



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

Appeal Number: AA/09781/2012

THE IMMIGRATION ACTS

**Heard at Field House
Oral judgment given at hearing
On 27th June 2014**

**Determination Sent
On 21st July 2014**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

MR MOHAMED INSAF MOHAMED ILLYAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A. Seehra, Counsel instructed by Nag Law Solicitors
For the Respondent: Mr Jack, Home Office Presenting Officer

DETERMINATION AND REASONS

1. This appellant is a citizen of Sri Lanka, born on 11th April 1991. He arrived in the UK in June 2010. He made a claim for asylum which was rejected by the Secretary of State and a decision was made on 12th October 2012 to remove him as an illegal entrant.
2. There was an issue that arose during the course of the proceedings before the First-tier Tribunal in terms of whether he was properly regarded as an

illegal entrant but the Judge of the First-tier Tribunal dealt with that matter and no further issue arises in connection with it.

3. His appeal against the decision of the Secretary of State came before the First-tier Tribunal on a previous occasion before the proceedings with which I am concerned. The appeal had been remitted by the Upper Tribunal and the appeal was dealt with on the second occasion by First-tier Tribunal Judge Molloy on a series of four dates, starting on 15 July 2013 and concluding on 21 January 2014.
4. Thus the hearing before Judge Molloy took a period of six months to complete. Judge Molloy ultimately rejected the appellant's claim for asylum and dismissed his appeal on asylum, humanitarian and human rights grounds in a determination extending to 66 pages, dated 20th February 2014.
5. The grounds of appeal before the Upper Tribunal challenge the decision of the First-tier Tribunal in several different respects. It is not necessary for me to refer to all of the grounds in this judgment.
6. Before hearing submissions from Ms Seehra on behalf of the appellant, I was addressed by Mr Jack on behalf of the respondent. Mr Jack indicated that it was not accepted that all the grounds had merit but there were aspects of the grounds which had caused him to accept that there were errors of law in the First-tier Tribunal's decision such as to require that decision to be set aside.
7. The matters that were conceded on behalf of the Secretary of State were as follows. In ground 2 it is alleged that there was a failure to consider relevant evidence when making material findings of fact in terms of the appellant's claimed detention in Sri Lanka. One of the matters relied on by the appellant is in terms of the judge's finding that there was no evidence from the appellant's mother to support what the appellant had said about his detention. At [513] of the determination the judge stated that there was no witness statement or letter or other documentation coming from the appellant's mother relating not only to the alleged disappearance of the appellant's father, but also the claim that the Sri Lankan authorities have a continuing interest in the appellant.
8. It was conceded on behalf of the Secretary of State that there was such evidence and indeed there is reference to it at [11] of the determination where there is reference to a letter from the appellant's mother dated 8th June 2013.
9. Other evidence that it was said was not taken into account by the First-tier Judge referred to at [8] of the grounds includes an extract from an information book held at the police station which is a document that is referred to in the written submissions on behalf of the appellant before the First-tier Tribunal at 5.3 of those submissions.

10. In ground 3 at [12] the complaint made about the judge's determination is in terms of his having said that the appellant could easily have provided evidence to the Sri Lankan authorities that he was renting property to a person called Mohan, the rental of that property being the cause of the appellant's problems. The grounds contend that the authorities were already aware that the appellant had rented property to Mohan, which is clear from the court documents, and the fact that the appellant leased his property to that individual was not in issue. It is contended that the judge speculated about irrelevant considerations and failed to consider relevant evidence before him.
11. Mr Jack on behalf of the respondent accepted that there was some force in that point although in common with the matters I have referred to thus far, those are not the most forceful of grounds.
12. Ground 4 concerns the judge's findings in terms of the appellant's claim that he was sexually assaulted during detention. One aspect of the complaint about those findings is in relation to the appellant's claim that he was forced to perform oral sex on one or more members of the security forces. What the judge said about that at [434] is as follows:

"The appellant says the officer told him to remove his trousers. The appellant would not have to do this if he, the appellant, was being obliged to perform oral sex on an officer. Additionally the appellant says that he was told to remove his trousers after the officer had pushed him, the appellant, to the floor. One struggles to conceive of oral sex taking place between two males when one of them is on the floor."
13. The grounds suggest that that finding is perverse and/or not reasoned. Mr Jack conceded that that finding was simply not one that he was entitled to make, for the obvious reason in terms of its content. In my view that concession was rightly made. I cannot see the basis on which the First-tier judge found that aspect of the appellant's account inherently incredible, which he clearly did. Mr Jack did, however, indicate that there are other reasons given by the First-tier Judge for not accepting the appellant's account of sexual assault during his detention.
14. Nevertheless, the grounds at [20]-[22] concern an alleged failure to engage properly with medical evidence as to scarring and failure to provide reasons for rejecting that evidence. Part of the complaint in this respect is that the judge had already made an assessment of the appellant's credibility before considering the evidence in the medical report of Professor Lingam which refers to scars that the appellant has.
15. It is apparent from the determination that the judge had made an adverse credibility finding in relation to the appellant's account before coming on at [449] to the medical evidence in relation to the scars. Mr Jack makes the further observation that it seems that the First-tier Judge took into account some of the reasons for doubting the evidence provided to Professor Lingam as a reason for doubting the evidence in relation to the scars.

16. At [22] of the grounds it is said that Judge Molloy failed to make any reference to Professor Lingam's conclusion that the scars were highly consistent with lacerations from beating and his clinical view that they were formed at the same time (as one another presumably). It was said that the judge provided no proper reasons for departing from Professor Lingam's opinion, and it does seem to me to be clear that the judge did not engage with that aspect of Professor Lingam's report in terms of the consistency of the scars with the appellant's account.
17. Paragraphs 33 to 36 of the grounds relate to documents that were provided in DHL envelopes and the judge's conclusion in relation to the dates of the sending of those documents with reference to the dates on the envelopes. The grounds suggest that the judge misunderstood or misinterpreted the dates, for example a date of 7th November 2012 was misunderstood as 11th July 2012. The conclusion the judge came to in that respect and in another respect in terms of a date of 14th November 2012 led the judge to conclude that the documents were sent at a time when the events that the appellant described could not have happened.
18. I agree with Mr Jack that not all of the grounds have merit. Some grounds are more meritorious than others but in the light of the acceptance on behalf of the Secretary of State that the matters to which I have referred reveal an error, or errors, of law in the judge's assessment of credibility requiring the decision to be set aside, that is also my conclusion. I should add that I would have in any event have come to the same conclusion, maybe perhaps for slightly different reasons, but no difference of reasons of substance.
19. I canvassed with the parties what the appropriate course of action should be if the matter were to be set aside for the decision to be re-made. Ms Seehra submitted that it was appropriate for the matter to be remitted to the First-tier Tribunal notwithstanding that there had previously been a remittal because of errors of law by the First-tier Tribunal. Mr Jack did not dissent from that view, having no strong view one way or the other.
20. Having regard to the practice statement at paragraph 7.2 and in the light of what I regard as a necessary wholesale reassessment of the appellant's credibility, it seems to me to be appropriate for the matter to be remitted to the First-tier Tribunal for a hearing *de novo* with no findings of fact preserved.

DIRECTIONS

1. The appeal is remitted to the First-tier Tribunal on a date to be fixed for a hearing *de novo* with no findings of fact preserved except as agreed between the parties.

2. The appeal is not to be re-heard by First-tier Tribunal Judges Molloy or Moore.
3. Further listing directions can properly be left to the discretion of the First-tier Tribunal, but a time estimate of at least 4 hours would seem to be appropriate.
4. If possible the appeal should be re-listed having regard to the dates of availability of Ms Seehra, although she is aware that this cannot be guaranteed and is a matter that is in the discretion of the First-tier Tribunal.

Upper Tribunal Judge Kopieczek

18/07/14