IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005451

First-tier Tribunal Nos: PA/50153/2022
IA/00519/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 10th of September 2024

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

TK
(ANONYMITY ORDER IN FORCE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms E Gunn, Counsel instructed by Duncan Lewis Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 14 June 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal by a citizen of Sri Lanka against a decision of the First-tier Tribunal dismissing his appeal against a decision of the respondent by refusing him international protection and leave to remain on human rights grounds. The decision complained of was made on 5 January 2022.

2. Permission to appeal was given by the First-tier Tribunal. It was particularly considered arguable that the judge had considered scarring evidence improperly by not having adequate regard for the Istanbul Protocol. It was said that it was:

> "… arguable that the judge failed to have regard to the overall evaluation of the scars by focusing on the two scars said to be 'highly consistent when considered together and failed to have regard to the other injuries as part of the assessment in concluding that this evidence provided only relatively limited corroboration. It is also correct that the judge identified two scars said to be highly consistent when there were in fact, three. There is thus an arguable error of law."

3. The appellant was given permission to appeal on all of his grounds and I outline them now.

4. Ground 1 contends that the judge did not apply properly the decision in **Devaseelan [2003] Imm AR 1**. It is implicit in this criticism that there had been a previous decision and it is said the judge did not consider it properly. Ground 2 dealt with the scarring point which is outlined above. Ground 3 said there was a failure to take proper regard of medical evidence, and Ground 4 said that weight given to immaterial matters.

5. Against this background I begin by considering the First-tier Tribunal's Decision and Reasons.

6. It began by identifying the appellant, correctly, as a national of Sri Lanka born in 1970. He had previously claimed asylum but on 24 December 2020 he made further submissions that were treated as a fresh claim leading to the decision complained of on 5 January 2022.

7. The appellant's immigration history was not contentious. He arrived in the United Kingdom, he said, in August 2004 apparently without permission and he did not seek to regularise his status. He travelled to Italy in October 2006 but was returned to the United Kingdom where he claimed asylum on 1 November 2006. The application was refused on 16 November 2006. In 2010 he made further submissions that were also refused and still further submissions that led to a further refusal of an asylum claim in February 2014. An appeal against that decision was dismissed by First-tier Tribunal Judge Harries in a decision promulgated on 7 April 2014.

8. Still further submissions were made in 2015 and then yet more submissions were made that were treated as a fresh claim but the application was refused on 5 January 2022. The decision was appealed and the appeal was dismissed. It is the challenged to the appeal against the decision that is before me.

9. The further submissions are summarised in the reasons for refusal dated 5 January 2022.

10. The judge found that the respondent reminded herself that the claimant had been disbelieved in 2014. The respondent considered further submissions, particularly medical reports, but concluded that they were based on the appellant's own, discredited, account. The respondent criticised the absence of supportive evidence particularly about alleged attendance at demonstrations, and, additionally, found that there was no evidence of sur place activity in the

United Kingdom in respect of the TGTE. The respondent accepted that the appellant had an anxiety/depressive disorder and accepted in principle a causal link between the appellant's removal and the deterioration but concluded that the appellant had not established the relevant criteria necessary for a grant of leave pursuant to Article 3 of the European Convention on Human Rights because of ill health and/or the risk of self harm.

11. The appellant did not give evidence and the judge heard submissions.

12. The judge set out well-known but pertinent standard directions from leading cases concerning the proper approach to credibility.

13. The judge reminded himself that, following the decision in **Devaseelan**, his starting point had to be the findings of Judge Harries in 2014. The judge then reminded himself of the decision of the Court of Appeal in Secretary of State for the **Home Department v Patel** [2022] EWCA Civ 36 and particularly paragraph 31 of the judgment of William Davis LJ which said:

> "I begin my assessment of the merits of the competing arguments with consideration of the effect of *Sultana*. *Sultana* did not establish any new principles. It was a decision on its own facts which applied existing authority, particularly *BK (Afghanistan)*. I make these observations about *Sultana* and its relevance to this appeal. Firstly, the appeal in *Sultana* was disposed of by reference to the findings of fact made by the FTT and UT judges. Any observations in relation to the approach to be taken when evidence is sought to be adduced at a second appeal which was available at a first appeal were obiter. Second, *Sultana* was a case where the first and second appeals involved the same parties. That provided prima facie justification for drawing a parallel with principles to be drawn from *Ladd v Marshall* [1954] 1 WLR 1489. In *Ladd v Marshall* the court was concerned with the circumstances in which fresh evidence could be admitted on appeal to justify a new trial. By definition the parties were the same throughout. There is no logic in seeking to apply these principles where the parties to the two appeals are different. Third, the observations at [51] of *Sultana* were directed to a case where a FTT judge made findings of fact in relation to whether particular documents were fraudulent and had then referred the case back to the SSHD for further consideration. If the SSHD in those circumstances were to make a decision based on a view of the documents directly contrary to the findings of fact of the FTT, the person affected by the decision would be entitled to challenge the decision on public law grounds. This was the approach taken in *Ullah v SSHD* [2019] EWCA Civ 550 as cited in *Sultana*. What is said at [51] of *Sultana* goes no further than that. Fourth, the proper approach to be taken by a FTT judge faced with a decision made in an earlier appeal was set out fully at [45] to [50] of *Sultana*. It would not be helpful to repeat the analysis other than in the following very summary form. The essential position is that the second FTT judge cannot be subject to any principles of estoppel in relation to an earlier finding. Rather, the judge must conscientiously decide the case in front of them applying principles of fairness. Those principles include the potential unfairness of requiring a party to re-litigate a point on which they have previously succeeded. These propositions were drawn from *Devaseelan*, *Djebbar v SSHD* [2004] EWCA Civ 804 and *BK (Afghanistan)*".

14. The judge set out relevant passages from **Sultana v SSHD [2001] EWCA Civ 1876** and then analysed the decision that had to be his starting point being the decision of Judge Harries. He said:

"In my view the following observations and findings from the decision of Judge Harries are material to my assessment of the issues in the appeal before me:

(a) The Appellant's representative asked for an adjournment on the day of the hearing in order for the Appellant to obtain two documents from 2004 and 2007 – this was refused by Judge Harries on the basis that the Appellant had had sufficient time to prepare his case for appeal, §22.

(b) The Judge also concluded that there was no evidence to support the Appellant's assertion that his previous solicitor (at that time) had told him not to submit the two summons documents on the basis that he'd already provided enough evidence, §25.

(c) The Judge also noted that the Appellant was a particularly poor witness in respect of his recollection of the timing of the three summonses which he claims had been issued in Sri Lanka since his departure in 2004; the Judge was not impressed by the Appellant's oral evidence that he had simply forgotten everything, §30.

(d) Judge Harries also concluded that there was no satisfactory explanation for the Appellant's claim to have been mistreated on numerous occasions by the police in Sri Lanka on the basis of apparently being suspected of connection to the LTTE when it was his claim that he had in fact been assisting the police in identifying LTTE suspects, §31.

(e) The Judge also observed the contradictory evidence given by the Appellant about the length of time that he says he was detained by the police on the four of five occasions he was allegedly detained, §§31-32.

(f) In respect of the summonses, the Judge also made the key finding that the Appellant had not provided an explanation as to why all of the three summonses, (which had been allegedly served on the Appellant's home by 2010), were not mentioned in the correspondence from his representatives to the Home Office at that time and were not mentioned by the Appellant himself during his interview in 2013, §32.

(g) The Judge also found the Appellant's core credibility was damaged by the fact that having entered the United Kingdom in 2004, he did not in fact claim asylum until around two years later and only after he had already been returned from Italy, §35.

(h) Judge Harries ultimately concluded that the Appellant was not credible at the core of his claim applying the lower standard of proof, (§37) and decided that the Appellant had failed to establish to the same standard that there was a real risk of persecution and/or serious harm on return to Sri Lanka, §40".

15. The judge then outlined the new evidence. The judge explained at paragraph 39 that having considered the two expert reports:

"I am prepared to accept that the Appellant has shown that it is plausible that he could have been detained and adversely treated by the Sri Lankan authorities despite assisting them and that he could have left Sri Lanka

> through the airport without problems despite the apparent adverse interest which it is said to have existed at that time."

16. The judge regarded this as something that pointed in favour of believing the appellant.

17. The judge then gave his attention to the arrest warrant of May 2020. The judge noted that there were arrest warrants from May 2010 before Judge Harries in 2014 and so the documents the judge saw were not new. It was the appellant's case that his father-in-law in Sri Lanka had paid the police in Sri Lanka for a copy of the arrest warrant.

18. The judge reminded himself that he was dealing with something that, on the appellant's version, had taken place some "considerable period of time before" and he also noted the medical report of Dr Galappathie about how PTSD can impact upon memory. However, the judge also noted it was the appellant's case that he claimed for the first time his father-in-law had paid for the arrest warrant. The judge found this contrasted with the appellant's previous evidence quoted by Dr Algar-Faria that the appellant's wife went to the police station and that she was issued with the arrest warrant. The judge found this to be a discrepancy between the appellant's current evidence and that given to the Secretary of State which was not explained by current memory issues caused by PTSD.

19. The judge then directed his mind to court summonses dated 2004 and 2007.

20. The judge directed himself that it was Dr Algar-Faria's view that delay in issuing the documents was not inherently implausible. However, the judge noted that it was Judge Harries' finding there was an adjournment application in 2014 to obtain summonses said to have been issued in 2004 and 2007 and Judge Harries noted that there was no evidence to support the appellant's claim that his previous solicitor had told him not to submit the documents.

21. The judge also noted that in the most recent witness statement dated 13 April 2012 the appellant complained about the conduct of the solicitor in charge of the appeal proceedings in 2014. The judge reminded himself of the decision in **Azimi-Moayed & Ors (decisions affecting children; onward appeals) [2013] UKUT 197 (IAC)** which required a proper explanation for criticised behaviour by former representatives including giving them an opportunity to comment.

22. The judge found this omission of supporting evidence pertinent and found that the appellant had not provided a reasonable explanation for failing to provide the 2004 and 2007 summonses to the First-tier Tribunal in 2014.

23. The judge said he had also taken into account the current evidence from Dr Galappathie about the memory problems the appellant might be facing and noted that Dr Galappathie's report was dated 13 December 2021 and that did not help very much about what happened at the previous hearing.

24. The judge noted that:

> "Dr Galappathie has been constrained to accept in his addendum report that PTSD symptoms can fluctuate and there has been some difference in the views of the various medical professionals involved for the Appellant in the context of his PTSD."

25. The judge noted that there was no medical evidence before the First-tier Tribunal in 2014 when it was plainly open to the appellant to have obtained evidence to support his case if he had mental health problems that needed to be

drawn to the court's attention. The judge found the absence of such evidence to be "materially significant".

26. The judge also noted the medical records detailed by Dr Galappathie. These showed no reference from 2011 to low mood or mental issues until May 2019.

27. The judge thought relevant that when the decision of Judge Harries was appealed to the Upper Tribunal it was not argued that the credibility findings were unlawful.

28. At paragraph 56 the judge said:

> "I therefore conclude that the Appellant has not established that the difficulties with his oral evidence about the timing of the summonses before Judge Harries originated from any particular mental health difficulties at that time."

29. The judge also noted there had been no response to the observation of Judge Harries that the appellant had failed to mention the three summonses in the 2013 interview.

30. The judge further noted that the appellant had said in his witness statement dated 8 June 2022 that there had been a translation error in respect of his name on one of the documents but had not produced evidence from an interpreter to substantiate that. The judge said that the "only legitimate way" to verify the documents was to take the originals to the relevant court or police station and that it was the appellant's case that he and his wife were frightened to do that.

31. The judge regarded the documents as "unverified". He was careful to say that this did not mean they could not be given any weight but it was something to bear in mind in his overall assessment.

32. The judge then applied his mind to the relevance of "the presence of depression and PTSD in respect of the core claim to have been a victim of serious harm in Sri Lanka".

33. The judge said at paragraph 71 of his Decision and Reasons, after reviewing the medical evidence before him:

> "I therefore consider very carefully the fact that these two healthcare professionals in recent times have considered the Appellant to be credible in relation to his mental health problems and especially Dr Galappathie's view that the Appellant is now experiencing PTSD is a consequence of a cumulative trauma."

34. The judge regards this as "important evidence" but also regarded it as "only part of the evidence" to be assessed. He asked himself then to what extent, if at all, the medical evidence helped him or rather helped the appellant make out his claim that he had been subjected to mistreatment by the Sri Lankan police in 2004. The judge noted that the appellant had given an account of the difficulties he faced in Sri Lanka but regarded the claim itself as a "relatively simple one" so it was not significant that the account was consistent. The judge's point was that the story was straightforward and therefore, even if it was untruthful, easy to remember. That, of course, does not mean that it was an untruthful story and the judge did not say otherwise.

35. However, the judge was:

> "more cautious about the reliability of the Appellant's description of symptoms when responding to questions in the context of the assessment of PTSD."

36. The judge reminded himself that it was Dr Whittaker-Howe opinion that the appellant would be suffering from depression even if he had not been mistreated. The appellant had been separated from his wife and family since at least 2004 and been frightened about his future in the United Kingdom.

37. The judge accepted the medical evidence concerning the appellant's mental health at the date of the hearing but had to consider very carefully how much they helped him determine whether the appellant had been mistreated in Sri Lanka in 2004.

38. The judge then addressed his attention to the significance of scarring on the appellant's body. There is a medical report from a Dr Turvill which the judge noted "concludes that there are a number of marks on the Appellant's body and that, of those said to be associated with the Appellant's claim for international protection, eight of the scars were *consistent* with that account and two *highly consistent*".

39. The judge said he reminded himself of the definitions of those terms in the Istanbul Protocol and had reminded himself to look at all of the evidence in the round before reaching any conclusions and to apply the lower standard of proof.

40. The judge said at paragraph 83:

> "In that respect the finding of 'consistent' is of relatively limited utility for the Appellant's claim albeit it does not materially undermine his evidence. I recognise that the finding of 'highly consistent' reduces the number of alternative explanations that there might be for the marks on the Appellant's body in that context."

41. The judge concluded that the scarring evidence did nothing to materially undermine the claim but gave only limited support for what the appellant had said had happened to him.

42. The judge then looked at the letter from the Sri Lankan Muslim Diaspora Initiative UK. There the appellant was described as an active member of the organisation in a letter dated 30 October 2020 but the judge declined to give material weight to the letter. The judge found nothing that explained the appellant's involvement in the organisation. For example, there were no details of demonstrations he attended. The judge also noted that there was reference to a protest in London in 2018 but the appellant had provided no supportive evidence about that demonstration such as photographs or reports in the media or even very much in his witness statement. The judge said:

> "I therefore consider that the Appellant has not reliably established that he did attend a protest in 2018 relating to the killing of a Muslim man by a Buddhist Sinhalese man."

43. The judge also recorded, as is plainly the case, that the author of the letter from the Muslim Diaspora Initiative UK did not attend and that almost necessarily devalues the weight that can be given to the evidence unless the document was accepted which it was not.

44. The judge then applied his mind to the appellant's attendance at one demonstration. There were a number of photographs showing the appellant at a protest relating to Independence Day that was said to have taken place at the Sri Lankan High Commission on 4 February 2022 having been organised by the TGTE. The judge found no supporting evidence that the photographs were taken at that place. The judge also noted that the appellant attended the demonstration a month after the Secretary of State refused his fresh claim and

said that there had been no evidence of his being involved in TGTE activities in the United Kingdom. The judge did not accept that his attendance at that event, wherever or whatever it was, was evidence of the appellant's views about the LTTE or the Sri Lankan authorities. The judge found he attended that event to respond to a point made in the refusal letter.

45. The judge then considered a letter from the appellant's mother. It was dated 25 March 2019 and suggested that police officers had been coming to her house every month to look for the appellant. The judge weighed this with evidence that he had already considered that inclined him to the view that the appellant was not reliable and he did not find that the evidence from an untested and clearly biased source could be given much weight.

46. The judge noted a statement from the appellant's wife. He noted a broad consistency with the contents of the statement and the appellant's claim but did not find that it added much weight to the other strands of evidence. In other words, he did not think it was an accurate state of affairs.

47. The judge then considered Section 8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Judge Harries had found the appellant's credibility damaged by the two-year delay in claiming asylum which claim appeared to have been prompted by his being returned from Italy.

48. The judge concluded that the appellant:

> "has not provided very good reason for departing from most of the core adverse findings on credibility reached by [Judge Harries]."

49. The judge took a similar view of the additional evidence about the claimant suffering from PTSD. He did not find that, either on its own or with the rest of the evidence, enough to depart from the findings of Judge Harries. The judge found that the appellant had not established that he had been subject to adverse interest from the Sri Lankan authorities in 2004 as claimed. Further, the judge did not accept that the appellant had shown that he had genuinely held pro-TGTE or pro-LTTE opinions. The only supportive evidence of that was attendance at one demonstration in February 2002 and the judge had concluded that that was done for rather cynical reasons.

50. The judge then addressed his mind to any risk the appellant might face in the event of his return. He reminded himself of the guidance given in **KK and RS (Sur place activities: risk) Sri Lanka CG [2021] UKUT 130 (IAC)** but the judge had found that the appellant had not established he had an adverse profile with the authorities. Dr Smith had reiterated in his reports that Tamils are no longer automatically considered LTTE sympathisers. The judge accepted that the need to obtain travel documents would attract a degree of attention that may bring to light his claim for asylum but the judge did not accept that the appellant's name was on a stop list or wanted list or that he had anything to hide, in particular he had not been playing a significant role in Tamil separatism at any level. The judge did not accept that Muslims generally were at risk in Sri Lanka and did not accept there would be a real risk of ill-treatment to the appellant in the event of his return.

51. Neither did the judge accept that the appellant had shown any risk of his taking his life in the event of return. The judge did not accept there was any proper basis for him fearing that he would be detained and he did not accept the appellant did think he would be detained or mistreated. Neither did he accept that the appellant would be destitute. He had a wife and family in Sri Lanka who could be expected to support him.

52. The judge also looked at Article 8 of the European Convention on Human Rights but found the appellant had established nothing but a private life when he was in the United Kingdom without permission and interfering with that would be proportionate. The judge dismissed the appeal on all grounds.

53. Before me Ms Gunn worked through the grounds of appeal beginning, appropriately, with ground 1. This is the ground saying that the judge did not apply properly the guidance in **Devaseelan**.

54. Appropriately, Ms Gunn's submissions closely matched her grounds of appeal.

55. Although the First-tier Tribunal Judge directed himself correctly that he had to take the decision of Judge Harries as the starting point, the grounds say that the judge wrongly reassessed the evidence that was before Judge Harries. I am not entirely sure what that means but I do take the point that at paragraph 53 of the Decision and Reasons the judge said:

> "I consider that the absence of medical evidence at that time is materially significant."

56. I respectfully ask the rhetorical question "why?" The absence of medical evidence may indeed explain Judge Harries' decision but it may be that that is why the decision, with the benefit of further evidence, should be decided differently.

57. It was then said that taking into account that the appellant may or may not have been properly represented is contrary to the guidance of **Devaseelan**.

58. Ground 2 is possibly the strongest point and was the main reason that permission to appeal was granted. This suggests there was a failure to follow the Istanbul Protocol.

59. I find it necessary to look at the report of Dr Turvill. Dr Turvill's medical qualifications include being a member of the Royal College of Surgeons. She noted in her report that the appellant said that when he was about 18 years old he was injured in a motorbike accident that left scars. As was noted by the First-tier Tribunal Judge two of the scars were described as "highly consistent" with their attributed cause, in this case being burned with hot water. These were scars on the inner right forearm._There was another scar described as "highly consistent" with the attributed cause. This was a scar on the back of the right forearm. The doctor noted that the appellant is right-handed but said "this does not negate the given cause". The judge did regard accidental burns as a medically plausible explanation. The significance of the appellant being right-handed is considered below.

60. Dr Turvill noted scars on the right thigh and right shin and right foot and left shin, all of which were attributed to being hit with a stick and was said to be "consistent with" this cause. There were also scars on the left abdomen attributed to being hit with a stick, similarly the inner right ankle bone area and the left forearm above the wrist and the right buttock. All of these scars were described as "consistent with" the cause.

61. There were other scars which had a benign explanation or were not something the appellant could explain. Dr Turvill found the injuries were not of a pattern that would have been expected in the event of self-harm.

62. Paragraph 100 of the medical report is, I find, very important. There the doctor said:

> "100 I have given further consideration to scars S2 and S8 which, considered together, are highly consistent with the history given and are typical of defence wounds where a right-handed person such as [the appellant] throws up his arm to defend himself. I have considered other possible causes. Accidental injury by burning to the individual areas is a medically possible explanation, but does not negate the given cause.
>
> 101 Considered overall, it is medically plausible that [the appellant's] injuries were deliberately caused by third parties."

63. It is said that the judge simply did not appreciate the effect of the medical evidence was that the appellant had been injured by a third party.

64. Ground 3 was a variation of the same point in which it was said the judge did not consider the medical evidence properly.

65. I consider now the report of Dr Nuwan Galappathie. His qualifications include his being a Fellow of the Royal College of Psychiatrists. The grounds particularly required me to look at pages 122–161 of the hearing bundle and pages 33 to 34 of the additional supplementary bundle. Dr Galappathie clearly opines that the appellant's mental health has deteriorated since the previous hearing and a possible explanation for that could be the fear of returning to Sri Lanka and uncertainty over his status. It does not of itself indicate a well-founded fear of persecution in the event of his return there. I agree with Counsel that an extra "not" has crept in at paragraph 91 (page 254) and Dr Galappathie was trying to say that the fact that the appellant did not have PTSD earlier did not indicate he did not have PTSD now. It is important to note that Dr Galappathie, having accepted that the appellant may not have demonstrated PTSD when examined earlier, had developed it now and Dr Galappathie said at paragraph 97 that in his opinion symptoms of, depression, anxiety and PTSD were consistent with his account of suffering from physical abuse and repeated interrogation by the police within Sri Lanka.

66. At paragraph 97 of his report Dr Galappathie found it "likely" that the appellant developed PTSD "as a result of the physical abuse and repeated interrogation that he reports" and "then likely to have developed depression and anxiety in the aftermath of the trauma that he described"._Thus, Dr Galappathie finding it likely and consistent with the appellant's description of events that he has the psychiatric symptoms that were detected. The thrust of the criticism was that the judge's analysis did not appreciate the extent to which the medical evidence supported his history of having been abused in Sri Lanka.

67. Ground 4 contends that the judge erred by describing the appellant's claim as a "relatively simple one" and therefore should not have found it of not significant weight that the stories were told consistently by the appellant and his wife. This was described as an irrational finding based on the judge's own opinion that such an account is a simple one.

68. Ms Gunn agreed with me that her main criticism was that the medical evidence was not dealt with properly.

69. Mr Lindsay submitted that there was a very thorough and detailed decision by the First-tier Tribunal and that it was without error.

70. He developed his points, and he respectfully cautioned me against interfering with a decision unless there was an error of law and, he implied a decision by an

experienced judge that was very thorough and detailed was not likely to be wrong in law.

71. The medical evidence, and particularly the finding that some of the injuries are "highly consistent" with their alleged cause is compelling but the judge acknowledged that the scars were highly consistent at least in two cases. The judge was aware of this and factored it into his analysis before deciding that the case had not been made out.

72. The psychiatrist's evidence was considered but the judge did not accept it was persuasive evidence of the causation of the symptoms complained of when there were other explanations that presented themselves on their face, namely the distress and concern over the uncertainty of his status. The judge was perfectly entitled to say that telling a story broadly consistently was not revealing when the story that mattered was not complicated.

73. I have actually found this a surprisingly difficult case to decide. It is in many ways an extremely careful decision and the judge was trying very hard to follow **Devaseelan** properly. I do not agree that the judge erred by focusing on the decision of Judge Harries rather than the evidence before him.

74. However, I am uncertain of the point the judge was making about medical evidence not being before the First-tier Tribunal Judge. It does not seem to have been put to the appellant that he did not dare obtain medical evidence earlier because it would not have assisted him or that indeed he had obtained it and suppressed it.

75. Maybe ground 1 should be seen as something that sets the scene. It does not identify an error of law.

76. Ground 2 (Istanbul protocol) and the related Ground 3 (wrong evaluation of the medical evidence) troubles me.

77. I find it very difficult to read the medical evidence without concluding that the appellant has suffered some traumatic event in his life. The evidence is that he does suffer from Post Traumatic Stress Disorder and he has given evidence about that trauma.

78. The scald marks are something that *might* be explained by accidental injury but it is not clear to me how medical evidence could indicate that a scalding was the result of a deliberate attack rather than a domestic accident. However, the injuries attributable to the alleged beating I find are very hard to explain indeed without finding that the appellant at some time in his life has been beaten. Such a beating could occur by one of several means. The appellant might have been beaten either accidentally or just possibly by design after the first hearing before the Tribunal but neither possibility seems plausible. Another is that the appellant was injured in an attack of some kind that was not at all related to the circumstances he alleges, and another is that was beaten in Sri Lanka as he says. The evidence was not before the First-tier Tribunal but, I find, that does not make the evidence of qualified professionals of this kind suspicious. I take on board Mr Lindsay's submission about the overall quality of the Decision and Reasons. Certainly it is a very careful piece of work in which the judge has gone to a lot of trouble to evaluate the various strands but I find that the judge has neither given a proper reason for not accepting that the appellant has been traumatised at some time in his life nor has the judge accepted that the appellant has been traumatised but not as a result of the circumstances he described.

79. If the judge had accepted that his whole approach to credibility or at least his conclusions might have been different and there might have been a different outcome. I have to conclude that the appeal needs to be redetermined.

Notice of Decision

80. The First-tier Tribunal erred in law. I set aside its decision and I direct the case be heard again in the First-tier Tribunal. No findings are preserved.

Jonathan Perkins

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 August 2024