



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

Appeal Number: AA/09781/2012

THE IMMIGRATION ACTS

**Heard at Field House
On 14 September 2015**

**Decision & Reasons
Promulgated
On 16 October 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**M I
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel, instructed by Nag Law Solicitors
For the Respondent: Miss J Isherwood, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a Sri Lankan national born on 11 April 1991 and he arrived in UK on 5 June 2010 on a student visa which was subsequently extended to 6 April 2014. He appealed against the decision of the respondent made on 12 October 2012 to remove him from the United Kingdom following a refusal of his grant of asylum, humanitarian protection and protection under the European Convention on Human Rights.

2. A brief history is that the appellant was born in Kandy and lived with his parents and two younger siblings in Akurana in Kandy until he came to the United Kingdom. Prior to leaving Sri Lanka he was studying for a Diploma in Computing at Kandy IDM. According to the appellant, his father owned a jewellery business and a tourist hotel in Bentota just outside Colombo. The family are not of Tamil ethnic origin although they do speak Tamil. The family home in Akurana was in the name of the appellant and during May 2009 he rented the top floor to a family. The police subsequently visited the appellant's house on 14 October 2009 to make enquiries about the tenants and the appellant was arrested taken to Katugastota police station and sexually assaulted, beaten and questioned about his connections to the LTTE.
3. On 28 October 2009 he was transferred to Bogambara prison and where he remained until 18 January 2010. He claims he was again mistreated and questioned occasionally. He was then released on bail by a court with a condition that he report fortnightly and his father and uncle organised a bail application. He was taken to the Royal Infirmary after his release for treatment. When reporting to the police he was arrested again and his parents decided he should be sent abroad and an agent was arranged to obtain a Tier 4 entry clearance for him.
4. Two months after arriving in the United Kingdom the appellant's father told him the police had been looking for him on a regular basis and on 19 August 2010 the appellant was informed that his father had been kidnapped the previous day.
5. The background immigration history is that this matter has been heard three times, by three different First-tier Tribunal Judges and dismissed. On 19 December 2012, 20 March 2012 and now the determination promulgated on 8 December 2014. The two previous decisions were found to contain an error of law and remitted to the First-tier Tribunal for fresh findings of fact.
6. Of particular relevance was the report of Professor S Lingam dated 14 November 2012 and which was subsequently altered in writing in November 2014.
7. First-tier Tribunal Judge Kamara last heard the appeal and on 8th December 2014 she dismissed his appeal on all grounds. She found at paragraphs 20 as follows

'Reliance is placed on a report prepared by Professor Sam (Sundara) Lingam dated 14 November 2012. Professor Lingam appears, from his CV, to be appropriately qualified and experienced, given the 600 medico-legal reports he has done for other asylum applicants. The Professor took a history from the appellant in Tamil and English and set out the information provided by the appellant in a separate section of the report. I can see not reason to doubt that the professor faithfully recorded what the appellant told him. His findings were that the scars on the appellant's body were 'Highly consistent with lacerations from bearing. Owing to the

care with which Professor Lingam approached his duties as an expert witness in his report, I attach a great deal of weight to his findings’.

8. The judge proceeded at paragraphs 22-23 to discuss the subsequent alterations made to the medical expert report particularly in relation to the sexual assault finding that it was the solicitors not the doctor who amended the report albeit the doctor accepted that he had made the mistake in the report. This report varied from the account given to Judge Moore at a previous hearing. Judge Kamara stated that

‘Had Professor Lingam genuinely made an error, I consider it not unreasonable to expect the solicitors to provide evidence that the report was corrected shortly after the report was compiled. The appellant now says that Professor Lingam did not speak to him in Tamil. I prefer the account of professor Lingam in this regard owing to the fact that the appellant has a clear incentive to distance himself from the account he provided to Professor Lingam’.

9. In sum, the judge did not accept as credible the appellant's account of being arrested, detained and tortured in Sri Lanka nor that the authorities had any adverse interest in him at any stage or that his father was abducted.
10. An application for permission to appeal was made to the First-tier Tribunal and rejected by Designated Judge McClure. An application was renewed to the Upper Tribunal in the following terms: (1) the judge failed to provide reasoned findings on medical evidence which related to scarring on the appellant's body, in particular (a) the appellant's evidence of being ill-treated in the manner in which he had received his scars was not challenged in cross-examination or in submissions. **RR (Challenging evidence) Sri Lanka [2010] UKUT 274** confirmed that the respondent's cross-examination should have fearlessly and clearly challenged the appellant's evidence. This was not done. The judge attached a great deal of weight to Professor Lingam's report which opined that the scars on the appellant's body were highly consistent with his account, but when reasoning the above the judge failed to reason properly why she did not accept the appellant had been ill-treated in the manner claimed. Further, there was not a two year delay in pursuing corrections to the medical report for the reasons set out in the grounds of appeal. This matter had been raised orally prior to November 2014. In any event, it was not apparent why this would undermine Professor Lingam's professional opinion and conclusion about the scars on the appellant's body to which the judge attached a great deal of weight.
11. The judge's approach and assessment of the documentary evidence was flawed and unfair and the lawyer's credentials remained unchallenged in the Presenting Officer's submissions.
12. Another challenge in the application was raised with regards the Judge's rejection of the appellant's evidence of a lawyer's letter said to support the appellant's claim. The lawyer's credentials remained unchallenged in

the Presenting Officer' submissions but the judge considered the Lawyer's Bar Association certificate had been doctored. In the absence of any evidence undermining the lawyer's letter and any challenge to his credentials the judge adopted a flawed and unfair approach to the evidence when finding the lawyers Bar Association certificate had been doctored. The judge also failed to address relevant submissions on that issue.

13. Further, the judge's finding that it was implausible the appellant would be able to leave Sri Lanka without using his own passport was inconsistent with relevant country guidance evidence at **GJ and others (post-civil war: returnees) Sri Lanka CG** [2013] UKUT 00319 (IAC).
14. A Rule 24 response was served although the author of that Rule 24 response did not have access to the Home Office file and the position was merely "protected".
15. I find there is an error of law within the decision. At paragraph 20 of the decision of Judge Kamara she states with reference to the report of Professor Lingam:

"His findings were that scars on the appellant's body were highly consistent with lacerations from beating. Owing to the care with which Professor Lingam approached his duties as an expert witness in his report I attach a great deal of weight to his findings."

16. That said, at paragraph 23 she states

"While I accept the appellant gave Professor Lingam an account of being beaten, being forced to perform oral sex on his captors and raped by four men over a fourteen day period, given the inconsistencies as to what was said to have occurred I do not accept the report amounts to reliable evidence that these events occurred."

17. First of all, the judge stated that the report of Professor Lingam was not corrected until nearly two years later. That is incorrect and indeed the judge referred to the determination of Judge Moore who at paragraph 41 identified that the appellant had raised an inconsistency as early as November 2012. Secondly, although those inconsistencies relate to the sexual abuse nature of the report, there were no inconsistencies in Professor Lingam's report in relation to the scarring which he considered were highly consistent with beatings. It is quite clear that in the skeleton argument presented by Miss Seehra to the First-tier Tribunal that **RR (Challenging evidence) Sri Lanka [2010] UKUT 274** was raised by Miss Seehra at the First-tier Tribunal. The Home Office did not challenge this in what appeared to be a very short cross-examination. As stated in the head note of **RR (Challenging evidence)** if the respondent does not put its case clearly it may well be very difficult for the Tribunal to decide against an appellant who has not been given an opportunity to deal with the respondent's concerns. Indeed it was the evidence of Professor Lingam before Judge Molloy that he did not go into detail about the sexual

matters because the appellant was distressed and certain references could have been a mistake on his part.

18. At paragraph 25 the judge referred to “two documents which appear to suggest that he was required to report to the police owing to his past failure to report”. The judge appears to attach weight to the documents but does not say what weight is being given and similarly at paragraph 27 the judge refers to the court cash receipt and which Mr Spurling pointed out had the same reference number as the court summons to which the judge attached no weight. This appears to be contradictory.
19. It was pointed out in ground 2 of the application for permission to appeal that the appellant relied on numerous documents in support of his claim and a lawyer's letter but there was no challenge to the lawyer's credentials in line with **PJ (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ.** I do not accept that **PJ** suggests that there should necessarily be a challenge in every instance but it does not appear that the Home Office did make any challenge to the authenticity and reliability of that document. It is noted that there was a submission made by Miss Seehra on that issue. Clearly it is open to a judge to draw his or her own conclusions about documentation without the need for cross-examination on every single point but bearing in mind the issues that were raised in the skeleton argument it is reasonable to expect that there should be acknowledgment of the lack of challenge by the Secretary of State and the judge should have addressed those points as they were specifically raised.
20. The further issue which does not appear to have been taken into account is that **GJ and Others** confirms that it is possible to leave the airport owing to the bribery and corruption that exists in Sri Lanka and indeed it was this appellant's case that the agent assisted him in removal. The judge at [36] merely states:

“I consider it implausible that if the appellant was suspected of sheltering members of the LTTE he would be released on bail by a judge, allowed to report without serious incident over a period of months and permitted to leave Sri Lanka openly using his own valid passport without incident”.

The skeleton argument did in fact state that the appellant received subsequent harassment and ill-treatment when he did report and that that was consistent with the Amnesty Report dated 13 March 2012.

Notice of Decision

The Judge erred in law for the reasons identified, and, in a manner which could have a material effect on the outcome. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under

section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date 12th October 2015

Deputy Upper Tribunal Judge Rimington