IAC-PE-SW-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/05903/2014

THE IMMIGRATION ACTS

Heard at Manchester	**Determination Promulgated**
On 1st May 2015	**On 6th May 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCCLURE

Between

Partheepan Rajathurai
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Faryl counsel instructed by Broudie Jackson & Canter solicitors
For the Respondent: Ms Johnson, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, Partheepan Rajathurai date of birth 14th November 1989 is a citizen of Sri Lanka. Having considered all the circumstances I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the determination of First-tier Tribunal Judge Edwards promulgated on 19th February 2015, whereby the judge dismissed the Appellant's appeal against the decision of the

Respondent dated 30th July 2014. The decision by the Respondent was to refuse the Appellant further leave to remain in the UK and thereupon to remove the Appellant from the UK.

3. By decision made on the 16th March 2015 leave to appeal to the Upper Tribunal was granted. Thus the matter appears before me to determine in the first instance whether or not there is an error of law in the original determination.

4. The grounds of appeal allege that the judge has failed to properly take account of the medical evidence submitted. In paragraph 31 Judge Edwards states that the appellant has a large number of lesions on his body and that Dr McKenzie is of the opinion that the lesions are consistent with the account given. However the judge continues by stating:-

> "The credibility of the account, of course, is a matter for the Tribunal, but what is troubling is that there is no indication in terms that I can find of the age of the injuries or any assessment of how they may have been otherwise caused."

5. I draw attention to Dr McKenzie's report specifically paragraph 76 wherein the doctor refers to the fact that :-

> "76 All the lesions observed had appearances compatible with timescale of the reported injuries I was provided with some photocopied photographs but the quality was not sufficient for me to use them to draw any reliable conclusions."

6. There was some evidence but it is limited. However whilst it would have been open to the judge to pass comment as to the limits of the evidence given, it was wrong to say there was no evidence.

7. Similarly as to the assessment of there being no examination of other potential causes, the judge appears to have ignored the evidence in paragraph 79 onwards.

8. For example in paragraph 79 Dr McKenzie having assessed that certain lesions are attributed to cigarette burns then considers skin disease, insect bites, vaccination scars and self-harm and gives reasons to discount such.

9. In paragraph 80 Dr McKenzie examines the method of causation of the injuries he is dealing with in detail and confirms that they are consistent with the description given by the Appellant. It is a careful assessment of the method of causation.

10. In paragraph 82 with regard to a white scar radiating out from the anus Dr McKenzie again considers alternative causation such as anal fissures and gives reasons for discounting such causation. In paragraph 83 re irregular scarring on the penis Dr McKenzie again assesses alternative causation and explanations and gives reasons for discounting such.

11. Judge Edwards does not appear to have assessed the evidence. Whilst there may be reasons for questioning the conclusions of Dr McKenzie, to say that Dr McKenzie made no assessment appears to ignore parts of the report. The problem with that is that a failure to properly assess the medical report ignoring the clear assessment by the doctor as to the timing and the causation of the injuries may impact on the assessment of the general credibility of the Appellant's account.

12. In the light of that the whole of the findings of fact of the judge are brought into question. In the circumstances there is a material error in the judge's decision which undermines the findings of fact made. The appropriate course is for the appeal to be heard afresh with none of the findings of fact preserved.

Decision

13. There is a material error of law in the original determination. I set the decision aside and direct that the appeal be heard afresh in the First-tier Tribunal.

Signed Date **1st May 2015**

Deputy Upper Tribunal Judge McClure