



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

Appeal Number: DA/00116/2012

THE IMMIGRATION ACTS

Heard at Field House

On 13 May 2014

Determination

Promulgated

On 28 May 2014

Before

**THE HON LORD BANNATYNE, SITTING AS A JUDGE OF THE UPPER
TRIBUNAL
UPPER TRIBUNAL JUDGE McGEACHY**

Between

**S S
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Miss S Jegarajah, Counsel

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND DIRECTIONS

Introduction

1. On 14 February 2012 a decision was made by the respondent to issue a Deportation Order in respect of the appellant. The appellant exercised his

right of appeal to the First-tier Tribunal. The appeal was based on the appellant's contention of a well-founded fear of persecution or a real risk of a breach of his rights under Article 3. The appeal was dismissed. The appellant's application for permission to appeal to this Tribunal was initially refused. On a renewed application to the Upper Tribunal, Judge Warr again refused permission. Thereafter permission having been granted by the Court of Appeal to apply for judicial review and there being no request under CPR Part 54.7A(9) for a substantive hearing, the decision of the Upper Tribunal to refuse permission to appeal was quashed.

Background

2. The appellant's case before the First-tier Tribunal is conveniently set out at paragraphs 6 to 16 of the findings of the First-tier Tribunal as follows:

"The Appellant's Case

6. The Appellant submitted two witness statements for the hearing of his appeal which he testified were both read back to him in his own language, were true and accurate, and he adopted as his evidence in chief. The first of those statements was dated 1 February 2012. In that statement the Appellant said that he is a Tamil from Sri Lanka and that he was born on 13 March 1987. At the date of hearing he was 25 years of age. He said that he has one brother and three sisters and that his parents are still living. All of these close family continue to live in Sri Lanka except for one sister who is living in the UK, in Wembley, where she has a post-study work visa.
7. The Appellant explained in his statement that in February 2006 he was in the second year of studying for his A-levels. The LTTE was in control of the area of Jaffna which included his school and they held meetings at the school. The Appellant said that he was asked by the LTTE to join them but he did not wish to do so as he was studying and wanted to stay with his friends. He protested about the disruption to his studies, which led to him being accused of being a supporter of the government Tamil party, the EPDP. The Appellant claimed that in February 2006 four people in a white van came to his parents' house and that he was forced into the van, blindfolded and taken away to a place where he was detained, beaten and pressured to join the LTTE. The Appellant said that he was kept in a room without any external light, that he was caught on a few occasions when he tried to escape and that he was beaten further. After about three weeks he was taken to a second camp where he was placed in an underground bunker.
8. In October 2006 the Appellant claims that he capitulated and agreed to join the LTTE. He says that he was warned that if he tried to escape he would be killed and that he was taken to another camp where he was required to undergo military training, which he refused to do as he refused to fight. He was placed to work in the hospital for injured soldiers where he worked as a cleaner.
9. While in that camp the Appellant claims that he was injured when a bomb fell and he was hit by shrapnel in his right arm and his side. His right leg was broken. Although he was treated at the camp for the shrapnel wounds, the Appellant said that he could not be taken from the camp by his family because he was so badly injured. The

Appellant claims that the LTTE eventually agreed that he could be removed from the camp provided that he undertook to provide information to the LTTE once he had recovered. He was taken to Jaffna by boat and then to hospital where he had an operation on his leg. He went to the hospital in April 2007 and returned home in May 2007 where he convalesced.

10. When he eventually began to go out again, he said that he began to supply the LTTE with information about army movements and units in the area. In his testimony, the Appellant said that he would go to the local Hindu Temple which was near to a main road and army camp where he could observe movements of soldiers and army units. Once a week he was visited by a member from the LTTE to whom he passed the information. He said in his testimony that he also gave information about the location of landmines, although he clarified that this was information about the location of people and cattle because the LTTE believed that there would not be any landmines where there were people and cattle. The Appellant was questioned as to why he had not mentioned any of this information gathering activity during his asylum interview. He replied that he had only been asked what he did immediately after joining the LTTE and he had not commenced the spying activities until after he had been released from hospital and returned home.
11. In his statement the Appellant claimed that in July or August 2008 officers of the CID and the army came to his family home looking for him. He hid behind or under a sofa and his brother, who spoke to the officers, denied that the Appellant was at home. The Appellant said in his testimony that the officers had not searched the house on that occasion. They came on a second occasion looking for the Appellant and he said, in his statement, that he was able to escape out of the back of the house and go to his uncle's house. His father then arranged for him to go to Colombo, which he did in September 2008 where he stayed with a friend of his father's called Kamalan who was with the EPDP. While in Colombo, the Appellant obtained a visa to come to the UK to study. He arrived in the UK on 9 January 2009 with leave to remain until May 2010. The Appellant testified that he had undertaken the studies although his main reason for coming was for his safety but he had not claimed asylum on this occasion because he had a visa to remain. Shortly before the expiry of his visa he had applied for further leave to remain as a student but when that application was refused and he did not have funds to remain, he voluntarily returned to Sri Lanka.
12. While in the UK as a student the Appellant says that on four or five occasions between February and June 2009 he attended demonstrations in support of the Tamil people which took place outside the Sri Lankan embassy in London.
13. Having voluntarily returned to Sri Lanka in July 2010, the Appellant said that he was detained at the airport by a soldier, that he was questioned about his activities in the UK and about what he did before going to the UK. The Appellant said that he answered honestly that he had been passing information to the LTTE. He said that he was asked if he had been involved with Tamil expatriates while in the UK, which the Appellant denied at which the officers hit him and showed him a photograph of himself standing with protesters in London. He claimed that the officer told him that the photograph had come from

the 'Lankasri' website (<http://www.lankasri.com/ta/index.html>). In his testimony the Appellant said that he had been unable to locate the photograph on the website in question. The Appellant claimed that he was taken to an army camp where he was further tortured by being continuously beaten and burned with cigarette butts. He said in his statement that his injured right foot was broken again and that he had wounds on his left foot and left arm. He was beaten with a rifle butt and batons as well as hands and feet and he was not fed. This torture went on for the first 15 days but after that he was given some food and beaten only occasionally.

14. The Appellant says that he was detained until March 2011 when he was visited by the same man who had helped him come to the UK in 2009. This man, who he said was called Kamalan, promised to help the Appellant's parents to get him released. A few days later, Kamalan returned and took the Appellant to his house in Colombo from where he was able to speak to his parents on one occasion. The Appellant said in his statement that he thought that Kamalan may have bribed the army officers. He had some native treatment consisting of oils and herbal medicine for his injuries but did not see a doctor.
15. While he was staying in Colombo the Appellant said that Kamalan and his parents arranged for him to leave Sri Lanka. He was given a false Malaysian passport and in April 2011 travelled to Malaysia. The Appellant said that he had had no difficulty leaving Sri Lanka. The passport that he had been given did not have his real name in it, nor his photograph although the photograph in the passport looked very similar. The Appellant said that the agent had directed him which immigration desk to go to where he was only asked to declare a name and date of birth. He was not subject to any other enquiry or rigorous checks. The Appellant said in his testimony that it was a possibility that Kamalan had known the immigration officers but he could not be sure as he had simply pointed out the counter to go to. From Malaysia he travelled to the UK by lorry, van and containers on ships. The Appellant said that he was under the control of an agent at all times and that he did not know the countries through which he had passed.
16. After arrival in the UK in July 2011 the Appellant said that he met a man called Kandan who took him to a place to stay. The Appellant said that he had planned to seek asylum in the UK but it was a long time before Kandan came to take him. Eventually he was taken and put in a car with some other people and Kandan called him on the telephone to say that in the jacket he had been given was a passport that he should use to travel to France and there claim asylum. On arrival in Dover the Appellant said that he presented the passport but was arrested for using a false document. That was 21 September 2011 and when he was detained he claimed asylum. He was prosecuted for using a false document and sentenced to 12 months imprisonment. While in prison he spoke to his parents on the telephone. Later he received a letter from his mother who told him that the army had come to know that the Appellant had contacted them and they assumed that their telephone line was tapped. In his statement the Appellant said that he feared to return to Sri Lanka because he would be detained by the army and would be tortured again."

3. In support of his claim the appellant produced to the First-tier Tribunal a medical report from a Dr Peter D Toon and we shall refer to the detail of that report later in this determination.

The Grounds of Appeal

4. There were two grounds of appeal:
 - 1) The First-tier Tribunal had failed to make proper findings of fact.
 - 2) The approach which the First-tier Tribunal had taken to the medical report prepared by Dr Toon had not been a proper one.

Submissions for the Appellant

5. With respect to the first ground of appeal it was submitted that at paragraph 26 of its determination the First-tier Tribunal had correctly identified the core of the appellant's claim for asylum as this:

“26. ... that having been forced to assist the LTTE by working in a hospital prior to being injured in a bomb attack and then, passing information to them about army movements, the Appellant was detained when he voluntarily returned to Sri Lanka in July 2010.”

6. The appellant's being forced to assist the LTTE by working in a hospital, being injured in a bomb attack and beginning passing information to the LTTE about army movements was said by the appellant to have occurred pre-January 2009 when he arrived in the UK.
7. It was Counsel's contention that the First-tier Tribunal had failed to make any assessment or finding on the part of the appellant's claim which related to the period pre-January 2009. It was her position that from paragraph 27 onwards the First-tier Tribunal had restricted its findings to the appellant's claim of ill-treatment which he suffered on his return to Sri Lanka at the end of his student visa in July 2010.
8. It was her submission that the First-tier Tribunal's failures went to the core of the appellant's account as to why he would have been wanted, on return from the UK, having been here for over a year, on a student visa. In these circumstances, the failures amounted to a material error of law.
9. The relevance of the failure to make findings of fact in relation to the above she illustrated by saying this: If it is the case that the First-tier Tribunal accepted this part of the appellant's account then this should have been expressly set out. Furthermore, it should have assessed this part of the appellant's claim in accordance with the country guidance of **LP (LTTE area, Tamils, Colombo, risk?) Sri Lanka CG** [2007] UKAIT 00076. This she submitted was particularly so given the part of the appellant's account set out at paragraph 11 of the determination which highlighted that CID and army had come looking for him at the family

home on two occasions. If this was an accepted fact, it impacted on whether the appellant was known to the authorities and had a record. In such circumstances **TK (Tamils - LP updated) Sri Lanka CG [2009] UKAIT 00049** paragraph 134 was directly material to the appellant's case in that if the appellant were to return to Sri Lanka the authorities at Colombo Airport would have, or at the very least would find a record showing he had been sought in the past.

10. Turning to the second ground of appeal, Counsel submitted, under reference to her grounds upon which permission to apply for judicial review had been sought (and ultimately granted) the following: the evidence of Dr Toon potentially assisted in determining the question of whether the appellant had been tortured in detention. Therefore determination of that question was crucial.
11. She submitted that the following findings in Dr Toon's report were of relevance:

"Bombing raid

He told me that when he was with the LTTE in 2007 he was injured in a bombing raid from the air by the Army.....The appearance is diagnostic of an injury caused by tearing of the flesh by a hard, sharp object, with so much damage to the skin that suturing was not possible.

He has significant deformity and scarring of the right leg. (145) The calf shows loss of muscle tissue and there is a bowing distortion of the tibia, and a 5 cm of shortening in the right leg. As a result of this he walks with an obvious limp. The appearance is diagnostic of a fracture,

Beating by the army

He told me he in 2010 he was kicked and punched at the airport then taken to a camp where they took off all his clothes and was naked. They tied a rope around his left ankle and hung him up by one leg. He was beaten with the butt of the gun. He was also burnt with cigarettes all over the body, he had electric shocks to the hands.

He has a broad linear scar approximately 9 cm x 2 cm on his left heel. He told me that this was caused when he was tied up by that foot.(148) The shape and appearance is highly consistent with the type of scar which can be caused by abrasion from a rope.....The site makes it improbable that this was where the weight-bearing rope was attached, as this would have to be above the ankle to take his body weight **however in this position his heel friction burn which would heal with this appearance.** There are no rope marks above the ankle- however one would not expect these from a thick rope tightly wound round the limb, which is what would be needed to suspend him in the way he describes.

Anterior to that 4 small round scars (154) which he says were caused when he was burnt with cigarettes during this assault. **They have the typical appearance of cigarette burns.**

He has two 6 mm diameter round scars on forearm which he says were caused when he was burnt with cigarettes during this assault. ***They have the typical appearance of cigarette burns.***

Also on the left forearm he has two 2 parallel linear scars 2 cm long and 4 cm apart which he says were caused when he was cut during this assault. They are diagnostic of deliberate cutting with a sharp blade. They could be self inflicted but he denies that he has ever cut himself and his medical records show no history of self harm.

Right arm

Near the shoulder he has a 6 mill keloid scar (15) whl.ch he says were caused when he was burnt with a cigarette during this assault. ***This scar is highly consistent with a cigarette burn in size and shape although keloid formation obscures the typical appearance of a cigarette burn.***

On his Left pectoralis major he has a 5 mm scar which he says were caused when he was burnt with a cigarette during this assault (152). ***The appearance is typical a cigarette burn.***

He has a similar scar 9 cm infero lateral to nipple which he says were caused when he was burnt with. a cigarette during this assault.(153) ***Again this scar is typical of a cigarette burn.***

Two cm above the umbilicus he has a scar which he says was caused when he was burnt with cigarettes during this assault. ***The appearance is typical of a cigarette burn.***

Left leg

shape which he says were caused when he was burnt with cigarettes during this assault. ***The appearance is typical of cigarette burns.***

There is another similar scar proximal to medial aspect of left knee which he says was caused when he was burnt with cigarettes during this assault ***The appearance is typical of a cigarette burn.***

In the same area he has a scar which he thinks was caused by a blow with a rifle. The appearance is diagnostic of a clean cut which has healed without being sutured, but it is not possible to ascertain the cause from the appearance.

He has 6 x 1cm linear scars on the dorsum of the foot which he thinks were caused when he was hit with a rifle butt. The appearance is diagnostic of a clean cut which has healed without being sutured, but it is not possible to ascertain the cause from the appearance.

He has four marks on the left buttock (157) which he says were caused when he was burnt with cigarettes during this assault. **These have the typical appearance of cigarette burns, and any other cause in this site is extremely unlikely.**

He has an unusually large number of scars of various types, indicating he has been subject to major trauma, accidental and/or deliberate. They can be divided into two groups; those which are the result of major cuts and bruises and those which are typical of cigarette burns.

His account of how he sustained the larger scars is consistent with the appearance: it is also credible that in a bombing or a torture assault the victim cannot give a precise account of each and every wound. The appearance of his leg is consistent with the history of a fracture in the bomb attack which was treated with only moderately good results in hospital. It is not clear whether in the assault he describes by the army the limb was broken again or merely bruised by beating in (10 already fragile limb. Either is consistent with the history; radiography may provide additional clarification.

He walks with a profound limp and has severe muscle wasting in the damaged limb. He told me that he does cycling and exercises in the gym to strengthen his leg, but I think he would benefit from physiotherapy and probably surprising that this has not been arranged as part of his healthcare in prison or detention.

Whilst the appearance of the scars which he says occurred from beating with a rifle butt are consistent with that causation, it is not possible to distinguish with certainty those from the scars which he sustained in the bombing.

More significant though less obvious to the untutored eye are the multiple scars which have the typical appearance of cigarette burns. I have described each of them individually as typical rather than diagnostic because it is possible for skin to be burnt by other "hot" objects of similar size to cigarettes.....**I would consider it inconceivable that more than 20 such scars (and probably also some less clear similar scars which I have not commented on) distributed in various parts of the body where accidental trauma is unlikely could be caused other than by deliberate burning with cigarettes.**

Cigarette burns are commonly the result of self harm, but self inflicted injuries are usually found on the flexor aspect of the forearms and other accessible sites. The wide distribution of scars is characteristic of cigarette burns inflicted as part of torture. It would be difficult to burn oneself in many of the sites where he has scars and impossible to inflict those he has on the buttock on oneself. Nor is accidental injury to produce this type of scar on the buttock likely, since it is usually covered by clothing.

In summary his gross scars and his limp make it obvious that he has sustained a major injury, and the scars from the cigarette burns make it clear that he has been tortured.

I am not an expert in the diagnosis of PTSD, but I would agree with the prison doctor that the systems he describes are typical of that condition and is consistent with the history which he gives.”

12. Moving to the First-tier Tribunal’s findings she drew our attention to paragraph 32 when it had stated that it disagreed with the doctor’s opinion that the site of the scarring rendered it impossible that the scarring was self-inflicted. In addition it had noted adversely that the doctor had not aged the scarring. At paragraph 33 it had found that the medical evidence was not strong enough to overcome the embellishments and discrepancies in the appellant’s evidence.
13. Counsel submitted that the approach of the First-tier Tribunal to the medical evidence was irrational in that:
 - a) It had approached the medical evidence with a presumption that the appellant had caused the scarring by self-infliction, and that the medical evidence had to be “strong enough” to rebut this presumption.
 - b) She submitted that the application of such a presumption in an asylum case is inconsistent with a standard of proof that requires only a reasonable likelihood that the facts are true. Effectively it was saying that it approached the evidence of scarring on the basis that it was self-inflicted and the onus was on the appellant to rebut that presumption.
 - c) She submitted under reference to the decision of the Court of Appeal regarding the proper approach to the Istanbul Protocol in **SA (Somalia) v SSHD** [2006] EWCA Civ 1302 per Sir Mark Potter at paragraph 28 that the sole question for the First-tier Tribunal was whether the expert had complied with the guidance in the Istanbul Protocol. The expert was not required under the Protocol to examine or comment upon when the wounds were inflicted or who inflicted the wounds. The expert was required to illicit an account, examine the scarring and comment on consistency. To require an expert to do more was to apply an additional and therefore unlawful evidential requirement to the determination of an appeal.
 - d) The First-tier Tribunal had failed to take into account country evidence that stated that torturers were trained in “well developed techniques” of torture and that torturers brand their victims so that they are in effect a living record.
 - e) The country evidence showed that torture claims had intensified including in respect of those who had returned to Sri Lanka.
 - f) The First-tier Tribunal’s failure to take account of this evidence was material because it showed that there was growing evidence of

torture inflicted in respect of those who had returned, voluntarily to Sri Lanka.

- g) Dr Toon had found that the claimant had an unusually large number of scars of various types, indicating that he had been subject to major trauma, accidental and/or deliberate. He further advised that these could be divided into two groups; those which were the result of major cuts and bruises and those which were typical of cigarette burns. She submitted that the medical opinion had not been considered by the First-tier Tribunal as an aid to the credibility of the subjective evidence, as it should be. Rather it was clear from the determination that the First-tier Tribunal had already made its mind up in respect of credibility. It was also clear that it was not open-minded in respect of the medical report because it already had a strong suspicion that the scarring was self-inflicted.

Reply on Behalf of the Respondent

14. With respect to the first ground of appeal Mr Avery submitted that the only sound construction of the determination as a whole and having particular regard to the last sentence of paragraph 26; the last sentence of paragraph 31 and the last two sentences of paragraph 33 of the determination was that the First-tier Tribunal had made proper findings on the appellant's claim as it related to the period pre-9 January 2009.
15. Moreover he submitted it was clear from the determination as a whole that the First-tier Tribunal had held the appellant not to be truthful in relation to his evidence about that part of his claim.
16. In relation to the second ground of appeal his submission was a short one: the First-tier Tribunal had considered the medical evidence as part of the overall evidence and this was an entirely justifiable approach.

Discussion

17. With respect to the first ground of appeal we are satisfied that the First-tier Tribunal has failed to make adequate findings of fact in relation to that part of the appellant's claim which related to his period in Sri Lanka prior to 9 January 2009.
18. The First-tier Tribunal accepted in the first sentence of paragraph 26 of its determination that a core element in the appellant's claim related to the period prior to January 2009. It is trite law that in relation to relevant factual issues it is necessary for the judge at first instance to fully consider and assess the evidence regarding that issue and to make clear findings thereon. However, despite that in its consideration of the issues in this case the First-tier Tribunal does not properly engage with the evidence relating to this part of the appellant's claim.

19. The nearest that it comes to considering the evidence relating to the pre-January 2009 chapter of the claim is at paragraph 31 of the determination. However, we do not find that this paragraph adequately deals with that part of the claim. In particular the First-tier Tribunal does not, in that paragraph, expressly set forth its position as to whether it is accepting or rejecting in whole or in part evidence regarding this part of the appellant's claim. Its findings on this issue, if any, are opaque. There is reference to accepting the Presenting Officer's submission that:

"The appellant showed that he was not too rigidly bound by the form of questions that he was being asked...."

Mr Avery's position was that paragraph 31 amounted to the First-tier Tribunal considering and rejecting in its entirety that part of the appellant's claim which related to the period prior to January 2009. We do not believe that that paragraph can properly bear such a construction. It appears to us to be reading far too much into what is said by the First-tier Tribunal at that point. The rest of the reasoning contained in the determination concentrates entirely on what happened on the alleged return to Sri Lanka in July 2010 and deals not at all with the chapter of the appellant's case relative to the period prior to January 2009.

20. Accordingly it appears to us that the First-tier Tribunal has failed to properly consider and to make adequate findings of fact in relation to a relevant issue and accordingly there has been a material error of law.
21. Turning to the second ground of appeal in our view there is considerable force in the submissions made on behalf of the appellant.
22. We are persuaded that the approach of the First-tier Tribunal to the medical evidence is materially flawed.
23. The First-tier Tribunal's consideration of the medical evidence is largely confined to paragraph 32 which is in the following terms:

"32. We have considered the medical report from Dr. Toon which confirms that the Appellant bears scars consistent with his claim to have been the victim of a bomb attack and scars which the doctor was satisfied were consistent with the claim to have been burned by cigarettes, although he rightly recognises that they could have been inflicted by other hot instruments. The doctor comments that cigarette burns are commonly the results of self-harm but he suggests that the Appellant has scars in areas where it was "impossible" for him to inflict them, such as on his buttocks. We have looked carefully at the evidence of the siting of the scars but find it difficult to accept the doctor's opinion with regard to that impossibility. In addition, the doctor gives no indication of the likely age of the scars associated with cigarette burns or, indeed, of the other injuries".

24. The First-tier Tribunal goes on to conclude regarding the medical evidence at paragraph 33:

“33. ... We find that the medical report, whilst very useful in most respects, does not provide strong enough evidence to overcome the evidence of embellishments and inconsistency in the Appellant’s claim.”

25. On a fair reading of the foregoing sections of the First-tier Tribunal’s determination, when looked at in the context of their whole determination, we conclude that the First-tier Tribunal has taken as its starting point when considering the medical evidence this: it has found the appellant incredible for reasons not relating to the medical evidence and so its presumption is that the cigarette burns are self-inflicted.
26. We agree with the submissions made on behalf of the appellant that given the First-tier Tribunal approached the medical evidence in the above way it was effectively holding that the onus was on the appellant to rebut that presumption. Moreover we agree that in an asylum case such an approach is inconsistent with a standard of proof requiring only a reasonable likelihood that the facts are true.
27. Moreover, this approach to the medical evidence does not, as it should, consider the medical evidence as an aid to the credibility of the subjective evidence. Rather on a fair reading of the determination the First-tier Tribunal had made up its mind that the appellant was incredible before considering the medical evidence. The effect of such an approach was to give no weight to the medical evidence or at the very least give it materially less weight than it should properly have been given.
28. The medical evidence was of considerable importance to the appellant’s case in that it in particular included the following:

“Cigarette burns are commonly the result of self harm, but self inflicted injuries are usually found on the flexor aspect of the forearms and other accessible sites. The wide distribution of scars is characteristic of cigarette [sic] burns inflicted as part of torture. It would be difficult to burn oneself in many of the sites where he has scars and impossible to inflict those he has on the buttock on oneself. Nor is accidental injury to produce this type of scar on the buttock likely, since it is usually covered by clothing.

In summary his gross scars and his limp make it obvious that he has sustained a major injury, and the scars from the cigarette burns make it clear that he has been tortured.

I am not an expert in the diagnosis of PTSD, but I would agree with the prison doctor that the systems he describes are typical of that condition and is consistent with the history which he gives.”

29. Given the approach which the First-tier Tribunal has adopted to the medical evidence, the question of the appellant’s credibility was not considered within the evidential context of the medical evidence. Overall

the First-tier Tribunal's approach to the medical evidence is seriously flawed and cannot be sustained.

30. Beyond that we also agree with the submission made on behalf of the appellant that the First-tier Tribunal has failed to take account of the country evidence as set out within the appellant's submissions. We can identify no point within the determination in which that particular part of the country evidence has been given any consideration by the First-tier Tribunal. We are persuaded that in considering the appellant's credibility it had to be considered in the context of that country evidence and the First-tier Tribunal has failed to do that.
31. We hold for the foregoing reasons that the First-tier Tribunal has materially erred in law in the way that it has approached the medical evidence.
32. Finally with respect to the issue raised on behalf of the appellant to the effect that the First-tier Tribunal had required, having regard to the Istanbul Protocol and the guidance given thereon in **SA (Somalia) v SSHD**, the doctor to meet an additional evidential requirement to comment upon when the wounds were inflicted we do not believe that there is any merit in this submission. The First-tier Tribunal were saying no more than that they would have found dating evidence helpful in their assessment of the evidence.

Decision

33. For the above reasons we allow the appeal on both grounds advanced and set aside the decision of the First-tier Tribunal. We have not thought it appropriate to re-make this decision given our concerns relative to the lack of proper findings in fact and accordingly we remit to a differently constituted First-tier Tribunal.
34. The First-tier Tribunal did not make an order pursuant to Rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. We believe it appropriate for the case to be anonymised and make an order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date

Lord Bannatyne, Sitting as a Judge of the Upper Tribunal