Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number AA/03201/2015**

THE IMMIGRATION ACTS

Heard at Taylor House	**Decision and Reasons promulgated**
On 23rd October 2015	**On 17th May 2016**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Secretary of State for the Home Department

Appellant

and

K V
(Anonymity order made)

Respondent

Representation
For the Appellant: Ms A Brockleby-Weller, Home Office Presenting Officer.
For the Respondent: Ms E Harris of Counsel instructed by Nag Law Solicitors.

DECISION AND REASONS

Background

1. This is an appeal against the decision of First-tier Tribunal Judge Steer promulgated on 27 July 2015, allowing the appeal of KV against the decision of the Secretary of State for the Home Department dated 13 February 2015 to remove him from the UK following refusal of an asylum claim.

2. Although before me the Secretary of State is the appellant and KV is the respondent, for the sake of consistency with the proceedings before the First-

tier Tribunal I shall hereafter refer to KV as the Appellant and the Secretary of State as the Respondent.

3. The Appellant's personal details and immigration history are a matter of record on file and known to the parties; they are also set out in the body of the decision of the First-tier Tribunal. It is unnecessary to re-rehearse all such matters here. What is particularly pertinent for present purposes is that the Appellant arrived in the UK on 31 May 2012 and claimed asylum on the following day. He claimed a fear of the authorities in Sri Lanka on the basis that he had been identified as an LTTE member. The Appellant's claim for asylum was refused for reasons set out in a 'reasons for refusal' letter (RFRL) dated 13 February 2015, and a decision to remove the Appellant from the UK was taken consequence

4. The Appellant appealed to the IAC. The First-tier Tribunal Judge allowed the Appellant's appeal for reasons set out in her determination.

5. The Respondent sought permission to appeal which was granted by FTTJ Landes on 17 August 2015.

Consideration: Error of Law

6. Although Judge Landes did not limit the scope of the grant of permission to appeal, nonetheless reservations were expressed as to the strength and/or materiality of some of the grounds. In light of such observations, and in any event, Ms Brockleby-Weller indicated that she did not seek to pursue the first of the grounds pleaded in the application for permission to appeal (which appears to be premised upon what is more likely an inelegance of expression on the part of Judge Steer, rather than an inconsistency of findings/reasoning amounting to an error of law). It was also acknowledged that the second ground – which related to the application of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319** to the facts of the case - was essentially 'parasitic' on the other grounds and as such did not constitute a freestanding basis of challenge in itself. Judge Steer's observations in respect of the materiality of the third ground – in respect of section 8 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 - were also noted. Accordingly the focus of challenge before me related to the fourth ground in respect of the adequacy of the Judge's reasoning in respect of the supporting medical evidence relied upon by the Appellant.

7. It is a core element of the Appellant's asylum case that following his surrender to the Army in April 2009 and his placement with his family in a camp for displaced persons in Vavuniya, he was picked out in an identification

parade as a perceived LTTE member, arrested and taken for questioning on 10 June 2009. He claims that during the subsequent detention and interrogation at the Joseph Camp he was ill-treated. In support of this aspect of his case the Appellant has relied upon what is described as a 'Diagnosis Ticket' said to have been issued by the Vavuniya General Hospital showing an admission on 11 June 2009 and a discharge on 14 June 2009; the Appellant also relies upon a report headed 'Medical Report (Scarring)' prepared by Mr M Andrew Mason, dated 22 June 2015 pursuant to an examination date of 16 June 2015.

8. The Judge summarised the contents of Mr Mason's report at paragraph 25 in the following terms:

> *"[Mr Mason] could not date the scars on the Appellant's body more precisely than to say that they resulted from injuries that had occurred in excess of twelve months earlier. The scars on the Appellant's back were typical of the scars that would result from being beaten, a severe beating a heavy stick or baton. The scar on the Appellant's hand was non-specific, but was consistent with the Appellant's account of being cut deliberately with a knife while being interrogated. Any laceration, however, caused accidentally or under any other circumstances might produce a scar of this type. Likewise, the scars on the Appellant's legs were non-specific. They were consistent with the Appellant's account that they were the result of being beaten and scalded, but scars in those areas were commonplace, often resulting from the lifestyle of the individual."*

9. At paragraph 39 of the decision, the Judge acknowledged that the Respondent's Presenting Officer made submissions critical of the medical report and of its value as corroborative evidence: "*The author of the report had not used the correct terminology under the [Istanbul] Protocol, did not deal with self-infliction by proxy, was contradictory in parts and referred to certain of the injuries possibly being caused by everyday injuries*".

10. Bearing in mind what is said in **KV (scarring - medical evidence) Sri Lanka [2014] UKUT 00230 (IAC)** at paragraph 294, these criticisms are not without substance:

> *"For completeness we need to clarify what doctors should do or say about the SIBP possibility when there are no presenting features to suggest it. We only mean here to identify what we as judges consider as best practice in respect of preparation of medico-legal reports for use in asylum cases. It follows from our earlier conclusion - that SIBP cannot be excluded as a possible cause, either a priori*

> *or routinely - that (i) doctors should indicate in their assessment that SIBP as a possible cause has been considered (in the same way as Professor Katona said it was best practice for doctors to consider feigning generally as a possible cause; and in the same way that Dr Zapata-Bravo considered whether the appellant's scarring could have been caused by tattooing); but (ii) if there is an absence of any presenting feature giving rise to a concern about a "false allegation of torture" of this type, then all the doctor need do is state that whilst SIBP as a possible cause has been considered, there is no presenting feature making it more than a mere or remote possibility."*

11. The Judge also summarised the Appellant's Counsel's response: "*The medical report did refer to the Protocol in Part 6. The author had considered the possible causes of the scars and provided an opinion, as to the likely causes. The timeframe accorded with the Appellant's account*" (paragraph 42). I pause to note that this summary of response does not engage with the submission in respect of 'self-infliction by proxy'.

12. In setting out her findings the Judge, at paragraph 52, having addressed issues in respect of an apparent discrepancy between the date of the Diagnosis Ticket and the Appellant's own statement as to the date of his discharge, states this in respect of the medical report:

> *"In addition to the diagnosis ticket, the Appellant provided a medical report. The report substantiated his account of torture, at least as to the beatings to his back."*

13. Further, although there is no additional amplification or analysis of the medical report, it is clear from paragraph 54 that the Judge took the medical report into account favourably in her overall evaluation of the Appellant's account.

14. I accept the criticisms made by the Respondent in respect of the adequacy of the Judge's reasoning with regard to accepting the medical report as 'substantiating' the Appellant's account. The Judge has not engaged with the criticisms made of the report by the Respondent's representative, and to that extent has failed expressly to adjudicate upon, or otherwise to offer any reasons for any such adjudication upon, a significant issue between the parties - the resolution of which was material to the outcome of the appeal.

15. In all such circumstances I am satisfied that there was a material error in law in that the decision of the First-tier Tribunal fails to engage with a material

issue between the parties, and otherwise lacks reasoning in respect of the issue. The decision of the First-tier Tribunal must be set aside accordingly, and requires to be remade. Because the error impacts upon the credibility assessment of the Appellant, and upon remaking it is not possible to deal with the issue discreetly: accordingly a full re-hearing is required with all issues at large. It is common ground between the parties, and I agree, that the appropriate forum is the First-tier Tribunal.

Decision

16. The decision of the First-tier Tribunal Judge contained a material error of law and is set aside.

17. The decision in the appeal is to be remade before the First-tier Tribunal before any Judge other than Judge Steer with all issues at large.

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 their 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.

Deputy Judge of the Upper Tribunal I. A. Lewis 10 May 2016