



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

Appeal Number: PA/07346/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 21st November 2017**

**Decision & Reasons Promulgated
On 23rd November 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

[D W]

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms R Popal, instructed by Lawland Solicitors

For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant was given permission to appeal the decision of First-tier Tribunal Judge Carroll on the grounds that it was arguable the First-tier Tribunal Judge had erred by failing to follow the Country Guidance case, by reaching conclusions that were not available on the evidence and by reaching conclusions that were contrary to the evidence.
2. The appellant, a Sri Lankan citizen, arrived in the UK on 20 December 2010 as a Tier 4 student. An in-time application for further leave to remain as a student was refused on 9th August 2011. He did not leave the UK. On 3rd

September 2013, he was served with reporting conditions. He failed to report as directed and on 8 April 2015 was listed as an absconder. On 4th January 2016, he was encountered and detained. Removal directions were made for 13 January 2016 but on 6 January 2016 he claimed international protection on asylum and human rights grounds. His claim was refused on 1st July 2016 and it is his appeal against that decision that was dismissed by First-tier Tribunal Judge Carroll.

3. Although permission to appeal was granted in short form, 9 separate grounds of appeal were relied upon in seeking permission. These can conveniently be summarised as follows:
 - (i) Grounds 1 to 5 take issue with the reliance placed by the judge on elements of the evidence before him in reaching findings that the appellant's account as to the circumstances in which he was forced to flee Sri Lanka was not credible.
 - (ii) Grounds 6 to 8 take issue with the judge's approach to the medical evidence before him; and
 - (iii) Ground 9 submits that the judge incorrectly applied the *dicta* of *Tanveer Ahmed*.

Grounds 1 to 5

4. The First-tier Tribunal judge set out in paragraph 18 of his decision the significant factors that he relied upon in reaching his conclusions on credibility namely the delay by the appellant in claiming asylum; that he had produced no documentary evidence of the claimed deposit of money into his bank account; that he was not of Tamil ethnicity, not a supporter of the LTTE and there were no LTTE connections in his family; there was an inconsistency in his account of when he was abducted; no explanation was forthcoming why his father had burnt court letters allegedly received by the appellant; that he left Colombo airport without any difficulty; the inconsistent evidence of his contact with the alleged LTTE supporter; there was no evidence from his uncle and aunt who were resident in the UK and with whom he stayed on his arrival.
5. The appellant submits that the finding that he left Sri Lanka without difficulty as being indicative of lack of risk, was contrary to country guidance; that whether or not he stayed with his uncle and aunt on arrival and that they did not give evidence was not only irrelevant to risk on return but also no reasons had been given why it was relevant and it was not relied upon by the respondent; the reference to the burning of documents was irrational and perverse and that the non production of an arrest warrant was not an indication that one was not outstanding; that the appellant was not asked if there was any reason why he was unable to produce a copy of his bank statement was a procedural error of law.

Grounds 6 to 8

6. The First-tier Tribunal judge considered the medical evidence before him in paragraph 19 of the decision. He records the appellants evidence of being burnt with a hot iron bar, beaten to his head and body, having a petrol bag tied to his face, falling and hurting his shoulder, pulling his toe nail off. The judge records differences between the written and oral evidence as to whether it was one or two toe nails that were pulled out, that the Rule 35 report made no mention of the toenail and gave a different account of how he hurt his shoulder that an adjournment was refused to obtain further medial evidence before of the delay and that although he claimed to be suicidal and taking medication there was no evidence.
7. The appellant submits that the Rule 35 conclusion was that the injuries described were plausibly obtained in the manner described by the appellant and the judge failed to engage with that observation; that the appellant was not asked why there was late disclosure of medical documents; that the refusal of the adjournment request was unfair given that delay in seeking to obtain a report was not in itself sufficient reason for refusal.

Ground 9

8. In paragraph 20 the judge set out his comments on documents relied upon by the appellant and notes that the documents do not provide details of detention or torture, or do not refer to outstanding arrest warrants, or no explanation for the late submission of a letter from his mother. The judge concludes:

“21. In the light of all the evidence, for the reasons given above and for the reasons given by the respondent, I find that the appellant is not in any way credible as to the circumstances in which he claims to have come to the attention of the authorities in Sri Lanka and to have been detained or tortured or that he is credible as to his claim that the authorities continue to have an interest in him. In the light of such findings, and applying the principles set out in **Tanveer Ahmed**, I attach no weight to the documents belatedly submitted in support of the appeal.

22. I have considered the appellant’s case in the light of the current guidance set out in **GJ** and I am satisfied that he is of no interest to the authorities....”

9. The appellant submits that the judge erred in finding the appellant not credible and then placing no weight upon the documents rather than considering the documents as part of the evidence in the round.

Further submissions

10. It was also submitted by Ms Popal that the Rule 35 report, at the very least, indicated that the appellant may have been the victim of serious harm and trauma and that inconsistencies in his evidence were not only minor, but could and should have been considered in the context of his potential vulnerability.

11. The respondent submitted that the judge had considered the appellant's vulnerability in reaching his decision. Mr Nath submitted that, in general, it had been open to the judge to reach the findings he had reached based upon the evidence before him. Although the wording of paragraph 21 was slightly odd, he submitted that in the previous paragraph, the judge had considered the documents and the findings on the appellant's account were findings on the evidence as a whole.

Conclusion

12. The difficulty with the First-tier Tribunal decision is that although the judge has set out what evidence he has considered it is not possible to see the relevance of that evidence from his reasoning (or lack of reasoning). It is not explained why the lack of a witness statement from his aunt/uncle was relevant and although the judge was entitled to comment that the appellant had left Sri Lanka without difficulty and apparently on his own passport and without payment of a bribe and that he was not a Tamil, it is difficult not to view the various comments made as comments made in isolation from the medical evidence and the documentary evidence. The judge failed to consider the possible inconsistencies in the light of the medical evidence even if he was satisfied that the appellant had not been abducted as he claimed. The Rule 35 report indicates the appellant had sustained some serious injuries and, however caused, they could have impacted upon his evidence. The appellant's submissions in relation to the judge relying upon the lack of evidence of bank statements are not sustainable – the appellant knew the case against him, based his claim significantly upon claimed transfers of money leading to his identification as a potential LTTE supporter and had had many years within which to obtain corroborative evidence that would not have endangered him. He had after all presumably had to produce bank statements for his student visa application.
13. Of some concern is the manner in which the judge stated he applied the principles of *Tanveer Ahmed*. Although in the written grounds the appellant submitted that proof of forgery lay initially with the respondent and this had not been done, it is not clear that the judge was saying the documents were forgeries, merely that they were not reliable as supportive evidence of the appellant's claim. But paragraph 20 states both that the documentary evidence had been considered and that it has been, effectively, discounted because of the credibility findings made earlier.
14. Although of course a decision must start with the writing down of evidence and findings in some sort of order, it should be apparent from a reading of the decision that the elements of the evidence have not been considered sequentially with findings made as the decision progresses, but that the evidence is considered as a whole. That is not apparent here.
15. Furthermore, there is no indication the judge considered the evidence in the context of possible vulnerability.

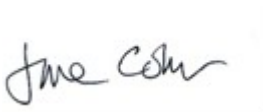
16. For these reasons, I am satisfied the First-tier Tribunal decision and conclusion dismissing the appellant's appeal against the international protection claim is infected with material errors of law and cannot stand. I set aside that part of the First-tier Tribunal judge's decision, to be remade.
17. In so far as the First-tier Tribunal judge's findings on the appellant's Article 8 human rights claim is concerned, the First-tier Tribunal judge made findings which have not been the subject of an application for permission to appeal and they stand. For the avoidance of doubt, paragraphs 24 to 28 inclusive and paragraph 31 of the First-tier Tribunal decision stand.
18. The scheme of the Tribunals Court and Enforcement Act 2007 does not assign the function of primary fact finding to the Upper Tribunal.
19. When I have set aside a decision of the First-tier Tribunal, s.12(2) of the TCEA 2007 requires me to remit the case to the First tier with directions or remake it for myself. Here the facts are significantly disputed and oral evidence is required in addition to consideration of documentary evidence. I conclude that the decision should be remitted to the First-tier Tribunal to determine the appeal.

Conclusions:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision as referred to in paragraphs 16 and 17 above.

Date 22nd November 2017



Upper Tribunal Judge Coker