



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: AA/06217/2015

THE IMMIGRATION ACTS

Heard at Field House, London

Decision & Reasons Promulgated

On 25<sup>th</sup> February 2016

On 31<sup>st</sup> March 2016

Before:

DEPUTY UPPER TRIBUNAL JUDGE MCGINTY

Between:

[S T]

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Muquit (Counsel)

For the Respondent: Ms Willocks-Briscoe (Home Office Presenting Officer)

DECISION AND REASONS

1. This is the Appellant's appeal against the decision of First-tier Tribunal Judge J.Connor promulgated on the 23<sup>rd</sup> October 2015, in which she dismissed the Appellant's appeal on asylum grounds.

## Background

2. The Appellant is a citizen of Sri Lanka who was born on the [ ] 1983.
  
3. It is the Appellant's case that in 2004 he was made to complete three months of compulsory training for the LTTE, following which he was sent to the front line in Omanthai to carry out work digging bunkers. Thereafter, he got a place at College in Colombo, but the LTTE, he says, said that he must continue to work for them in Colombo and that his role was to allow LTTE visitors into Colombo to stay with him and to take LTTE members to the airport, transport goods such as medicines, batteries, flashlights and other electrical goods. He says he continued this work until 2006 when the war intensified and he lost contact with these LTTE members and that he completed his studies in February 2009. In August 2009 the Appellant's case that he began working for a Non-Governmental Organisation (NGO), the revival project, which helped rehabilitate internally displaced people from the camps and provided them with humanitarian aid and that this NGO was under the control of the government. He says that he was arrested by the Sri Lankan authorities in May 2010 because he was accused of being an LTTE member and that he had been pictured with people involved with the LTTE and that the authorities had come to know about his compulsory training with the LTTE and that he was also accused of helping Tamils in the resettlement project. His case is that he was detained for almost 50 days, during which time he claims that he was beaten very badly in detention, including being beaten with wires, being suspended from something, having a bag filled with petrol wrapped around his face, being beaten with the butt of a gun and that he claims to have scars from mistreatment. It is said that in early July 2010 his father arranged his release through paying a bribe and that he managed to escape coming to the United Kingdom, where it is said that he has been involved with pro-Tamil demonstrations and celebrating Heroes day. His case is that he fears the Sri Lankan government will arrest and torture him if he returned because of his suspected involvement with the LTTE.
  
4. The Appellant claimed asylum on the 29<sup>th</sup> November 2013, 3 years after

having arrived in the UK on the 28<sup>th</sup> September 2010. His original asylum claim was rejected by the Respondent in an Asylum Decision dated the 10<sup>th</sup> March 2015. The Appellant sought to appeal that decision to the First-tier Tribunal, and that appeal was heard by First-tier Tribunal Judge Connor at Hatton Cross on the 22<sup>nd</sup> September 2015, with her decision being promulgated on 23<sup>rd</sup> October 2015. She rejected the Appellant's asylum appeal, for the reasons set out within her decision which I have fully read and taken account of. The Appellant sought to appeal that decision to the Upper Tribunal on the grounds set out within the Grounds of Appeal. Permission to appeal was initially refused by First-tier Tribunal Judge Foudy on the 12<sup>th</sup> November 2015, but permission to appeal was then subsequently granted by Upper Tribunal Judge Allen on the 7<sup>th</sup> January 2016. In granting permission to appeal, Judge Allen stated that "as regards to the grounds, I consider that the matters raised in paragraph 4 in particular and the grounds genuinely identify arguable challenges to the Judge's decision".

#### Submissions

5. Within his oral submissions Mr Muquit told me that the renewed Grounds of Appeal to the Upper Tribunal adopted the initial Grounds of Appeal to the Upper Tribunal, and he relied upon both sets of the Grounds of Appeal in support of his case. I have fully considered both the original Grounds of Appeal and the renewed Grounds of Appeal, and have fully taken account of the same in reaching my decision. I have also taken account of the Rule 24 reply, which was helpfully provided to the Upper Tribunal by Ms Willocks-Briscoe at the appeal hearing.
6. In his oral submissions, Mr Muquit argued that the First-tier Tribunal Judge had wrongly treated doubts about one distinct aspect of the Appellant's evidence regarding how he managed to leave Sri Lanka as damaging another discreet aspect of the Appellant's evidence, namely that he was tortured by the authorities, which he argued had been corroborated independently by medical evidence. He argued that the Judge had irrationally rejected the Claimant's claim that he been tortured in light of the medical evidence and

failed to give adequate reasons in respect thereof. He argued that the Judge had not made clear findings regarding whether or not both the claim of torture and the Appellant being released on payment of a bribe had been rejected, or whether or not the Judge had simply rejected the assertion that the Appellant had been released following the payment of a bribe. He further argued that the Judge had failed to treat the Appellant as a vulnerable witness given the diagnosis from the consultant psychiatrist that the Appellant was suffering from PTSD and failed to assess his evidence in light of him being a vulnerable witness.

7. He argued that the main objection related to [59] of the Judgement in that it is said that this was the only reason why the Judge had rejected the Appellant's asylum claim in that his claim that he had been detained and tortured to the extent that a bribe was paid for his release was said to be inconsistent with his application for a student visa in his own name within days/weeks of his release. He argued that the fact that if a Appellant had not been believed in respect of one distinct finding did not lessen the impact upon the credibility of other distinct findings and that no reason for the connection between the Appellant being tortured and whether or not there was inconsistencies regarding his application for a student visa had been given, such as to justify rejection of the Appellant's core account. He argued that the Judge had accepted that the Appellant had worked as an NGO, given the further corroboration produced in this regard and that the medical evidence had shown that the Appellant had been mistreated at the hands of the authorities and that this torture had led to PTSD. Although he agreed that the Judge was the ultimate arbiter of facts, he argued that the Judge did need to give reasons and those reasons did need to be adequate and sufficient and that the Judge needed to give reasons for discounting the Appellant's evidence, especially in light of the medical evidence that the scarring was typical of the treatment said to have been suffered by the Appellant. He argued that the Judge was unclear as to whether or not the Appellant had been tortured and the Judge had failed to consider the perception of the Appellant if he had previously been tortured, upon an enforced return.

8. In her submissions on behalf of the Respondent, Miss Willocks-Briscoe relied upon the Respondent's Rule 24 reply. She handed up to the Upper Tribunal, the authorities of JL (medical reports-credibility) China [2013] UKUT 00145 (AIC) and MD (Guinea) v Secretary of State for the Home Department [2009] EWCA Civ 733, and I fully taken account of those authorities in reaching my decision. She argued that in light of the case of JL (medical reports-credibility) China, whilst medical report may support an Appellant's case, what has to be considered is the extent to which a diagnosis is dependent upon whether or not the Appellant's account is believed. She argued that it was for the First-tier Tribunal Judge to consider the credibility of the core account and to assess credibility and that the Judge had properly, in her submission, considered the evidence of both Dr Martin regarding the scarring and Dr Dhumad regarding the Appellant's PTSD.
9. She argued that at [59] the Judgement should not be read in isolation and that when one read [60], it was clear that the Judge, she argued, considered the inconsistency was related to the Appellant being in such fear that he disguised himself as a Muslim and used fake identification document, but had attended at the British Embassy in Colombo to apply for a student visa in his own name with his own documents. She argued that the Judge was perfectly entitled to find that this was inconsistent.
10. She argued that the Judge had considered all of the evidence in the round as the Court of Appeal had said should be done in the case of MD (Guinea) between paragraphs 7 and 9 of the Judgement. She argued the fact it was found to be credible that the Appellant had worked for an NGO did not mean that all of his evidence needed to be accepted, when the NGO was working in conjunction with the government.
11. Miss Willocks-Briscoe argued that the Judge had gone on to consider the Appellant's *sur place* activities and the risk that he might face as a result and that adequate reasons had been given in respect thereof. She argued that the psychiatric report had simply indicated that the Appellant had required

extra time to answer the questions and required regular breaks when giving evidence, but had not said that he would be significantly hampered in giving evidence or that his ability to recall matters would be affected.

12. In reply, Mr Muquit argued that there was no rational reason given for the alleged inconsistency of the Appellant hiding his identity by pretending to be a Muslim man and using false documents, and yet applying at the British Embassy with his own identity documents and even if there was any irrationality in the Appellant's actions, it had to be borne in mind that he was suffering from PTSD.

13. Both advocates agreed that if there were any material errors of law in the decision of First-tier Tribunal Judge Connor that the matter should be remitted back to the First-tier Tribunal for rehearing de novo.

#### My Findings on Error of Law and Materiality

14. The findings of fact of any First-tier Tribunal Judge have to be supported by reasons, which are both adequate and sufficient. The reasoning has to be sufficiently clear and adequate such that the parties know why they have either won or lost, and in particular the losing party knows why they have lost.

15. In this case the First-tier Tribunal Judge did have before him the evidence of Dr Martin, who in his report stated that the scarring suffered by the Appellant was typical of those he described as being inflicted upon him whilst being detained and the scarring was caused by a third-party, but Dr Martin was not able to say who had caused them, and the psychiatric report from Dr Dhumad which again stated that the Appellant was suffering from PTSD and was on antidepressants, but had not stated the cause of the symptoms. It has to be borne in mind that although Dr Martin had not stated that the scarring was "diagnostic" of the traumas described by the Appellant, such that it could not have been caused in any other way than described, he did describe it as

being "typical" of the trauma described by the Appellant, such that it had an appearance that is usually found with this type of trauma, but there were other possible causes. However, "typical" is the second highest categorisation under the Istanbul Protocol, and the scarring was described as "typical", rather than simply consistent or highly consistent.

16. Although within [35] the First-tier Tribunal Judge did state that "in terms of the scarring report by Dr Martin, the doctor can say that they were caused by a third party but not who caused them. It is possible to inflict the injuries with the consent of the Appellant and the scarring is not determinative of anything.", the First-tier Tribunal Judge did not go on to make any findings regarding the causation of the scarring, or as to whether or not they had been inflicted with the consent of the Appellant, or as to whether or not they have been caused at any other time other than at the time alleged by the Appellant. The Judge simply appears to have considered that the medical evidence both in terms of the scarring and the psychological injury was not determinative of the case, but in giving reasons for rejecting the Appellant's account then simply relied upon the reasons set out by him between [59] and [63] of the decision.

17. When considering this reasoning, the First-tier Tribunal Judge's findings at [59] that "having considered the Appellant's evidence in the round, I find the Appellant's claim that he was detained by the Sri Lankan government and tortured to the extent that a bribe was paid for his release is inconsistent with his application for a student visa in his own name within days/weeks of his release" and the subsequent reasoning between [60] and [52] is inadequate.

18. The judge goes on at [60] to find that:

"It is the Appellant's claim that he was released from detention by a bribe and taken into hiding by the agent because the government would want to arrest him. The agent then disguised him as a Muslim and used fake identification documents. However, the Appellant, whilst in hiding, was

able to attend the British Embassy in Colombo to apply for a student visa in his own name with his own documents. On his own evidence, in his statement, he was travelling around Colombo to the Embassy with a fake ID card whilst also carrying his own documents to apply for a Visa at the British Embassy. It is not consistent that the Appellant was in fear for his safety following his detention to the extent that he was using false documents and in hiding, but was able to attend the British Embassy and apply for a visa in his own name".

I consider that the Judge's reasoning in this regard and explanation for the findings is inadequate to allow the Appellant to know exactly why his account in this regard has been considered to be inconsistent and has been rejected. It is unclear from the reasoning within [59] and [60] as to why it is considered that the Appellant disguising himself as a Muslim and using fake identification documents is inconsistent with him applying for a student visa at the British Embassy in his own name within weeks and days of his release. It is not the case as was wrongly stated by the Respondent within the reasons for Refusal Letter at paragraph 44 of the reasons for Refusal Letter as was summarised by First-tier Tribunal Judge Connor at paragraph 9 (vi) of the decision that "certainly, it is considered to be inconsistent that you would go through such lengths as to use false identity whilst you were in hiding and then would approach the Sri Lankan government using your own identity and documents". The Appellant in applying for a visa to the British Embassy, would not be applying to the Sri Lankan government, he is applying to the British authorities. It is unclear from reading [59] to [62], whether the Judge again has become confused in this regard in associating an application for a visa to the British Embassy, as being equivalent to applying to the Sri Lankan authorities, as was suggested wrongly within the Refusal Notice. Certainly, however, the bald finding at [59] that "I find that the Appellant's claim that he was detained by the Sri Lankan government and tortured to the extent that a bribe was paid for his release, is inconsistent with his application for a student visa in his own name within days/weeks of his release" has not been adequately explained.



19. To the extent that Ms Willocks-Briscoe sought to argue that the Judge at [60] had clarified her reasoning and that the inconsistency was in terms of the Appellant carrying around the streets of Colombo both a false ID and his own documents, it is not clear from the Judge's reasoning within these paragraphs, that is in fact the inconsistency that the Judge was alleging, and even if it were, it has not been properly explained as to why this would necessarily be inconsistent, as if the Appellant did wish to apply for a student visa, there would be no logical reason for him to do so using a false identity and false documentation. If he were to hide his own documents upon his person, but still use his disguise of being a Muslim and having his fake ID documentation for inspection, were he to be stopped by the authorities on the streets of Colombo, I fail to see why this would necessarily be inconsistent with him fearing for his own safety. This has not been adequately explained by the Judge.

20. Unlike in the case of MD (Guinea), the First-tier Tribunal Judge has not made any definitive findings regarding the cause of the scarring, or the PTSD, other than finding that they are not conclusive of the matter, but given the errors regarding the reasoning for rejecting the Appellant's account, I am not in a position to say that the decision would have been the same irrespective of those errors. I do consider that the error of law in this regard is material in that it may well have affected the outcome of the case. The decision of First-tier Tribunal Judge J. Connor, therefore does contain material errors of law and is set aside and the matter is remitted back to the First-tier Tribunal to be reheard by any Judge other than First-tier Tribunal Judge J. Connor.

#### Notice of Decision

The decision of First-tier Tribunal Judge J. Connor, does contain a material error of law and is set aside;

The matter is remitted back to the First-tier Tribunal to be heard before any First-tier Tribunal Judge other than First-tier Tribunal Judge J. Connor.

Signed

Dated 26<sup>th</sup> February 2016

RF McGinty

Deputy Judge of the Upper Tribunal McGinty