



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

Appeal Number: PA/12396/2017

THE IMMIGRATION ACTS

Heard at Field House

On 21st March 2019

**Decision & Reasons
Promulgated
On 3rd April 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

**K J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Brooks of Counsel instructed by Central England Law Centre

For the Respondent: Mr Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Aziz made following a hearing at Birmingham on 17th April 2018.

Background

2. The appellant is a citizen of Sri Lanka born on 13th March 1991. He entered the UK clandestinely on 6th June 2017 and claimed asylum thirteen days later.

3. He said that he had been arrested in 2007 on suspicion that he was a member of the LTTE and would be at risk on return. His sister LJ had been raped and murdered by a local leader within the EPDP who had been later arrested. A case had been filed against the leader and hearings began in March 2012. He and his parents came to court to give evidence but were threatened by members of the EPDP. The appellant was arrested and detained in May 2012 and in February 2017 was abducted by the CID on the instruction of the EPDP. He was interrogated and accused of being a member of the LTTE. He was able to escape detention and remained in hiding until he was able to flee the country.
4. The judge accepted that the appellant had been arrested in December 2007 but not that any other aspect of his case was true. He did not accept that he was related as claimed to the girl LJ nor that the appellant had been tortured nor that the EPDP would have any interest in him. Whilst the judge accepted that the medical evidence showed clear scarring he did not believe that the scarring was the result of torture as the appellant claimed. On that basis he dismissed the appeal.
5. The appellant sought permission to appeal on the grounds that the judge had erred in his consideration of the evidence and that his credibility findings were flawed. In particular, he had failed to take into account material evidence and had fallen into error in his consideration of the evidence by failing to assess it in the round contrary to the ratio in Mibanga v SSHD [2005] INLR 377.
6. Permission to appeal was granted by Judge Grant on 15th June 2018 for the reasons stated in the grounds.

Submissions

7. Mr Brooks relied on his grounds and submitted that the appeal needed to be reheard.
8. Mr Tarlow defended the determination arguing that the grounds amounted to a simple disagreement with the decision.

Consideration as to Whether the Judge Erred in Law

9. I am persuaded that the judge did err for the following reasons.
10. First, the judge had accepted that the appellant had been arrested and detained in 2007 which ought to have formed a part of his assessment of whether he would, cumulatively, have been at risk on return.
11. Second, more importantly, the judge erred in his consideration of the medical evidence. At paragraph 80 he said that the evidence before the Tribunal was weak and the appellant's testimony was unreliable. The documentary evidence which the appellant has sought to rely upon contained material discrepancies and was of limited probative value. In

addition to the documentary evidence, he said that he had heard from the appellant and found that he was not a credible witness.

12. It was only after these conclusions had been reached that the judge considered the medical report. The appellant had scarring on his back which the doctor found to be highly consistent with injury caused by burning from a heated implement. The doctor said that due to the sight and pattern of the scars it was difficult to think of plausible alternative explanations for their causation other than that they were deliberately inflicted burn injuries.
13. In KV (Sri Lanka) v SSHD [2019] UKSC 10 the Supreme Court held that where there were only two real possibilities; either that KV had been tortured or that the wounding was self-inflicted. When it rejected the former the original tribunal failed to take into account the fact that self-infliction of wounds is inherently unlikely.
14. The judge therefore erred by not considering the evidence in the round and not considering that self-infliction of wounds is improbable.
15. Moreover there was evidence before the judge which he did not take into account at all, in particular, expert evidence from Frances Harrison which was not referred to in the determination. This evidence was potentially helpful to the appellant in a number of ways. Furthermore a faxed report was sent to the Tribunal on the day of the hearing from a human rights lawyer and activist in Sri Lanka confirming the authenticity of a birth certificate. According to the author of the grounds, who presented the appeal, the document was before the judge at the hearing but was not referred to. There was also a summons in the appellant's bundle which was not considered.
16. The judge therefore erred in law in failing to take into account all of the relevant evidence and in failing to assess the evidence in the round. The decision is set aside. It must be remade by a judge other than Judge Aziz at Birmingham at a date to be notified.

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.

Deborah Taylor

Signed

Date 31 March 2019

Deputy Upper Tribunal Judge Taylor