



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/00577/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 31 July 2018

Decision and Reasons Promulgated
On 10 September 2018

Before

UPPER TRIBUNAL JUDGE HANSON

Between

[M S]
(anonymity direction made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Logan instructed by Accu Legal Solicitors

For the Respondent: Mr Dimuycz Senior Home Office Presenting Officer

ERROR OF LAW FINDING AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Walker promulgated on 3 May 2017 in which the Judge dismissed the appellant's appeal on protection and human rights grounds.
2. The appellant, a citizen of Sri Lanka born on 10 July 1983, entered the United Kingdom on 27 September 2010 lawfully as a Tier 4 (General) Student Migrant. His

leave was extended to 19 June 2014. On 17 June 2014 the appellant claimed asylum. His claim was refused on 26 April 2016 giving rise to these proceedings.

3. The Judge considered the basis of the claim together with the documentary and oral evidence before setting out findings of fact from [55] of the decision under challenge. Those findings can be summarised in the following terms:
 - a. The Judge did not find the appellant had left and returned to Sri Lanka with no problems prior to his final departure as contended by the respondent [55].
 - b. There was insufficient evidence for the Judge to be satisfied that the appellant had paid a bribe to immigration officers to enable him to leave Sri Lanka without difficulties. The appellant's evidence relating to employment of an agent in order to leave Sri Lanka is insubstantial and inadequate. The appellant is still in touch with his father yet there was no evidence from the appellant's father and his friends explaining steps taken to enable the appellant to leave Sri Lanka safely. No explanation has been provided for the absence of such evidence [56].
 - c. The Judge accepts the appellant's brother has a business called Digital Communication (DC) operating in Colombo. The Judge did not accept the respondent's contention that the documents the appellant supplied in relation to the DC business do not refer to GS. The Judge was satisfied that GS was an employee of DC and/or the appellant's brother. The Judge accepts the memorial notice referring to GS dying on 23 March 2010 although there was no evidence to support the appellant's contention he was killed by the Sri Lankan authorities or anyone else. The Judge found it noticeable there was no mention of the death made by the appellants father in his letter [57].
 - d. The Judge was not satisfied the appellant was employed by his brother to work for DC. Although the appellant described his role as that of a full-time manager of the shop, his name did not appear on a single item of correspondence or internal business document. The appellant's claim the Sri Lankan authorities seized the documents from the business was undermined by the fact the appellant produced some documents showing all were not taken [58].
 - e. The appellants claim other named employees were working at the shop was noted but also there being no reference to them in the business documents provided when the appellant was interviewed [59].
 - f. On the day the hearing the appellant produced a household list which is the only document connecting with the business premises of DC. The Judge did not accept this explanation in relation to the production of the document as the appellant was aware the respondent's case was that there were no documents showing a connection between him and the DC business. The Judge does not accept the document was fortuitously found a matter of days before the appeal hearing in a bag at his brother's house which had not been searched before [60].

- g. The Judge found weaknesses in the content of the documents itself, which was found to be designed to be an official record of householders, family members or other residents and not well suited to record occupiers of business premises. The Judge noted that intended period of stay referring to periods of days, weeks, months etc have been completed by reference to a number of hours and that the document referred to other members of staff other than GS, whereas other documents relating to an Employees Trust Fund Board listing the names of employees made no reference to those two people, an absence that had not been explained [61].
- h. The Judge finds this is a document that is not genuine and has been produced at the last minute in order to support the appellant's case [62].
- i. The Judge noted the appellant had provided very little detail of his own address or evidence to establish that he was living in Colombo at all. The Judge accepts that while studying in Colombo he stayed with his brother and that his Visa application shows his local address as that of his brother whereas in the Statement of Evidence form the appellant stated his last address in Sri Lanka was an address in Trincomalee which is the same address as that of his father. The appellant's account was that he was arrested in Colombo and then on release he only lived at his father's friend's house in Thikari which was found inconsistent with this last address being in Trincomalee [63].
- j. The Judge considered the medical evidence noting the author, Mr Mason, identified scarring on the appellant's forehead, left eyebrow, on both shoulder blades, and the assessment of the scarring in terms of consistency and age, the fact it was accepted scars 1 to 4 could have been caused accidentally as well as by deliberate means, that scar 5 could be the result of infected abrasion or insect bites and that scar 6 could be caused by scraping the heel against a hard edged object [64].
- k. Although Mr Mason considered it unlikely the scars were self-inflicted or inflicted by proxy the Judge found his explanation for this finding inadequate, based upon a simple statement the conclusion had been reached by virtue of the number, appearance, and characteristics of the scarring, without explaining what it is about the appearance of the scars or what are the characteristics which enabled him to reach the conclusion [65].
- l. The Judge noted a significant aspect of the medical evidence is an important omission that the appellant claimed in his asylum interview that when he was tortured the authorities burnt his leg and that in his witness statement that both his legs were burned and that he had scars on his legs. The Judge would have expected deliberate burns to leave scars and for there to be scars on both legs; although there was no reference by Mr Mason the scars which he found to be consistent in this area, the only finding of consistency with a burn is the scar on the left foot which it was said might arise as a result of a superficial burn which might arise from infected insect bites or deep abrasion caused by accidental injury in everyday life. The Judge notes Mr Mason describes no scars on either of the appellants legs for which no explanation has been given

and did not accept reference to there being a burn on a leg was a reference to being burnt on his foot [66].

- m. In relation to court documents provided by the appellant, the Judge places no weight on a verification report prepared by the respondent [67].
- n. The Judge considered whether the documents were genuine, bearing in mind the decision in *Tanveer Ahmed*, but was not satisfied they are even to the lower standard as a result of a number of inconsistencies both internal and with the other evidence [68]. These matters are identified by the Judge between [69 - 76] of the decision under challenge.
- o. The Judge noted the appellant sought to establish the veracity of the court documents by means of a letter from a Mr Handagama but found the letter itself contains some weaknesses, noting in particular, that the claim the registrar of the High Court in Colombo had verified the court documents as being genuine was not supported by anything in writing from the Court confirming this. The Judge found it "odd" that an advocate would pay a fee for a verification service and come away with only a verbal assurance and that if assurance was given in writing it had not been produced [76].
- p. The Judge did not find the appellant's explanation for not claiming asylum earlier credible [77 - 78] leading to a finding the appellant had failed to take advantage of a reasonable opportunity to make an asylum claim which was relevant to assessing the credibility of his claim [79].
- q. The Judge was not satisfied to the lower standard that the appellant was arrested and detained is claimed or that the court documents relied upon by him are genuine and was not satisfied the appellant is wanted by the authorities for breach of bail or for any other reason [81].
- r. The Judge notes the findings are not dependent upon a finding in respect of the appellant's claimed employment by his brother and if the appellant were employed the Judge still did not accept the remainder of the appellant's account [82].
- s. The Judge was not satisfied the appellant is at risk of persecution and is not satisfied the authorities in Sri Lanka have any interest in him. The appellant's own account is that he was not himself a supporter of the LTTE and that he was only suspected of being so because of DC's dealings with the named individual. The Judge did not accept the appellant's account was credible or that he is a person who falls within the risk categories identified in the country guidance case of GJ [83 - 87].
- t. The Judge notes no arguments were put forward in respect of article 8 ECHR although if they had been the claim would be rejected as the appellant has no family in the UK, his father lives in Sri Lanka where the appellant was born and educated, and no reason had been established as to why he could not return there [88].

4. The appellant sought permission to appeal which was initially refused by another judge of the First-tier Tribunal but granted on a renewed application by the Upper Tribunal on 29 January 2018.

Error of law

5. The appellant asserts the Judge erred in considering the medical evidence, and in making the findings recorded in relation to the same, despite the fact Mr Mason is an independent expert who undertakes medico legal work and has experience of 35 years of managing patients such as the appellant. The appellant states the medical expert's conclusion was that the scars are consistent with the appellant's account as to the manner in which the wounds that cause them arose and that the Judge erred in putting himself in the position of an expert and in questioning the medical evidence whilst not providing sufficient reasons for the findings made. The appellant asserts the Judge erred by arriving at credibility findings in isolation of the medical evidence and that the correct approach should have been for the Judge to assess in light of all the evidence, including the medical evidence, whether the appellant was telling the truth. The appellant claims the Judge erred as he failed to make findings as to whether he accepts or rejects the independent expert report or the expert's conclusion that the injuries are consistent with the appellant's claim of being tortured.
6. It is not disputed or in fact challenged by the Judge that Mr Mason is who he claims to be, namely a specialist in accident and emergency medicine. The report dated 25 August 2016 examined the scars brought to the doctor's attention by the appellant (see 1.4 of the report) which were identified by Mr Mason as being mature scars which was to say they resulted from injuries that occurred in excess of 12 months ago and that a more precise dating of the scars could not be made. As noted by the Judge, Mr Mason found that the scars are non-specific in relation to scars 1 to 5 and that scar 6 is the sort of scar that would result from a wound caused when the skin at that point strikes or is struck obliquely raising a flap with the proximal base which might arise as a result of an accidental fall against a hard edged object or could be the result of a deliberate blow to the ankle with a hard edged object. In his 'Opinion' section Mr Mason writes:
 6. Opinion:
 - 6.1 The scars on [Mr S] face, back and left hand are all non-specific. They are the sort of scars that might arise as a result of accidental or deliberate injuries.
 - 6.2 [Mr S] described to me how he was punched in his face and his eyebrows were lacerated. The lacerations healed to form the scars described above (scars 1 and 2). Punches to the face frequently split the skin overlying the upper orbital reach particularly if the fist bears signet rings. The scars on [Mr S] face are highly consistent with his account that the wounds that cause them resulted from being punched there.

- 6.3 [Mr S] described how he was dragged across rough ground and sustained lacerations to his back. Scars 3 on the upper part of his back lie over the most prominent part of his skin overlying the shoulder blades. The scars, although non-specific, are consistent with his account of being cut there as a result of being dragged across rough ground, although an accidental injury might also account for these scars.
- 6.4 The scars on [Mr S] left wrist (scar 4) are consistent with his account of being struck there with an iron bar such as is used in reinforced concrete. These bars frequently have ridges and a blow from one of the bars might well lacerate the skin in two places leaving small, parallel scars such as these. An accidental injury might also account for these scars.
- 6.5 Scars on [Mr S] feet (scars 5) are non-specific. Little information can be gained from the characteristics of the scars. They are consistent with scars from superficial burns but could equally well be the result of infected abrasions or insect bites.
- 6.6 The scar on [Mr S] right ankle (scar 6) is the sort of scar that would result from a blow to the area with a hard object such as a metal bar or any other hard object, splitting the skin and dragging it upwards. [Mr S] describes how the laceration occurred when his feet were being beaten with the metal bar. One such blow missed the sole of his foot and instead struck his ankle causing the laceration which healed to form this scar. This scar is in my opinion highly consistent with his account of how the wound that caused it arose but scraping the heel against a hard-edged object might also result in a wound that healed to form a scar such as this.
- 6.7 It is in my opinion extremely unlikely by virtue of their number, appearance and other characteristics that the wounds that resulted in the scars described above were self-inflicted or were inflicted on [Mr S] with his consent (self-inflicted injuries by proxy – SIBP) although it is recognised that these possibilities cannot be entirely eliminated on the basis of the scars characteristics alone.

7. In his conclusions Mr Mason writes:

- 7.1 Following my evaluation of [Mr S] scars, in particular their number, characteristic patterns of distribution, it is my overall opinion that they are consistent with his account as to the manner in which the wounds that caused them arose.
- 7.2 In using the term “consistent” and “highly consistent” I am mindful of past guidance by the Courts to medical experts on the use of terminology.
- 7.3 In reaching my conclusions I do not rely on any uncorroborated assertion by [Mr S].
- 7.4 I am familiar with the Istanbul Protocol (Manual on the effective investigation and documentation of torture and other cruel, inhumane or degrading treatment or punishment.)

7.5 I have followed the Ikarian Reefer guidelines and the Practice Directions of the Immigration and Asylum Chambers of the First Tier Tribunal and Upper Tribunal in the preparation of this report.

8. It is not made out that the Judge sought to discredit the expert and the Judge was entitled to assess what weight could be given to the expert's report in light of the evidence considered as a whole.

9. In relation to the Istanbul Protocol on Medical Reports; Paragraphs 186 and 187 of the Istanbul Protocol in relation to the term "consistency" state:

"186 ... for each lesion and for the overall pattern of lesions, the physician should indicate the degree of consistency between it and the attribution:

- (a) Not consistent: the lesion could not have been caused by the trauma described;
- (b) Consistent with: the lesion could have been caused by the trauma described, but it is non specific and there are many other possible causes;
- (c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;
- (d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;
- (e) Diagnostic of: this appearance could not have been caused in any way other than that described.

187 ... Ultimately it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story."

10. The Judge was arguably entitled to find that the fact the scarring was 'consistent' with the appellant's account as to the manner in which the wounds that cause them arose indicated that there were also many other possible causes. This is not a case in which the evidence before the Judge established to the lower standard that the medical evidence was sufficiently compelling such that strong reservations about the veracity of the appellant's account of events could not displace a finding of torture to the lower standard.

11. The claim the Judge considered the medical evidence in isolation, such as to create an artificial separation of this evidence from the remainder of the evidence as submitted by the appellant, is not established from a reading of the determination. The Judge clearly considered the evidence as a whole and sets out in detail the concerns that arose both in relation to the medical and the other aspects of the evidence relied upon by the appellant. The Judge finds that aspects of the evidence undermined the weight he was invited to place upon Mr Mason's report and only

draws together the threads of the evidence as a whole once all the material has been properly considered.

12. There is no obligation upon the Judge to come up with a definitive alternative account of how the scarring occurred.
13. In relation to the issue of bribery, the appellant asserts the Judge erred on the basis it is said to find that the appellant did not pay a bribe in the circumstances of this case was contrary to the objective evidence and country guidance which amounted to a failure to consider all the circumstances of the case with anxious scrutiny. It is not disputed that the country guidance refers to the payments of bribes and indeed this has been a common aspect of Sri Lankan cases for a number of years. The Judge's finding is not that bribes are never paid but that on the facts of this case, on the evidence the Judge was required to consider, it was not accepted the appellant had established that he had paid a bribe as alleged. This is a subjective assessment in which the finding is that there was insufficient evidence to establish that such a bribe was paid. On the basis of the material available to the Judge and reasoning set out at [56] no arguable legal error is made out.
14. In relation to the arrest warrant relied upon by the appellant, the Judge noted a number of internally inconsistent aspects arising from the appellant's evidence concerning the court documents and at [71] that the appellant said the police had sent a document, a warrant, asking for an explanation for why he had not come to sign on at the police station and that this letter was in his house; although no such letter had been produced by him suggesting the statement was untrue. The Judge notes the document he has now provided does not include a letter asking for an explanation of not signing on at the police station which was therefore found to be an inconsistent statement. At [72 - 74] the Judge writes:
 - "72. The court documents themselves also contain weaknesses. At first sight they appear to amount to complete file commencing with the initial request for an order seeking detention, and authorisation of further detention, the Appellant's release on bail and then an application for a warrant in respect of his breach of bail. However, there appears to be a document missing from this history and its absence is not explained. At pages 42 to 44 there are no documents which appear to authorise detention for a period of 90 days from 10 October 2009 until 9 January 2010. This appears to be under the terms of "section 19 (1) of 1538/37". The document at pages 35 to 39, which is described as the "Facts Reported to the Magistrates" ("the Facts"), Which states that it was made on 31 January 2010, sets out the history of the Appellants detention and (at Page 37) refers to his being detained under the same provision for 90 days from 10 October 2009. There is no explanation anywhere in the documentation for his continued detention from 9 January 2010 to 1 February 2010. Given the nature and formality of the documentation, I would expect to see some explanation in these documents for this period of detention.
 73. More significantly, the Facts also recount that "*The accused in custody admitted to the above charges*" (page 37). However, the document which appears to show the Appellant's release (page 45) states "*there is no*

evidence submitted against the suspect". I find it very unlikely that the Appellant's own confession would not amount to evidence against him and so find the documents are inconsistent with each other. In addition, at no point has the Appellant stated that he in fact confessed, whether intentionally or by trick, to the offences. I accept that he stated in his witness statement that he signed some documents in Sinhalese which he did not understand and some blank documents (para 14) however, I would expect that if these were in fact confessions intended to be used against him he would have become aware of this during the course of the proceedings.

74. The last of the court documents is a warrant for the Appellant's arrest following his failure to comply with his bail conditions (page 46). This was not issued until 2 September 2016, almost 7 months after his first failure to attend the police station. I consider it unlikely that the authorities would wait such a long time before taking action in respect of the Appellant's alleged breach of bail, especially if, as alleged by the Appellant, they were in fact seeking him the very day after he was released."
15. The appellant makes the point that the arrest warrant was issued on 4 October 2010 when he was already in the United Kingdom and that when he travelled to the UK there was no arrest warrant extant against him and so he was not on the 'stop list'. It was argued that a period of seven months was not an unreasonable period of time and it was argued there was no inconsistency in the evidence provided by the appellant. It was argued on the respondent's behalf that the Judge made no material error. An issue concerning the seal of the police station being provided, by reference to a translation, was not an issue that arose before the Judge nor the High Court seal on the translated document and it was accepted there was no independent document report accepted by the Judge. It was argued on the respondent's behalf that the Judge was entitled to rely on the documents in the round and to rely on the discrepancies in the evidence that the Judge notes in the decision. It was submitted it is not made out the conclusions in relation to the court documentation were not reasonably open to the Judge on the basis of the information made available.
16. The appellant asserts further error in relation to the death of GS as it was not found by the Judge that it had been established that he was killed by the authorities in Sri Lanka. This is a finding specifically be made by the Judge at [57]. The assertion in the appellant's skeleton argument that on the available country information the finding the authorities had murdered GS should have been made is no more than a mere disagreement with the specific finding by the Judge that the same had not been made out. It was not established that GS had died as the appellant alleged, and the assertions he was a man "in the prime of his life" whose death was "premature" does not automatically lead to a conclusion that his death occurred as the appellant alleged.
17. The appellant asserts the finding by the Judge that the household list was not a genuine document is also challenged by the appellant on the basis it was not a finding the Judge was entitled to make that the household list only recorded

household members rather than occupiers of business premises. The difficulty with such submission is there is nothing within the grounds or made available to the Judge to show that a list of household occupants would include business premises or sufficient to make the Judge's conclusions arguably irrational. The Judge was entitled to make the finding that he did irrespective of whether the document had been verified by the respondent or not. The burden of proof at this stage fell upon the appellant to establish that what he was saying was true. On the basis of the evidence the Judge was not so satisfied and provides adequate reasons for such a conclusion in the decision under challenge.

18. The Judge clearly considered the evidence with the required degree of anxious scrutiny including letters from the appellant's father. So far as the court documents are concerned the Judge was entitled to consider what weight could properly be placed upon the same. It has not been made out that the Judge makes a specific finding that the appellant was in detention from 10 October 2009 to 9 January 2010. The Judge identifies discrepancies in the evidence recorded in the decision under challenge and the submission that because the Judge did not reject the court documents as forgeries they should have been accepted as genuine has no arguable merit. The argument these documents should have been accepted as proof the appellant was arrested and detained as claimed was a matter the Judge clearly considered looking at the evidence as a whole. Even if internal inconsistencies were not the responsibility of the appellant such inconsistencies as identified by the Judge arose which were relevant to the weight the Judge was prepared to give to that evidence. It is not made out that the Judge adopted an irrational approach in attaching the weight to the evidence he was prepared to attach to this material, or that the conclusion that little weight could be attached is an arguably irrational outcome.
19. In relation to the delay in claiming asylum, the appellant disagrees with the conclusions of the Judge that this damaged his credibility but, again, it has not been shown that this is a finding outside the range of those reasonably open to the Judge on the evidence.
20. Having considered the material; I find the Judge considered the evidence with the required degree of anxious scrutiny and has given adequate reasons for the findings made. It has not been shown those findings are outside the range of those reasonably available to the Judge or that they are in any way perverse or irrational and not available to the Judge. The weight given to the evidence was a matter for the Judge and disagreement with the conclusions reached and/or an attempt to re-argue the appellant's case does not establish arguable legal error material to the decision to dismiss the appeal.
21. I do not find it made out the appellant has established the Judge made legal error material to the decision to dismiss the appeal sufficient to entitle the Upper Tribunal to interfere in this decision.

Decision

22. There is no material error of law in the Immigration Judge’s decision. The determination shall stand.

Anonymity.

23. The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated: 3 September 2018