



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

Appeal Number: AA/02112/2015

THE IMMIGRATION ACTS

**Heard at: Field House
On 24th November 2015**

**Decision and Reasons
Promulgated
On 4th December 2015**

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

Secretary of State for the Home Department

Appellant

and

KG

(anonymity direction made)

Respondent

Representation:

For the Appellant: Mr Melvin, Senior Home Office Presenting Officer

For the Respondent: Mr Toal, Counsel instructed by Theva Solicitors

DECISION AND REASONS

1. The Respondent is a national of Sri Lanka born 17th December 1986. On the 1st July 2015 Judge Munonyedi of the First-tier Tribunal allowed his appeal against a decision to refuse to vary his leave to remain by granting him asylum. The Secretary of State now has permission to appeal against that positive determination, granted by Judge Heynes of the First-tier Tribunal on the 21st July 2015.
2. The matter in issue between the parties is whether Judge

Munonyedi was entitled to believe the Respondent's evidence, and whether she gave adequate reasons for so doing.

The Claim

3. The Respondent claimed to have a currently well-founded fear of persecution for reasons of his political opinion. In 2010 he had come to study in the United Kingdom. He states that prior to this he had been a member of the LTTE, and had worked for their intelligence division in Colombo. In 2013 he had completed his studies and returned home on a one-way ticket. He claims that shortly after his arrival he was identified by his LTTE *nom de guerre* at a checkpoint. He was arrested, detained for 22 days and badly tortured by the Sri Lankan security services. He was accused of being a member of the LTTE, involved in political activity and fundraising from London. He claims to have escaped upon payment of a bribe and made his way back to the United Kingdom with the assistance of an agent. He claims that while in the United Kingdom he has attended pro-Tamil demonstrations in London.
4. In support of his protection claim the Respondent submitted photographs depicting his injuries shortly after his escape from detention.

The Refusal

5. The Secretary of State had disbelieved the entire account. In her letter dated 21st January 2015 she gives reasons why, under the heading 'detailed reasons for refusal'. Chief among these was the alleged inconsistency between the evidence that the Respondent had only been known to one LTTE 'handler' a long time ago and yet somehow someone at a checkpoint had managed to identify him. It is noted that the Respondent had failed to give an explanation as to how this could happen. Secondly it was not accepted that a man who had escaped and was wanted would be able to pass through security at the airport using his own passport. No weight was attached to the photographs on the grounds that the injuries shown could have been caused in a number of ways.

The Appeal and Determination

6. The First-tier Tribunal heard oral evidence from the Respondent and had an opportunity to see him cross-examined. The Respondent relied on a statement in which he set out his rebuttal of the Secretary of State's case. He relied on the photographs and two medico-legal reports. One, prepared by Dr Andres Martin, stated that the Respondent bears two oblique scars on his back, each approximately 9-10cm in length. The scars accord with the injuries shown in the photographs. Dr Martin notes the Respondent's explanation that these injuries were sustained when he was beaten with a long wooden stick. He considers the possibility that such scars could have

been caused in other ways, whether they were ‘self inflicted by proxy’ and whether their claimed age accords with their appearance. Having done so Dr Martin expresses his opinion that these scars are “typical” of the events described. Mr Toal notes that this terminology is derived from the Istanbul Protocol, being second only to “diagnostic of” in the criteria of evidential weight set out therein¹. The second report was prepared by Consultant Psychiatrist Dr Z Al-Salihy who took a detailed history direct from the Respondent and assessed his mental state with reference to the diagnostic criteria set out in ICD 10. He concludes that the Respondent is suffering from Post-Traumatic Stress Syndrome with a secondary diagnosis of depressive disorder and adjustment disorder. Finally the Respondent relied on a letter, said to be from his father NG, in which he expresses pride at how well his son has done in his education, and describes the 2013 events from his point of view. He writes that he spoke to his son after he landed in Colombo but became concerned when he did not arrive home. Enquiries with a relative there and with the bus company led him to the checkpoint at Omanthai where he was told that his son had been arrested. He engaged a lawyer and eventually managed to secure his release by payment of a bribe of 25 lakhs.

7. The determination records that the Tribunal had regard to all of this evidence, as well as the material produced in the Secretary of State’s bundle.

8. Under the heading ‘assessment of the appellant’s evidence’ the determination reads:

“I find the appellant’s evidence to date to have been consistent throughout.

Every matter raised in the Refusal letter has been answered by the appellant in a manner I find convincing and reasonable”

9. The determination goes on to note that in his oral evidence the

¹ The hierarchy set out in the *Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (“the Istanbul Protocol”) has been approved in, for instance, RT (medical reports – causation of scarring) Sri Lanka [2008] UKAIT 00009. This requires that the clinician must evaluate the scar as one of the following:

- *Not consistent*: the lesion could not have been caused by the trauma described;
- *Consistent with*: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;
- *Highly consistent*: the lesion could have been caused by the trauma described, and there are few other possible causes;
- *Typical of*: this is an appearance that is usually found with this type of trauma, but there are other possible causes;
- *Diagnostic of*: this appearance could not have been caused in any way other than that described.

Respondent was able to expand upon his evidence, providing greater detail, such as how his interrogators mocked him for his stammer. The Tribunal found the Respondent's consistent evidence to be supported by the medico-legal reports, both described as "detailed, comprehensive, helpful and persuasive". The letter from NG is set out in detail. At paragraph 33 the Tribunal sets out its conclusions:

"Having weighed all the evidence before me, the totality of the appellant's account, the evidence of his father, Dr Martin's findings that the amount and positioning of the appellant's scars are consistent with having been caused by torture, Dr Al-Salihy's evidence that the appellant is suffering from Post-Traumatic Stress Disorder and depression as a result of his traumatic experiences in detention and applying the lower standard of proof, I am satisfied that the appellant is a truthful witness and I accept his evidence".

10. The Tribunal then sets out a summary of the country guidance provided in GJ and Ors (Post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and applying that guidance to its own findings, allows the appeal.

The Grounds of Appeal

11. The Secretary of State's written grounds were helpfully distilled by Mr Melvin in his oral submissions. The central complaint is that the determination nowhere addresses the detailed reasons for refusal. The Secretary of State gave at least two reasons why this account should be rejected for want of credibility, and the Tribunal does not deal with them at all. Mr Melvin submitted that the account of identification at the checkpoint was so inherently improbable that the determination's acceptance of it bordered on perversity. The evidence of the Respondent's father was self-serving and no reasons were given as to why it was accepted. Secondary to this ground is an attack on the approach taken to the country guidance. The Judge appears to have weighed into her risk assessment her finding that the Respondent attended demonstrations in London; the Secretary of State considers her comment that it is "possible" that he could have been identified by the Sri Lankan authorities at such protests as speculative.

The Response

12. Mr Toal opposed the appeal on all grounds. He pointed out that the determination does give reasons why the evidence is accepted: it was consistent, corroborated by the medical evidence, consonant with the country background material and had the "ring of truth". There was good supporting evidence which the Tribunal had been entitled to accept.

My Findings

13. In his submissions Mr Melvin relied on the decision of the President in MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC) and its rehearsal of the established principles of public law in respect of the duty to give reasons. Therein the President cites with approval the dicta of Henry LJ in Flannery v Halifax Estate Agencies [2000] 1 All ER 373:

“The duty [to give reasons] is a function of due process and therefore of justice. Its rationale has two principle aspects. The first is that fairness surely requires that the parties –especially the losing party – should be left in no doubt why they have won or lost. This is especially so since without reasons the losing part will not know...whether the Court as misdirected itself and thus whether he may have an available appeal on the substance of the case. The second is that the requirement to give reasons concentrates the mind; if it is fulfilled, the resulting decision is much more likely to be soundly based on evidence that if it is not”.

14. I have analysed the determination in light of that clear guidance. Having done so I am satisfied that in this case reasons have been given, and that they are adequate and sufficient to explain to the Secretary of State why she lost, as well as demonstrating that the Tribunal had addressed its mind to all of the relevant evidence.

15. The first reason given is that the account given, over the course of two interviews, a detailed written statement, the medico-legal reports and cross-examination remained consistent. Second, the Respondent was able to expand on his account and give greater detail when asked. Third, such details gave the account the ‘ring of truth’. Fourth, there was corroboration. The account was supported by medical evidence which showed the Respondent to bear scars “typical” of having been beaten with a blunt linear object and to be suffering from clinically diagnosed PTSD. These were all perfectly legitimate reasons for accepting the account.

16. Mr Melvin submitted that the broad findings at paragraph 16 were not good enough given the “detailed nature” of the forensic attack in the refusal letter. In fact the refusal letter is fairly generic. It makes the vague assertion “overall it has been noted that your account... contains a number of inconsistencies”. The Tribunal concludes to the contrary at paragraph 16, finding the account to be consistent. This has not been shown to be a mistake of fact. I am satisfied that there can have been no obligation on the Tribunal to try and work out what the Secretary of State thought these inconsistencies might have been and then to address them. The Secretary of State believed the account to be inherently improbable and the evidence self-serving; it is evident from her findings that Judge Munonyedi did not. The fact that it was consistent, detailed and corroborated was found sufficient to discharge the burden of proof. As for the criticism that the Tribunal should have directly engaged with the submission that a wanted man

would not have been able to leave Sri Lanka in the manner claimed, it is correct to say that this feature of the refusal letter is not expressly addressed. I find that any omission in that regard cannot be said to be material in light of the accepted evidence in GJ that it is possible to bribe one's way out of Sri Lanka via the airport, even if suspected of LTTE activity: see paragraphs 28 and 275.

17. The grounds of appeal further challenge the overall risk assessment on the grounds that the findings were "speculative", in particular the finding at paragraph 47 that it was "possible" the Respondent could have been identified on a demonstration in London. It is quite evident from the relevant part of the determination that the risk assessment is not based on this finding at all. The following paragraphs, 48 through to 50, make perfectly clear that the risk assessment is made in light of the accepted evidence that the Respondent was arrested, detained and tortured, has been accused of being a still active member of the LTTE, and his father is still required to sign at a police station every month by the officers who are investigating his son.

Decisions

18. The determination of the First-tier Tribunal does not contain a material error of law and it is upheld.
19. The direction for anonymity made by the First-tier Tribunal is maintained.

Upper Tribunal Judge Bruce
28th November 2015