



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

Appeal Number: AA/01744/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 November 2015**

**Decision & Reasons Promulgated
On 18 December 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

KV
(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit, Counsel instructed by Kanaga Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the First-tier Tribunal made a similar order and in unresolved asylum appeals such as this there is a risk that publicity might itself create a risk to the appellant in the event of his return.

2. This is an appeal by a citizen of Sri Lanka against a decision of the First-tier Tribunal dismissing his appeal against a decision of the Secretary of State to refuse him asylum.
3. There are extensive grounds. With respect to Mr Muquit, whose grounds are entirely satisfactory, it may be that his best point is buried in the middle of the list because that is where he says that the First-tier Tribunal Judge's adverse credibility findings are unsustainable.
4. They are unsustainable because they are based on a misreading of the evidence. At paragraph 41 of its decision the First-tier Tribunal Judge says in terms:

"It is to be noted that the appellant made no mention of ankles being tied together and suspended upside down during his screening or asylum interview".
5. The judge then went on to find that he found that a significant omission that tended to undermine the credibility of the claim as a whole. The problem with that finding is that it is wrong. At his full asylum interview at question 173 the appellant was asked:

"How were you tortured?"

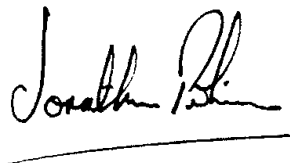
He replied:

"I was beaten. ... They hung me upside down. Forced my head into water and burnt me".
6. It follows therefore that a major reason given by the judge for disbelieving the appellant is unsustainable. Mr Muquit said that this contaminated the other findings, and with respect, I think that was a very good word. It is precisely what it did.
7. Mr Walker, who, as I would expect, was scrupulously fair, pointed out that the suggestion that the appellant had been hung upside down was made *also* in the psychiatric report where the psychiatrist had picked up that it had been claimed on an earlier occasion.
8. This leads on conveniently to criticisms that have to be made on the judge's evaluation of the expert evidence. There is a psychiatric report from a Dr Dhumad. I do not mean to minimise or trivialise the report in any way when I say it is in the form not uncommon in cases of this kind. It explains that the decision that the appellant suffered from post-traumatic stress disorder and concluded with an observation that because of depression and poor concentration the appellant needed particularly sensitive treatment. This is something to bear in mind when deciding if poor sequencing or omission of apparently important events is indeed significant and is a further reason why the judge should have thought a bit more before making the adverse finding that he did about the appellant not giving a complete account of how the injuries were inflicted.

9. What ought to have happened is that that expert report, and the expert report from Dr Martin, a Fellow of the Royal College of Surgeons of Edinburgh and a Fellow of the College of Emergency Medicine, who had considered the appellant's injuries and found that the appellant had injuries which were inflicted at the time he said they were inflicted as a result of torture, should have been considered separately. They should have been considered to see if they were credible and reasonable. If they were not proper reasons should have been given. If they were then the facts of the reports should have been used as part of the overall credibility evaluation. There is at least a suspicion here that instead of looking at the evidence in the round, as the judge was supposed to have done, the judge decided points sequentially and had decided before considering the medical evidence that the appellant had not in fact told the truth. I am not absolutely certain that that was what had happened but again it was another mistake. It should be clear that this is not what the judge did.
10. Scarring in Sri Lankan cases has been troublesome to Immigration Judges in various incarnations for many years now. There are photographs in the bundle prepared by Dr Martin. They show the appellant with something like twenty, I have not counted exactly, vivid scars across his back. Clearly it would be helpful if anybody deciding if such scars were inflicted, not as a result of torture but mischievously to enhance an otherwise unmeritorious claim did ask just what was involved in submitting to such injuries.
11. Dr Martin has done that. It was his judgment that it was unlikely that anyone would submit to such injuries being done by a friend. He said in terms that it was a possibility that the injuries had been inflicted voluntarily but he said "in my opinion I found the former possibility extremely unlikely due to the numerous numbers of scars and the severity of the injuries". This led him to go on to say that there was "a high likelihood that the injuries were caused by being tortured as described by the claimant". Dr Martin's opinion is not necessarily right but it needed to be respected and explained and sweeping it away because of a wholly mistaken reading of the evidence was not the proper way to deal with this case.
12. I think it is also right to say that the evidence is not entirely one-sided. It is a matter of surprise to me that the appellant left Sri Lanka with a return ticket in his pocket if were really fleeing persecution.
13. Nevertheless, for all the reasons indicated above and without opposition from the Secretary of State after Mr Walker had heard the submissions I conclude that this determination is completely unsatisfactory.

Notice of Decision

The appeal has not been determined properly. I allow the appellant's appeal to the extent that I rule that the appeal has to be determined again in the First-tier Tribunal. The file will be sent for listing in Birmingham. The appellant now lives in Walthamstow. He should apply to the First-tier Tribunal if he wants the appeal heard in London.



Signed
Jonathan Perkins
Judge of the Upper Tribunal

Dated 16 December 2015