



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

Appeal Number: AA/05419/2014

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**Decision and Reasons  
Promulgated**

**On 27 May 2015**

**On 11 June 2015**

**Prepared on 27 May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JM HOLMES**

**Between**

**M. H.  
(ANONYMITY DIRECTION MADE)**

Appellant

**And**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Soltani, Solicitor, Iris Law Firm

For the Respondent: Ms Rackstraw, Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a citizen of Sri Lanka, born on 10 April 1985, entered the United Kingdom using his own passport and entry clearance as a student on 16 January 2010. He claimed asylum on 17 March 2013, having abandoned his studies in May 2010.

2. The Respondent refused the asylum claim on 17 July 2014 and in consequence she made a decision of the same date to remove him to Sri Lanka.
3. An appeal against that removal decision was heard and dismissed by First Tier Tribunal Judge Fisher in a Decision promulgated on 31 October 2014. Whilst the Judge was not satisfied that the evidence before him allowed him to make a finding upon whether the Appellant had never returned to Sri Lanka after 16 January 2010 as he claimed to have done, he otherwise rejected as untrue the Appellant's account.
4. The Appellant applied to the First Tier Tribunal for permission to appeal. Permission was refused by Judge Ford on 1 December 2014 for lack of any grounds of challenge. The Appellant then renewed his application to the Upper Tribunal, which was granted by Deputy Upper Tribunal Judge McWilliam on 20 March 2015
5. The Respondent filed a Rule 24 Notice on 14 April 2014. She argued that the grounds were misconceived, and there was no material error in the approach taken to the evidence by the Judge.
6. Thus the matter comes before me.

#### The grounds

7. There is only one ground advanced on behalf of the Appellant, and that is the complaint that the Judge fell into error in his approach to the medical evidence relied upon by the Appellant. There were two reports prepared in relation to the scarring to the Appellant's body by Dr Lesley Lord. The first was a detailed report dated 5 June 2013, and the second was a brief addendum dated 24 September 2014. Her reports were made by reference to the Istanbul Protocol, and they sought to offer an opinion upon whether the scarring that she had observed was consistent with the injury mechanism that had been described by the Appellant.
8. No issue arose in this appeal over whether or not the Respondent had properly raised the issue of whether the scarring was self inflicted by proxy, or "manufactured to order"; RR (challenging evidence) Sri Lanka [2010] UKUT 274.
9. In her first report Dr Lord observed;  
"All the scars on the back of his arms and legs and on his back are diagnostic of burns. They have a definite outline and therefore have been caused by a hot solid object held against the skin. The scar over the left shoulder blade and that on the right upper arm could have been caused by the same implement at the same time. This also applied to the two scars across the upper thighs. Most of these scars are in positions where he could not have caused them himself. They are in different planes so they could not have been caused by a fall against something with several hot bars. These would have been very

painful and to inflict these on him he would have had to be restrained in some way.”

10. In the addendum report Dr Lord observed;
- “The scars on his back arms and legs were all diagnostic of healed burns.
  - The clearly defined shape of each was diagnostic of contact with a hot solid object and all the burns have been inflicted with a similar shaped object
  - They are not in a position where he could have inflicted them himself
  - These burns are completely healed so cannot be dated
  - I have been asked to consider the possibility of SIBP. I have now examined over 1000 asylum claimants including many from Sri Lanka and this is a familiar picture. Medically however it is not possible to determine by whose hand the burns were inflicted and whether they were with consent.
  - These injuries would have been extremely painful at the time and he shows no signs of flinching which would have made the outlines less regular. This means that he was immobilised in some way. He told me that he was tied to a table lying on his front. He also said that he was in and out of consciousness.”
11. The argument advanced in the grounds, and before me, is that the medical evidence was not therefore inconsistent with the Appellant’s account of being restrained when tortured. Since Dr Lord had not said in terms that the Appellant’s account of being restrained but conscious was inconsistent with the appearance of the scarring, then it was not open to the Judge to conclude that it was. Ms Soltani went so far as to describe this as “an untenable tension between the medical evidence and the Determination”.

### Conclusions

12. It is plain that the Judge had well founded concerns about the credibility of the Appellant’s account of abandoning his studies in the UK, and instead deciding to return and start up in business as a rickshaw taxi operator in Sri Lanka [25]. He also considered that the Appellant’s delay in claiming asylum was not consistent with his claim to be in genuine fear of his life at the hands of the Sri Lankan authorities, and as a result he applied s8 of the 2004 Act [29]. He also considered incredible the account of having been released from detention and torture by the Sri Lankan authorities in order to pose as one who was involved in a business of which he knew nothing, in order to seek to act as an informer upon people he did not know [30].

13. In my judgement it is also plain, when the decision is read as a whole, that the Judge considered the medical evidence as a part of the whole of the evidence before the Tribunal, and not in isolation.
14. It was of course the Appellant's case that on occasion he was deliberately burned by his torturers whilst unconscious, although some of the burns were inflicted during questioning and whilst conscious. It is difficult to comprehend the purpose that a questioner would have in acting in this way, if he was aware that his victim could neither anticipate, nor feel, the pain being inflicted. Nevertheless it was his case that some of the burns were inflicted whilst he were conscious.
15. In my judgement, contrary to the argument advanced by Ms Soltani, the Judge did not seek to go behind the medical evidence. On the contrary the medical evidence posed a serious credibility question. Would a torturer have been able to take the care to have immobilised his victim so completely, that despite the natural flinch reaction to a burn, he had been unable to flinch when deliberately burned whilst conscious? It was Dr Lord's evidence that none of the scars upon the Appellant's body showed any sign of a flinch reaction. Thus either the Appellant was unconscious throughout which he denied, or, he had been immobilised so completely that when conscious, despite the level of pain inflicted, he was unable to flinch at all. In my judgement that was the issue that the Judge grasped, and that the challenge to his decision seeks to avoid [28].
16. In my judgement it was well open to the Judge to find as he did, that no matter how well restrained, given the level of pain that Dr Lord advises would have been occasioned by the burns necessary to cause the scars he bears, that he would have moved to some degree if conscious. Since the scars showed that he had not, it was open to the Judge to find in consequence that contrary to his claim he was unconscious throughout the occasion(s) on which such burns were inflicted. That pointed to the burns being inflicted with the Appellant's consent and whilst he was unconscious. That was the Judge's finding. He gave adequate reasons for it, and it was open to him to make on the evidence before him. Although he did not refer to the authority, the decision shows in my judgement that the Judge sought [31] to apply the principles set out by Ouseley J in CJ (on the application of R) v Cardiff County Council [2011] EWHC 23, when he restated the importance of the approach in Tanveer Ahmed v SSHD [2002] Imm AR 318. Documentary evidence along with its provenance needs to be weighed in the light of all the evidence in the case. Documentary evidence does not carry with it a presumption of authenticity, which specific evidence must disprove, failing which its content must be accepted. What is required is its appraisal in the light of the evidence about its nature, provenance, timing and background evidence and in the light of all the other evidence in the case, especially that given by

the claimant. The same can properly be said for a claimant's oral evidence.

17. Accordingly there is in my judgement no error disclosed in the Judge's approach to the evidence, and the challenge is revealed to be in reality no more than a disagreement with the Judge's conclusions.

#### Conclusions

18. In my judgement, and notwithstanding the terms in which permission to appeal was granted, there is no merit in the grounds advanced before me. It was open to the Judge to make the adverse findings of fact that he did, for the reasons that he gave, and to conclude that the Appellant was not entitled to international protection. The complaints made about the Judge's approach reveal no material error of law that requires his decision to be set aside and remade.

#### DECISION

The Determination of the First Tier Tribunal which was promulgated on 31 October 2014 contained no error of law in the dismissal of the Appellant's appeal which requires that decision to be set aside and remade, and it is accordingly confirmed.

#### **Signed**

Deputy Upper Tribunal Judge JM Holmes  
Dated 27 May 2015

#### Direction regarding anonymity - Rule 14 Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until the Tribunal directs otherwise the Appellant is granted anonymity throughout these proceedings. No report of these proceedings shall directly or indirectly identify him. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to proceedings being brought for contempt of court.

#### **Signed**

Deputy Upper Tribunal Judge JM Holmes  
Dated 27 May 2015