



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

Appeal Number: PA/01025/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 August 2017**

**Decision & Reasons  
Promulgated  
On 7 August 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MONSON**

**Between**

**RK (SRI LANKA)  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N. Paramjorthy, Counsel instructed by Loshana & Co Ltd

For the Respondent: Mr L. Tarlow, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals from the decision of the First-tier Tribunal (Judge Abrebesse sitting at Taylor House on 27 October 2016) dismissing his appeal against the decision of the Secretary of State to refuse his protection and human rights claim. Given the nature of his protection claim (fear of the authorities as a suspected Tamil separatist and as the

member of a proscribed organisation) I consider that it is appropriate that the appellant should be accorded anonymity for these proceedings in the Upper Tribunal.

### **The Reasons for the Grant of Permission to Appeal**

2. On 16 June 2017 First-Tier Tribunal Judge Landes granted the appellant permission to appeal to the Upper Tribunal on three grounds: (a) it was arguable that the judge had erred in his treatment of the psychiatric report of Dr Dhumad; (b) it was arguable that the judge had erred in his treatment of Dr Al-Wakeel's scarring report; and (c) it was arguable that the Judge was wrong not to consider specifically whether the Sri Lankan authorities would be interested in the appellant because of his connection with TGTE, a proscribed organisation.

### **Discussion**

3. After hearing Mr Paramjothy develop the above grounds, Mr Tarlow conceded that the decision was unsafe and should be set aside in its entirety.
4. Given the concession, which I am satisfied was properly made, I allow the appeal for the reasons given in the permission application read with Judge Landes' detailed reasons for granting permission.
5. In brief, although the Judge referred to the cases of **Mibanga** and **SA (Somalia)**, he did not follow their guidance. The scarring report had independent probative value as the expert observed scarring on the appellant's body which was typical of the mechanism of injury allegedly inflicted on him in detention, which was burning by hot metal objects. So it was a clear error of law for the Judge to make an adverse finding on the appellant's general credibility, based on inconsistencies in his account, before considering the scarring report; and this error was compounded by the Judge dismissing the scarring report because *"the assessment has been made on the basis of what the appellant told the expert"*.
6. Although the psychiatric report was mainly based on the appellant's account of his symptoms and their alleged causes, it was also based on a mental state examination conducted by Dr Dhumad, and the Judge was wrong not to acknowledge that it had some probative value as an independent assessment of the appellant's mental state carried out by a qualified professional. He was also wrong to reject it on the basis that he had not found the appellant to be credible on core aspects of his claim, as he had failed overtly to consider whether there were inconsistencies in the appellant's account which might have arisen from the appellant's traumatised state rather than from the appellant making things up as he went along. In short, the Judge needed to show that he had considered the medical evidence first, before coming to a conclusion on the appellant's credibility.

## **Conclusion**

The decision of the First-tier Tribunal contained an error of law, such that it must be set aside and remade.

## **Directions**

**(1) This appeal is remitted to the First-tier Tribunal at Taylor House for a *de novo* hearing before any Judge apart from Judge Abebrese.**

**(2) None of the findings of fact made by the previous Tribunal shall be preserved.**

**(3) The time estimate is three hours.**

## **Direction Regarding Anonymity - rule 14 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) 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

Date 04 August 2017

Judge Monson

Deputy Upper Tribunal Judge

