



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

Appeal Number: AA/11050/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 10 September 2015**

**Decision & Reasons Promulgated
On 10 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

Mr Yureshkanth THILLAINADARASASA

Appellant

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Pascoe, counsel instructed by Vasuki solicitors

For the Respondent: Ms K Pal, Senior Home Office Presenting Officer

DECISION & REASONS

1. The Appellant is a national of Sri Lanka, of Tamil ethnicity, born on 23 October 1988. He arrived in the United Kingdom on 22 May 2012 and claimed asylum at the port. The basis of his claim is that his brother, Kishanth became involved in the LTTE in 2008 and he was recruited at the end of that year. He was arrested by the Sri Lankan army in 2009 and detained, interrogated and tortured until he managed to escape. His application for asylum was refused on 28 November 2014 and his appeal against this decision came before a panel comprising First Tier Tribunal Judges Denson & Feeney on 16 March 2015. In a determination dated 30 March 2015 the appeal was dismissed, essentially on the basis that, whilst the panel at [41] accepted that the Appellant had some

level of involvement with the LTTE, they did not find the Appellant's evidence to be credible. There was before the panel a medical report from Professor Lingham, in respect of the Appellant's scarring and a psychiatric report from Dr Dhumad but the panel placed little weight on these reports because they did not accept the Appellant's account as credible.

2. An application for permission to appeal was made on 14 April 2015 *inter alia* on the basis that the panel erred in their assessment of the Appellant's credibility, in particular making adverse findings prior to considering the medical evidence and failed to consider the Appellant's poor mental state and vulnerability when assessing inconsistencies in his accounts given at different times. Permission to appeal was granted by First Tier Tribunal Judge Simpson on 24 April 2015, with reference to the decision by the Upper Tribunal in JL (medical reports - credibility) China [2013] UKUT 00145 (IAC). The Respondent filed a rule 24 response on 6 May 2015 placing reliance on the decision in HH (medical evidence; effect of Mibanga) Ethiopia [2005] UKAIT 00164 at [21].

3. At the hearing before me, Ms Pascoe relied on the grounds of appeal and submitted that the Judge erred materially in law in failing to consider the medical reports prior to assessing the Appellant's credibility. She acknowledged the Respondent's rule 24 response but noted that HH pre-dated JL and the clear starting point of the determination is the credibility finding at [28] and there was only scant acknowledgment of Professor Lingham's report at [33]. Ms Pascoe submitted that the panel's findings in this respect go behind the intention of the Istanbul protocol. Whilst it may be a question of weight to be attached to expert evidence in this case the medical reports have been dismissed out of hand. In response, Ms Pal acknowledged that it would have been helpful if the First Tier Tribunal had taken account of both medical reports by experts. They did not but this does not mean they formed adverse credibility findings without considering the reports. She drew my attention to [33] where reference is made to Dr Lingham's report. She submitted that it was possible the Appellant had scars inflicted deliberately. She submitted that there is reference to the Appellant's mental health condition at [37]-[38] and this has been considered in context of Dr Dhumad and that there was no material error of law.

4. I find that there is a material error of law in the decision of the First Tier Tribunal. At [33] the panel acknowledge the report from Dr Lingham and record that: *"the scars on the appellant have been found to be diagnostic and typical of scars caused by heat/burning."* They noted that Dr Lingham could not say whether these injuries were caused deliberately to mislead and when on to find: *"Taking into account our findings regarding the appellant's credibility ... we do not accept as credible that the scars arising from burns from a metal rod are as a result of his experiences of torture in Sri Lanka as claimed."* And at [34] in respect of the burns Dr Lingham found to be consistent with being burnt on the chest with cigarette butts the panel held: *"given our findings of fact regarding the appellant's credibility we do not accept as credible that the cigarette burn occurred as a result of torture received as claimed in Sri Lanka."* It is clear from the panel's findings that they considered the issue of the Appellant's credibility first and then relied on their findings in this regard to

disregard the reports by the medical experts. As the Court of Appeal and Upper Tribunal have consistently found, most recently in JL (medical reports – credibility) China [2013] UKUT 00145 (IAC) [31]-[32] this is an erroneous approach. Whilst a Judge engaged in a fact finding exercise is not obliged to accept the findings of a medical expert, it is incumbent upon the fact finder: (i) to assess the credibility of an Appellant's account in light of all the evidence, including expert evidence and (ii) to provide clear and adequate reasons if that evidence is not accepted. This approach was not taken by the Judges engaged in determining this case at first instance and thus they erred materially in law.

5. The parties agreed that the appropriate course would be for the appeal to be remitted for a *de novo* hearing before a single Judge of the First Tier Tribunal, other than Judge Denson or Judge Feeney.

Deputy Upper Tribunal Judge Chapman

10 September 2015