



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/04140/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at: Manchester

**Decision &
Promulgated**

Reasons

On: 25th May 2016

On: 31st May 2016

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

VP

(ANONYMITY DIRECTION MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Hassan, Counsel instructed by S Satha & Co
Solicitors

For the Respondent: Mr Harrison, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka born in 1986. On the 2nd December 2013 he arrived in the United Kingdom and sought asylum. His application was rejected and on the 24th February 2015 the Respondent refused him leave to enter. The Appellant appealed and in a determination dated 31st July 2015 the First-tier Tribunal (Judge Nicol) dismissed his appeal on asylum, humanitarian and human rights grounds. The Appellant now has permission to appeal against Judge Nicol's decision.

2. The basis of the Appellant's claim was that he has a well-founded fear of persecution in Sri Lanka for reasons of his imputed political opinion. In very brief summary, he claims to have been detained and severely ill-treated because the Sri Lankan authorities believe him to have some connection with the LTTE. The Respondent had rejected the claim on credibility grounds and the matter had come before the First-tier Tribunal.
3. On appeal the Appellant had relied on a report prepared by Professor Sundara Lingham confirming that the Appellant had scars on his person "highly consistent" with the methods of torture he described. The Appellant further relied on a report by Dr Raj Persaud, a Consultant Psychiatrist, who diagnosed him with "serious psychiatric disorder" including PTSD and major depression.
4. The First-tier Tribunal found there to be a number of inconsistencies in the Appellant's account. Paragraph 38 finds that Professor Lingham "is not conclusive in his findings in respect of scarring". The appeal is dismissed.
5. In finding an error of law I take the relatively unusual step of adopting, in its entirety, the terms of the grant of permission, made by Designated Judge of the First-tier Tribunal McCarthy on the 26th August 2015:

"There are in essence two grounds of appeal: (i) that the Judge failed to give adequate reasons for finding the appellant's evidence to be inconsistent or contradictory; (ii) that the judge erred in his evaluation of the medical evidence.

The second ground is certainly arguable because at paragraph 38 Judge Nicol found 'Professor Lingham is not conclusive in his findings in respect of the scarring'. Not only does the use of the word 'conclusive' raise questions about the standard of proof Judge Nicol applied to the medical evidence, it also suggests that he failed to understand the provisions of the Istanbul Protocol, wherein a description of 'highly consistent' might be sufficient to discharge the lower standard of proof, as set out by the Upper Tribunal in KV (scarring - medical evidence) [2014] UKUT 230 (IAC).

As to the first ground, I am satisfied it is also arguable because it is not clear from paragraphs 33 and 34 whether Judge Nicol gave appropriate consideration to the question of whether the appellant's psychological problems might have affected his abilities to give a consistent account over time. The mere fact that there might be inconsistencies in the accounts given by an asylum seeker is not enough to find that such a person is not a refugee; it may simple mean the greater weight has to be placed on other available

evidence”

6. Mr Harrison did not make any submissions in defence of this determination. He was right not to do so.
7. The Appellant gives a long and complex history of a Tamil civilian caught in the cross fire – both literal and metaphorical – in the fight between the LTTE and the Sri Lankan state. It was an account which required careful findings of fact, and conclusions reached upon a holistic assessment of all of the evidence. That required the First-tier Tribunal to examine the account in the context of the country guidance (and any other country background material that might be relevant), the Appellant’s own evidence, both documentary and oral, and the medical evidence. In respect of the latter the Appellant had produced two reports from Consultant physicians who attested a) that he was suffering from serious psychiatric disorder consistent with his having suffered some significant trauma and b) he bore numerous scars, some of which were highly consistent with having been burned by cigarettes.
8. This determination fails to make clear findings, supported by reasons, on the Appellant’s evidence. The unparticularised assertion that he has been “inconsistent” does not enable the Appellant to understand why he has lost. The determination further fails, for the reasons articulated by Judge McCarthy, to properly assess the evidence of Professor Sundara Lingham. The determination appears to contain no evaluation at all of Dr Persaud’s opinion. This appeal has not been examined with anxious scrutiny and in those circumstances the determination must be set aside and the appeal remitted to the First-tier Tribunal.

Decisions

9. The determination of the First-tier Tribunal contains errors of law and it is set aside.
10. Having regard to the extent of the fact-finding required, the parties agreed that the decision in the appeal should be remade in the First-tier Tribunal.
11. Having regard to the fact that this is a protection claim I make the following direction for anonymity, pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders.

“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 his family. This direction applies both to the Appellant and the Secretary of State. Failure to comply with this direction could lead to contempt of court proceedings”.

Upper Tribunal Judge Bruce

25th May

2016