



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

Appeal Number: AA/05126/2015

THE IMMIGRATION ACTS

Heard at Field House

**Decision and
Promulgated**

Reasons

On 19 February 2016

On 22 March 2016

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

[V T]

~~(no anonymity direction made)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms J Hassan of Counsel

For the respondent: Mr L Tarlow, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka born on [] 1985. He appeals to the Upper Tribunal against the determination of First-tier Tribunal Judge Davidge dated 21 August 2015 refusing his appeal against the decision of the respondent dated 4 March 2015 refusing him asylum and humanitarian protection and to remove him from the United Kingdom pursuant to s10 of the Immigration and Asylum Act 1999.

2. Permission to appeal was at first refused by the First-tier Tribunal Judge and subsequently granted by Upper Tribunal Judge Chalkely on 16 November 2015 who stated that it was arguable that the First-tier Judge may have erred in his determination for the succinct reasons set out to ground one of the grounds of appeal.

The first-tier Tribunal's findings

3. The Judge in his determination made the following findings which I summarise.
 - I have a psychiatrist report dated 17 March 2015 from Dr Robert Lawrence MRCPsych, including a statement that the appellant is not fit to face a court hearing because "he does not have the capacity to understand the court proceedings and it would be impossible for him to withstand any form of cross examination". The diagnosis is severe psychosis secondary to depression. I also had the benefit of a medical report dated 3 August 2015 from Professor S Lingham MD who made the report following an examination on 30 August 2015. The doctor notes that the appellant is clinically depressed and presents with symptoms of post-traumatic stress disorder which psychosis. The report considers the scars of the appellant and finds them diagnostic of burns consistent with having been caused over two years prior, which have not been self-inflicted, not being in an area where the patient could easily cause them himself, and whilst it is impossible for him to say that they have not been deliberately inflicted to mislead, they have not been caused by a surgical procedure, do not result from a medical condition, and not inflicted through ritual. One of the scars may have been caused by deep wounds arising in severe accident or injury, the doctor states, "I cannot clinically think of a scenario where the patient could have been accidentally burned repeatedly to cause such injuries".
 - The doctor notes that the scars are typical of cigarette burns and the he is satisfied, finding no reason to dispute the history provided by the patient, they are highly consistent with his account of ill treatment. I am satisfied that the medical evidence is capable of corroborating the appellant's account of ill treatment and counts positively in my assessment of credibility.
 - The appellant submitted documentary evidence from the court which states that a complaint had been made to the authorities prompting his arrest in May 2010, on suspicion of being "a leader" in "planting bombs". The documents states that he was before the Magistrate in person on nine occasions. The appellant said in his interview that he only went to court twice, once in May 2010 and then again in August 2010. The appellant was quite specific in his interview about that. In his witness statement he reiterates he only went to court twice and says that he was not taken more often the

cause he was so badly beaten that it was likely the authorities wanted to avoid the magistrate's seeing his condition.

- The appellant also states in connection with the second period of detention between January and March 2013 that he was not taken to court. The court documents he relies upon state that he was. In his witness statement apparently to resolve these discrepancies, he draws a distinction between being taken to court and one where he sees the magistrate. The appellant had an opportunity in his interview to explain exactly what happened, and this latest explanation does not sit well but the documentation, and has all the characteristics of being a gloss intended to meet a difficulty as it has become apparent to him than with the truth.
- In his interview, the appellant said his bail conditions required to report weekly. Contrary to that position he said he had in fact only departed after his release and then left the country before she was next due to report. The chronology he provides does not fit with weekly reporting as this would have necessitated him reporting at least twice before release to the point that it would not have been the once he said and contrary to his account he had already failed to report before he left the country.
- Further discrepancies arise in connection with the bail conditions upon which he says he was released in 2013. His evidence was that he had to report weekly, the court documents he relied on state it was monthly. In his witness statement he changed it to monthly but provides no explanation as to why in his interview he said weekly. If he was to report monthly, that he would not have been required to report before the date he says he left Sri Lanka and yet he says he had reported accompanied by his uncle. The appellant's account is inconsistent and the discrepancies remain unexplained. The lawyer's letter does not assist the appellant in this regard. There is no expert verification report of the court documents. The medical evidence does not address the discrepancies specifically, I find I cannot infer that the fact of suffering and post-traumatic to stress disorder and having the scarring described in the report provides an adequate explanation. The discrepancies between his account and the documents is undermining of his account and the reliability of the documentation.
- The appellant produced a letter from the lawyer who he says represented him in the Magistrates court. In his interview he did not know the details of his lawyer and I find his inability to record his name and firm is undermining of his credibility. The medical evidence does not deal directly with this point. The appellant explanation that it was not a Tamil name which is why he had difficulty in recording it, is not a credible explanation given the appellants contact with his lawyer was for two years in post flight contact.

- There are aspects of the appellant's account which count adversely in my assessment of his credibility and upon which his mental state and have no bearing. His account that his cousin and brother-in-law, Joseph Alex, the government servant, stood surety for him to report as required. It is self-evident that no arrest warrant was issued at that time because the appellant had left the country and re-entered without being arrested on a warrant.
- The appellant asserts that on re-entry though he was not detained for failing to attend bail in connection with the suspicions he was a lead bomber, but because of re-entering without proper documentation. He relied instead on the proposition was that he was an LTTE activist and as he had been outside of the country, it was presumed, raising funds and support for the course of separation outside the country. His assertion that he was subsequently released on bail, with his same relative as a surety, but fails to recognize the difficulty apparent in the assertion that the authorities would accept as surety of a relative who had failed in his duties previously, particularly given the seriousness of the suspicions for the first detention: namely being a leader in planting bombs. When the matter was put to the appellant, he simply asserted that he could find no one else to stand as surety. His explanation does not meet the difficulty. There is no witness statement from the appellant's brother in law or uncle who he says actually paid the bail funds and attended the first to reporting date by the appellant in 2013 and also facilitated his flight from Sri Lanka who has been in touch with his family, and has been subjected to harassment on account of his relationship with the appellant. Whilst corroboration is not a requirement the absence of evidence reasonably available, given the production of all the documentary evidence from both sources, does not assist the appellant.
- Looking at the evidence in the round I find that I can place no reliance on the appellant's chronology of detention and ill-treatment. But at its highest I find that the evidence shows that the appellant has been in an IDP camp that he has suffered deliberate ill-treatment through the application of burning rods and cigarette burns. When and in what context, it is not established even to the low standard applicable. Taking into account the country guidance which is on the point that although detention and ill-treatment of Tamils was relatively commonplace prior to the cessation of the conflict. I find that the appellant has not established, even to the lower standard, that he was detained and ill-treated following the end of the conflict, or there is an outstanding warrant for his arrest.

The grounds of appeal

4. The appellant in his grounds of appeal states the following which I summarise. The Judge accepted that the combined effect of the psychiatrist

and forensic evidence was that the applicant had suffered ill-treatment by the application of burning rods and cigarette burns at an IDP camp. The Judge considered that the country guidance shows that detention and ill treatment was relatively common place prior to the cessation of the conflict. This finding gives rise to a fundamental error of fact that undermines the safety of the risk assessment. While IDP's were subject to poor conditions but no interrogation relating to LTTW involvement took place within the IDP camps. Interrogation and torture to secure a confession took place in army, Cid, TID and all police camps. Therefore, the error undermines the credibility assessment.

5. The second ground of appeal is that the Judge having noted psychiatrist's opinion that the appellant was unfit to give evidence, it was unfair for the Judge to draw adverse inferences from his failure to give evidence.
6. The third ground but is that the lawyers letter was vague and lacking in detail but the e appellant secured bail on two occasions in respect of two different cases, the lawyer provided the dates of detention that he had been investigated when the appellant left the country without reporting.

The hearing

7. At the hearing I heard submissions from both parties which are set out in my Record of Proceedings.

Error of law findings

8. I have given anxious scrutiny to the determination of the First-tier Judge and have taken into account the grounds of appeal and the documents.
9. Permission was essentially given on the first ground of appeal which is that the Judge erred in law by his finding that that the appellant suffered deliberate ill treatment through the application of burning rods and cigarette burns which took place while the appellant was in an in an IDP camp and not in detention by the authorities as claimed by the appellant. The main thrust of the grounds of appeal is that it is not possible for the appellant to have suffered these injuries in an IDP and therefore the only explanation is that the injuries must have been inflicted when he was detained.
10. The Judge stated at paragraph 31 "taking the evidence *at its highest*", I find that the evidence shows that the appellant had been detained in an IDP camp and that he has suffered ill-treatment by the application of burning rods and cigarette burns. When and in what context, it is not established even to the low standard applicable". (emphasis mine)
11. I do not read this as saying that the Judge specifically found that the appellant suffered ill-treatment at an IDP camp. He stated that when these injuries were inflicted and in what context has not been established.

12. The Judge has given ample ad cogent reasons for finding the appellant and his claim not credible. He found the appellant inconsistent about many matters and found that the appellant has not adequately explained the inconsistencies in the evidence. He found that the appellant's evidence was inconsistent with the documents provided. He said that the medical evidence is not capable of explaining these inconsistencies. He found the appellants account about his appearances at the magistrate's court in Sri Lanka and bail were also inconsistent. He also did not find it credible that the appellant would be of interest to the authorities on his re-entry into Sri Lanka on the bases of his re-entry without the proper documentation and not because he was a person who was involved with bombs, which is a much more serious crime.
13. The Judge also did not find it credible that the authorities would accept the same surety and grant the appellant bail for the second time when the appellant had previously not abided to the bail conditions with the same surety. The Judge was entitled to find that the appellant's inability to remember the name of his lawyer, even though he was in contact with him for two years, goes to his credibility and to the credibility of his claim that he appeared before a magistrate. He also found that the number of times that he said that he appeared before the magistrate, which was two times, is not consistent with the documentary evidence which stated it was on nine occasions.
14. I find that the Judge was entitled and required to reach her conclusion based on her consideration and evaluation of the evidence as a whole. I find that the Judge did take into account the medical report. However, an expert report is simply evidence in the case, which must be considered and assessed together with all of the other evidence in the case. This is what the Judge did. I find that the Judge was entitled to find and to take into account that the appellant gave inconsistent evidence and his account was not credible or plausible and was entitled to consider the expert report together with the appellant's own account in reaching a conclusion as to whether the scarring was consistent with the appellant's account. The Judge found that taking the case at its highest, the appellant suffered these injuries but he has not proved to the lower burden of proof, that they were inflicted by the authorities in the circumstances stated by the appellant.
15. The appellant's remaining grounds of appeal are of no merit whatsoever and a merely quarrel with the Judge's findings. I find that the Judge considered the evidence in the round gave sustainable reasons for her finding that the appellant's evidence is not credible in her determination. I find that the Judge's reasoning is understandable, and not perverse.
16. For each of these reasons the judge was not satisfied, even to the lowest standard, that the events of which the appellant speaks are credible
17. In **R (Iran) v Secretary of State for the Home Department [2005] EWCA Civ 982** Brooke LJ commented on that analysis as follows:

15. It will be noticed that the Master of the Rolls used the words "vital" and "critical" as synonyms of the word "material" which we have used above. The whole of his judgment warrants attention, because it reveals the anxiety of an appellate court not to overturn a judgment at first instance unless it really cannot understand the original judge's thought processes when he/she was making material findings.

18. I find that I have no difficulty in understanding the reasoning in the Judge's determination for why she reached her conclusions. I find that the grounds of appeal and no more than a disagreement with the Judges findings of fact and the conclusions that she drew from such findings.

19. In any event, I find that a differently constituted Tribunal would not come to a different conclusion on the evidence in this appeal. There are many inconsistencies in the evidence which cannot be explained by the medical evidence provided. The medical evidence is based on the account given by the appellant to them about his circumstances which has been found not credible by the Judge for good reasons. It is for the Judge to determine the credibility of the appellant and of the medical experts.

20. I find that no error of law has been established in the determination. I find that the Judge was entitled to conclude that the appellant is not entitled to be recognised as a refugee or to be granted humanitarian protection in this country. I uphold the decision.

DECISION

Appeal dismissed

2016

Dated this 15th day of March

Signed by,

Deputy Judge of the Upper Tribunal

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Mrs S Chana