



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/11839/2014

THE IMMIGRATION ACTS

Heard at Field House
On 22nd July 2015

Decision and Reasons Promulgated
On 29th July 2015
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Before

UPPER TRIBUNAL JUDGE FINCH

Between

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(An anonymity order is made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms L. Turnbull, instructed by Vasuki Solicitors
For the Respondent: Ms J. Isherwood, Home Office Presenting Officer

DECISION AND REASONS

History of Appeal

1. The Appellant, who was born on 2nd September 1992, is a national of Sri Lanka. He entered the United Kingdom on 5th March 2011 as a Tier 4 (General) Student but on 9th January 2012 the Appellant's college informed the Respondent that it was no longer sponsoring him.

2. The Appellant applied for asylum on 12th March 2013 and attended a screening interview. His substantive asylum interview was conducted on 24th November 2014. It was his case that he collected money for the LTTE between January and September 2007 and hid grenades and other weapons for them between January and April 2009. He also said that in 2010 he helped the LTTE obtain documents in Colombo and was arrested there on 2nd October 2010. In addition, he asserted that he was held in detention until 22nd December 2010 and tortured during this period. The Appellant's application was refused on 10th December 2014.
3. His appeal was heard by First-tier Tribunal Judge Plumptre and she dismissed his appeal in a decision and reasons, promulgated on 28th April 2015.
4. The Appellant applied for permission to appeal against her decision on the basis that the First-tier Tribunal Judge had made a defective assessment of the medical evidence and, in particular, that she had not engaged with Professor Lingam's clinical findings. He also asserted that the Judge erred in her assessment of credibility of the Appellant's account of his release from detention, his departure from Sri Lanka and his membership of the TGTE.
5. On 22nd May 2015, First-tier Tribunal Judge Ford granted the Appellant permission to appeal but she restricted her permission to the grounds relating to Professor Lingam's report. She found that the Judge may have erred in substituting her own clinical judgment for his. She also found that it was arguable that the Judge may have erred in stating that he should have been in a position to be clearer as to the age of the scars. Finally, she found that it was arguable that the Judge may have erred in substituting her own judgment as to whether some of the scars could have been self-inflicted. She found that the remaining grounds amounted to no more than a disagreement with the findings of fact made by the Judge.

Error of Law Hearing

6. At the hearing counsel for the Appellant's counsel accepted that she had only been given permission to appeal on the grounds which related to the Judge's approach to the expert evidence provided by Professor Lingam. She also submitted that contrary to the assertion in the Respondent's Rule 24 Reply, Professor Lingam had been provided with copies of the Appellant's screening and substantive asylum interviews. She then submitted that the Judge had substituted her own opinion for that of Professor Lingam and noted that he had found that the Appellant's scars had been caused by heated metal equipment and were clearly old. She also asserted that it could be inferred that he believed that the scars were over four years old. In addition, she submitted that the Judge had not given sufficient weight to Professor Lingam's opinion.
7. The Home Office Presenting Officer replied and submitted that there were no material errors of law in the Judge's decision and reasons. She noted that the Judge had set out Professor Lingam's findings in paragraphs 30 to 37 and then given her own findings on his evidence in paragraph 48. She also submitted that the Judge had correctly considered the evidence in the round

before coming to her final decision about the credibility of the Appellant's account.

8. In his grounds of appeal the Appellant asserted that the Judge had failed to engage with Professor Lingam's rationale as to why he reached his clinical conclusion. However, in paragraphs 30 – 37 of her decision and reasons the Judge reminded herself of the main points of his evidence. In particular, at paragraph 32 she noted that he had stated that "the scars shown on the photographs cannot be from anything other than burn with heated hot metal iron rod and that characteristic features of burn are evident on each scar". She did not reach any findings later in her decision and reasons which suggested that she had not accepted this clinical finding.
9. At paragraphs 34 and 54 she correctly points out that Professor Lingam's evidence was contradictory about the timing of the Appellant's injuries, as he had said that the scars were clearly old and were certainly over two years old but then referred to a burn injury in 2010. When doing so she was not seeking to substitute her own view for his but merely commenting on his evidence. The timing of the scars was clearly relevant to her decision as the medical report had been prepared more than three years after his arrival in the United Kingdom.
10. On page 31 of the Appellant's Bundle Professor Lingam stated that in his opinion the injuries suffered by the Appellant could not have been self-inflicted. The Judge did not challenge his findings about the scars on the Appellant's back but did find that, absent a clinical explanation, she could not accept that he would not have been able to cause the burn on his left upper arm. This was a finding which was open to her on the evidence before her.
11. At paragraph 60 of her decision and reasons the Judge said that "in short summary I am unable to accept the conclusions Professor Lingam has reached about the Appellant's scars". In his conclusions Professor Lingam said that his findings are typical of the incident described. Therefore, the Judge was not reaching an adverse credibility finding about his clinical findings but was not accepting his conclusion about the causation of the injuries. This was a finding which was open to her when the clinical findings did not date the injuries and when Professor Lingam had also found that "there is no way I nor any other medical expert in his field can scientifically differentiate between deliberately inflicted wounds (say at a third party's behest) from wounds inflicted from any trauma".
12. In paragraph 46 of her decision and reasons the Judge also correctly reminded herself that she must consider all the evidence in a case in the round before coming to a decision, as found in *Karanakaran v Secretary of State for the Home Department* [2000] EWCA Civ 11). In paragraph 48 she also directed herself to relevant case law relating to the correct approach to medical evidence.
13. For all of these reasons I am satisfied that there were no material errors of law in the First-tier Tribunal Judge's decision and findings and that it should stand.

Conclusions:

1. The First-tier Tribunal Judge's decision and reasons did not include material errors of law.
2. It should not be set aside.

Direction Regarding Anonymity – Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Date 24th July 2015

Nadine Finch

Upper Tribunal Judge Finch