpoints. He was arrested by the police in August 2008 on suspicion of involvement with the LTTE. He was detained for two and a half months, interrogated and tortured. He was beaten, cut with a knife and burned with a hot metal rod. His uncle paid a bribe and he escaped, resulting in the issue of an arrest warrant. An agent was employed to make arrangements for him to come to the UK where he arrived in January 2009. He heard that in April 2011 the police went to his house with the arrest warrant looking for him.
11. Both parties were represented at the hearing before Judge Halliwell and the appellant gave evidence. The judge found that he was not a credible witness. He did not believe the appellant's account of events or that he would be at risk on return to Sri Lanka. He dismissed the appeal on asylum, humanitarian protection and human rights grounds.
12. The grounds of appeal originally submitted in September 2011 have been refined and the appellant now relies on the submissions contained in Mr Sowerby's skeleton argument which is undated but submitted on the day of the hearing before me. Initially, I was told that this superceded the original grounds of appeal but, in his oral submissions, Mr Sowerby went back to and relied on paragraphs 5 and 6 of the original grounds in which it was argued that the judge erred in law by failing to consider the country material and the country guidance cases before him in the context of whether the appellant would be at risk on return even in the light of the judge's adverse credibility findings.
13. Mr Sowerby relied on the authorities of HE (DRC - credibility and psychiatric report) DRC [2004] UKAIT 00321 and SA (Somalia) v SSHD [2006] EWCA Civ 1302. I asked him whether what the Judge Halliwell said in paragraph 31 of the determination indicated that he accepted the medical evidence from Dr Costa that the appellant scars were caused by burns from hot metal. Mr Sowerby submitted that the finding was ambiguous and that the judge erred in law in reaching the conclusion that evidence should be provided as to the age of scars. He accepted that the subsequent medical report

which he said indicated that it was not possible to give the age of scars more than a year old was submitted later and was not before Judge Halliwell.

14. I drew Mr Sowerby's attention to paragraph 15.7 of the determination recording the cross examination of the appellant which states; "Asked why he went to Denmark in December 2010 - he said it was to see a relative for one or two weeks. He had not arranged for someone to cause the scars."
15. Mr Sowerby submitted that nobody had suggested that Dr Costa lacked the necessary qualifications. The judge had failed to consider the then current country guidance cases of TK (Tamils, LP updated) Sri Lanka CG [2009] UKAIT 00049 and LP (LTTE area - Tamils - Colombo - risk?) Sri Lanka CG [2007] UKAIT 00076. On return the appellant's scarring would attract the adverse attention of the authorities. Both representatives were aware of the very recent country guidance case of GJ and others (post-Civil War: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). Mr Sowerby submitted that, even if the current guidance had changed, the judge's failure to address the then current country guidance amounted to a material error of law. It went to the question of the appellant's credibility. I was asked to find that the judge had erred in law, to set aside his decision and to return the appeal to the First-Tier Tribunal for a new decision to be made.
16. Ms Tanner submitted that Judge Halliwell reached the adverse credibility finding after considering all the evidence including the medical evidence. He had not put the cart before the horse. It was clear from the determination that he had accepted the medical evidence that the scars were caused by burns. There was no disagreement with the evidence given by Dr Costa. The judge accepted Dr Costa's evidence that the injuries could not have been caused accidentally or have been self-inflicted. It was open to the judge to conclude that the scars were not caused in the circumstances the appellant claimed. It was not for the judge to reach a conclusion as to an alternative scenario in circumstances where he accepted the causation but not the circumstances. There was no evidence before the judge as to whether it was medically possible to tell the age of scars.
17. Ms Tanner submitted that paragraph 15.7 of the determination indicated that the appellant was asked in cross-examination whether he had arranged for injuries to be inflicted which led to the scarring. Whilst he denied this it raised the matter and would have alerted the appellant's representatives. The appellant had no family history of involvement with the LTTE and if his account of events was not accepted the country guidance in force at the time of the hearing did not show that he had a profile which would put him at risk on return. It had not been suggested that on the judge's findings he would now be at risk in line with GJ.

18. In reply, Mr Sowerby clarified what the appellant was seeking if I found that the judge had erred in law and submitted that the judge had made no findings as to whether the appellant had arranged to the injuries to be inflicted. I reserved my determination.
19. The main thrust of the appellant's case since the hearing before Judge Halliwell has been that he erred in law by failing to give sufficient weight to the medical evidence from Dr Costa, disagreed with the doctor's conclusions without giving proper reasons and reached the conclusion that the appellant was not a credible witness before considering the medical evidence.
20. On a close examination of the medical evidence and the determination I find that Judge Halliwell did not disagree with Dr Costas conclusions, gave appropriate weight to his opinions and reached the adverse credibility finding after considering all the evidence in the round including the medical evidence.
21. In his report dated 19 August 2011 Dr Costa said; "After having considered each scar individually, I have made very clear that the scars seen which Mr AP claims were caused by his having been burnt with a hot piece of metal are diagnostic of scars which have been caused in this way. I have gone as far as quoting the Istanbul Protocol above as this would enable the reader to fully understand how I reached my conclusions. The scars seen which are the alleged result of his having been cut with a knife were highly likely to have been caused in the manner described but there are other possible causes. Burns have a very characteristic shape and form and for that reason I can corroborate all of his claims in relation to the scars seen which he claims were caused by burns with hot metal. Furthermore, given their size, position, form and characteristics the scars do not appear to have been caused by accident or indeed self-inflicted."
22. I compare this with what Judge Halliwell said in paragraph 31; "The other significant issue is the extensive scarring on the appellant's back. Dr Costa is satisfied the scarring can only have been caused by burns from hot metal - and is thus consistent with the appellant's account. I have not been so persuaded, even to the low level of proof required. It is significant that the appellant made no reference to burns in the interview. There is no analysis by Dr Costa of the age of the scarring. That in my view is a significant omission. The scarring is extensive and without clear evidence it was caused within the last three years, I can reach no conclusion as to its cause, save that the weight of the medical evidence is that it was caused by burns. The burns may have been caused three years ago, much longer ago, or more recently, without any medical evidence on this point I have to view the evidence in the round. I did not find the appellant to be a truthful witness and I have not been persuaded, even to the low level of proof required, that the scarring arose as the appellant asserted. This matter could have been put to rest by the

appellant obtaining evidence from Columbo of his asserted medical treatment immediately after his alleged release, but no such material was before me. The matter could also have been evidenced by hearing testimony from the appellant's brother - had the appellant elected to call him." (My emphasis).

23. I find that this paragraph and in particular the passage which I have underlined there is a clear finding by Judge Halliwell that he accepted Dr Costa's opinion that the scars on the appellant's back were caused by burns and, in the context of what is said earlier in the same paragraph, that they were caused by burns from hot metal. I reject Mr Sowerby submission that there is any ambiguity. What the judge was rejecting was not Dr Costa's medical opinion that the scars were caused by burns from hot metal but his non-medical opinion that they were "consistent with the appellant's account".
24. Looking at this paragraph in the round with the rest of the determination I find that Judge Halliwell did not put the cart before the horse. He reached the adverse credibility finding after considering all the evidence, including the medical evidence.
25. It is accepted that the medical evidence before Judge Halliwell from Dr Costa said nothing about the age of the appellant's scars or whether it was medically possible to estimate the age of scars. There was no other medical evidence before him about this. Dr Costa could have dealt with this but did not. In the circumstances I can find no error of law in the judge's reasoning as to the lack of evidence as to the age of the scars. Whilst it is not relevant to the question of whether Judge Halliwell erred in law on the evidence before him I note that the medical report from Professor Lingam dated 11 January 2012 states on page 7; "The said incident was in August 2008 which is more than three years ago. The scars are therefore now permanent and will not change. Scars become permanent by one year." I also note that on page 8 he states; "Secondly, I considered if these were caused deliberately to mislead. I have ruled that, no way I could scientifically differentiate between the wounds inflicted deliberately from the wounds inflicted from the said torture. They are not from any rituals." In paragraph 12 of his skeleton Mr Sowerby refers to Professor Lingam's opinion as to scars caused by "surgical procedure". Taken in context I take this to be a reference to regular surgical procedures for proper medical reasons rather than what Professor Lingam describes earlier as actions taken "deliberately to mislead".
26. It was for the judge to reach conclusions in relation to the evidence before him. He was under no duty to make findings as to other possible circumstances in which the injuries might have been inflicted. However, I note what is said in paragraph 15.7 that, in cross-examination, the appellant was asked, but denied, that he had arranged for someone to cause the scars. I also note that the point is likely to have been taken on board by those acting for the appellant

because Professor Lingam was asked to address this. In these circumstances it could not have been argued that the only possible conclusion in the light of the medical evidence was that the scars were not only caused in the manner but in the circumstances the appellant claimed.

27. The appellant's grounds of appeal submitted with the application for permission to appeal to the Upper Tribunal in August 2011 argue that the judge erred in law in failing to consider the background evidence and the country guidance cases of TK and LP. The grounds provide no clear indication of how it is suggested that the appellant's asylum claim might succeed if, as I now find, Judge Halliwell's wide ranging adverse credibility finding is not flawed. Furthermore, there is no reference to any particular background evidence. However, in the light of the limited evidence which was accepted, including that the appellant is a young Tamil from Sri Lanka who has scars on his arms and back I find that he would not succeed on an application of the guidelines contained in these country guidance cases. He is of Tamil ethnicity, has scars on his back and arms, would be returning from London and has made an asylum claim abroad. On the judge's findings he does not have a previous record as a suspected or actual LTTE member or supporter; does not have a previous criminal record and/or outstanding arrest warrant; is not a bail jumper and/or escapee from custody; has not signed a confession or similar document; has not been asked by the security forces to become an informer; did not depart illegally from Sri Lanka; and does not have relatives in the LTTE. He should be able to show that he came to the UK with leave as a student. It is not clear whether he lacks an ID card or other documentation. LP was decided in August 2007 and TK in December 2009. Looking at paragraph 144 of TK in conjunction with paragraph 217 of LP and the authorities then specific focus of current interest in tracking down LTTE cadres, the appellant's lack of other significant factors means that he is not likely to come to the attention of the authorities resulting in a body inspection and discovery of scarring resulting in a real risk of arrest, detention and subsequent ill-treatment. Assessing the appellant's circumstances in the round in the light of LP as modified by TK I find that the appellant would not be at risk on return. Even if I had concluded otherwise and that the judge erred in law I would have found that the error was not material or such that I should set aside the decision because the appellant's circumstances would now need to be assessed in the light of GJ. Mr Sowerby has not suggested that the appellant would be at risk in the light of that assessment of current conditions in Sri Lanka for a Tamil returning from the UK. I find that he would not be at risk. I am not persuaded by Mr Sowerby's submission that Judge Halliwell erred in law by not addressing the then current country guidance or that this had any relevance to the question of the appellant's credibility.

28. I conclude that the judge did not err in law and I uphold his determination.

29. Previously judges have made an anonymity orders in relation to this appellant and this appeal. I consider that it is necessary to continue these.

Direction regarding anonymity

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.

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Signed  
Upper Tribunal Judge Moulden

Date 10 July 2013