



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

Appeal Number: PA/12694/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 11<sup>th</sup> February 2019**

**Decision & Reasons  
Promulgated  
On 18 March 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**J A  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms F Allen (Counsel)

For the Respondent: Miss S S Cuhna (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against a determination of First-tier Tribunal Judge R Sullivan, promulgated on 5<sup>th</sup> October 2018, following a hearing at Hatton Cross on 14<sup>th</sup> September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Sri Lanka, and was born on 15<sup>th</sup> May 1985. He appealed against the decision of the Respondent Secretary of State dated 25<sup>th</sup> November 2017, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

## **The Appellant's Claim**

3. The Appellant claims a fear of the Sri Lankan authorities because he has in the past worked for the LTTE in India, and was detained in Sri Lanka for six to eight months in 2009, having been arrested on return from India, whereupon he was detained for nine months again in 2016, having returned to Sri Lanka on that occasion from Europe.
4. The Respondent stated that the Appellant's claim was not credible because he has twice visited Sri Lanka without any difficulty, arriving by air, and it was not accepted that he had worked for the LTTE, or that he had been detained in either 2009 or in 2016.

## **The Judge's Findings**

5. The issue before the judge revolved around the question of the weight to be attached to the expert report of Dr Martin, who assessed the Appellant's scars and injuries, in relation to the allegation of his having been detained in 2009 and 2016. The judge held that, whilst it was accepted that the Appellant had scars (as described at pages 28 to 29 of his bundle), suggested that the Appellant had been tortured in detention (paragraph 22), nevertheless, his evidence was not credible because of the inconsistency in the scarring.

## **Submissions**

6. At the hearing before me on 11<sup>th</sup> February 2019, Ms Allen, appearing on behalf of the Appellant, submitted, that having discussed the matter with Miss Cuhna, the Senior Home Office Presenting Officer, there was a degree of agreement between the two of them, that the judge did indeed err below so that this appeal should be allowed and remitted back to the First-tier Tribunal. Ms Allen submitted that there were three essential reasons why the judge's treatment of the expert report by Dr Martin was deficient.
7. First, the judge had erred in stating that there was a discrepancy in the doctor's description of scar five. However, there was no such discrepancy. There were seven areas of scarring, which were shown on the diagrams provided (at page 36) and the only error lay in the doctor's numbering of the scarring at pages 28 to 29. The expert had correctly identified them when addressing causation at pages 30 to 33. This was consistent with the diagrams and the descriptions provided. The scarring was entirely consistent with the Appellant's own account (at paragraph 41 of his witness statement). The judge, however, ignored the scarring areas three and five, as they were both labelled five, despite the fact that it was clear from the rest of the report that all of these areas of scarring were present.

8. Second, the judge erred in her failure to have regard to Dr Martin's report and his comments at paragraph 5.3 (which appear at pages 29 to 30) in which he expressly noted that blunt force often does not cause wounds, and that indeed being beaten on a well-padded part of the body is unlikely to do so, particularly where the skin does break. The extent of the scarring that the applicant had, could not simply be judged on the basis of the wounds. Yet the judge noted that the applicant had not attributed any scarring from the many 2016 beatings with rod like objects or kickings and she expressly stated that she was taking that factor into account in her overall assessment.
9. Third, the judge accepted that the Appellant had a number of scars as described and that their overall pattern must be taken into account (at paragraph 22). Having then taken out of account the two areas of scarring (so one part being numerous scarring from cuts with a sharp object on the left arm in 2016 and the other being a burn with a hot metal object on the right arm in 2009), both of which had been considered by Dr Martin to be highly consistent with the claimed causes, the judge gave no further consideration to the report. The report was capable of amounting to independent evidence of torture. The failure of the judge to approach the report in the right manner was an error.
10. To these submissions by Ms Allen, Miss Cuhna added that the judge had in fact failed to draw attention to the Istanbul Protocol which requires a lower standard of proof to be applied.

### **Decision**

11. The decision of the First-tier Tribunal involved the making of an error on a point of law such that it falls to be set aside. I set aside the decision of the original Tribunal. I remake the decision as follows. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge R Sullivan pursuant to Practice Statement 7.2(v) given the degree of agreement between both Miss Cuhna and Ms Allen.
12. An anonymity order is made.
13. This appeal is allowed.

### **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.

Signed

Dated

Deputy Upper Tribunal Judge Juss

13<sup>th</sup> March 2019