



**UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)
AA/04336/2015**

APPEAL NUMBER:

THE IMMIGRATION ACTS

**Heard at: Field House
on 10 March 2016**

**Decision and Reasons
Promulgated
on 15 April 2016**

Before

Deputy Upper Tribunal Judge Mailer

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

U. S.

ANONYMITY ORDER MADE

Respondent

Representation

For the Appellant: Mr S Whitwell, Senior Home Office Presenting Officer

For the Respondent: Ms K Olley, Counsel (instructed by Kanaga Solicitors)

DETERMINATION AND REASONS

1. I continue the anonymity direction made. This direction is to remain in place unless and until this Tribunal or any other appropriate court directs otherwise. As such, no report of these proceedings shall directly or indirectly identify the respondent or any member of his family. Failure to comply with this direction could amount to a contempt of Court.

2. I shall refer to the appellant as “the secretary of state” and to the respondent as “the claimant.”
3. The secretary of state appeals with permission against the decision of the First-tier Tribunal Judge C Greasley allowing the claimant's appeal on asylum, humanitarian protection and human rights grounds [68-70].
4. In granting permission to appeal, First-tier Tribunal Judge Ford found that the grounds constituted “an arguable material error of law.”
5. I set out below in some detail the claims made by the claimant and the evidence produced at his appeal hearing.
6. The claimant is a national of Sri Lanka, born on [] 1979. He departed Sri Lanka in January 2008 and arrived in the UK on 19 January 2008. He had been granted a work permit valid until January 2013. In September 2009 the Home Office received a notice of premature “end of employment form” confirming that the claimant had ceased to be employed on 31 December 2007. His leave as a work permit holder was curtailed on 17 September 2009 without any right of appeal.
7. The appellant subsequently claimed asylum. A screening interview was conducted on 4 December 2012. He was detained on 26 February 2015.
8. An asylum interview was booked for 10 March 2015 but he failed to attend and did not give any reason for his non-attendance. He was subsequently released from detention.
9. The Judge noted that he claimed that he was at risk of persecution on account of his political opinion. His problems began in November 2006. He claimed to have been with the Tamil Tigers. He also claimed that he was trained by the LTTE. He was arrested by the army and his fingerprints and photograph were taken [13].
10. There was a psychiatric report produced to the First-tier Tribunal dated 27 July 2014. The claimant asserted that he was beaten with wooden sticks, wires and plastic pipes during detention. He was kicked on his testes and held upside down. He was covered in petrol and claimed to have been burned with a hot metal rod and cigarettes. He had scars as a result. He also claimed that he was sexually abused by an officer on three occasions. He escaped from detention after an uncle arranged payment to obtain a work permit for him, after which he came to the UK [13].
11. The Judge also had before him a psychiatric report from Dr Saleh Dhumad in which he stated that an uncle paid a bribe to the authorities as a result of which he was released on reporting conditions in July 2007. The claimant asserted that his brother was also with the LTTE and had also been arrested, beaten and subsequently escaped. That brother has subsequently been granted asylum in France [14].

12. The claimant further claimed that on 12 November 2012, his father was arrested and beaten "due to the appellant's activities." He claimed that the army had visited the family home looking for him and his brother and had arrested his sister. She was released on reporting conditions. His father was also released under fortnightly reporting conditions [15].
13. The claimant did not know whether or not there was a warrant in existence for his arrest. He claimed that his father passed away on 13 January 2014 and since then his mother had received messages from the police 'demanding her presence with regard to the claimant and his brother's activities abroad' [15].
14. The claimant claimed that he had a brother and sister in the UK with whom he had lived and who supported him. He was suffering from depression for the past six months but did not take any medication [16].
15. Whilst accepting his identity and nationality, the secretary of state did not accept that he had been involved with the LTTE and that he had experienced the problems claimed. He failed to attend an asylum interview on 10 March 2015 without explanation. He also failed to submit a witness statement regarding his claim for asylum by the deadline on 11 March 2015. Those actions damaged his overall credibility. His claims were rejected. [18]
16. The psychiatric report dated 27 July 2014 was considered by the secretary of state. The symptoms of depression could have been caused by a number of different or alternative causes which had not been considered in the report. Further, the claimed events occurred a significant time before the report was produced, namely some seven years earlier. No medical or legal reports that the author had prepared in other cases had been cited [19].
17. The claimant asserted that he had visible scars. He had provided no supporting evidence and these scars could have been caused in a number of ways [20]. The respondent also considered s.8 of the Asylum and Immigration (Treatment of claimants, etc.) Act 2004. He did not claim asylum after arrival but only four years later. His behaviour fell within section 8(5) [20]
18. Although the psychiatric report had referred to suicidal thoughts by the claimant, the respondent considered the decision in *v SSJ HD* (2005) and (2009) [23]. It was concluded that his claimed fear of ill treatment was not well founded. He had not been subjected to significant traumatic events in Sri Lanka. There were also effective mechanisms in place to treat any possible risk of suicide [23].
19. The Judge recorded that at the appeal hearing the claimant adopted his statement dated 7 September 2015. The Judge has set out the claimant's case at [25-29]. He referred to his early education in Sri Lanka and his undertaking of LTTE training for a period of 60 days. It was eventually

agreed that he could work as a messenger and coordinator for the LTTE [26]. He also worked with the political wing of the LTTE in Jaffna. He was arrested after a bomb blast in Colombo in 2007. He was suspected of involvement. He was detained, interrogated and assaulted [28]. He was beaten with hands, batons, sticks, plastic pipes and wires. He was slapped and kicked in his testicles. His face was covered with a petrol bag and he was burned with metal rods and cigarettes. He was sexually harassed and raped, and hung upside down [28].

20. On release in September 2007 following payment of a bribe, he initially fulfilled reporting requirements but was advised that it was no longer safe for him to remain in Sri Lanka. He managed to procure a valid visa via an agent. He was advised not to claim asylum on arrival. The authorities still visited his parents' home and threatened family members. He had been involved with diaspora activities organised by various Tamil groups in the UK. His mother received a police message in early 2014 demanding that she present herself at the police station in relation to his and his brother's activities abroad [29].
21. He did not attend the asylum interview; he was not receiving appropriate medication at the time [29].
22. The Judge considered a letter dated 4 September 2015 from his GP stating that he has been registered with the practice since January 2015. His main problem was post traumatic stress disorder causing severe anxiety and depression [30]. The claimant attributed these symptoms to his torture in Sri Lanka. The claims made by the claimant as to how he was tortured were set out and noted by the Judge at [30]. He was receiving help from a counsellor as well as receiving medication. Documents relating to his brother's detention and his younger brother's French ID status document was produced. Further, a copy of his father's obituary notice was produced [31].
23. The Judge had regard to an expert medical report compiled by Mr Martin dated 14 August 2015. He has extensive experience in general surgery including fractures and plastic surgery, including wounds, burns, fractures and soft tissue injuries. He has provided over 800 medico legal reports over the years. A number of photographs were taken of the claimant which were appended to his report. He took a brief history from the claimant consistent with the information provided to the immigration authorities [32].
24. Mr Martin identified all round scars, elongated and pigmented scars. There were also several criss-cross linear scars on the whole left of the back between 8 and 14 centimetres long. There were several traverse linear scars on his upper limbs from the anterior aspect of both elbows and forearms. There was also an atrophic scar on the anterior aspect of the left ankle [33].

25. The assertion by the claimant that the scars were caused by his being burned with a hot cigarette in 2007 were found to be highly consistent with the claimed causation. Dermatological conditions were unlikely to result in similar scars. Those scars which he claimed were caused by being burned with a hot iron rod and hot wires during detention were typical of injuries caused by a narrow hot instrument or surface as described. A skin disease as the cause was ruled out. Accidental injury was extremely unlikely, as was self harm in view of the position of the scars.
26. Accordingly, causation by a third party was the most likely cause although it is scientifically impossible to differentiate self infliction of injuries by proxy from injuries caused by torture [34].
27. The scars which he claimed were caused by ligatures used to tie his arms and elbows were not referable to stain or skin disease, nor were they likely to have been caused by accidental injuries. As to the atrophic scar to the lower leg the claimant stated had been caused by accidental injury when training, which was consistent with such an injury [35].
28. The Judge had regard to the evidence regarding the age of the scars by visual inspection which is not a precise science. They were mature and consistent with injuries that occurred approximately seven years ago. His scars on his back were typical of the events described by the claimant, namely that he had been intentionally burned. The remaining scars were less specific but did not show any inconsistencies with the description of events claimed by the claimant.
29. Mr Martin had regard to the Istanbul Protocol relating to the issue of causation [35]. His overall expert opinion was that most of the scars were typical of intentionally caused injuries, more likely to have been caused by a third party as described by the claimant.
30. The Judge also had regard to the psychiatric report from Dr Dhumad. The claimant was interviewed and provided a history. Medical GP records had been made available to Dr Dhumad [37].
31. Dr Dhumad noted that the claimant's condition had deteriorated since he was last seen in June 2014. He found him to be severely depressed with PTSD symptoms. His diagnosis was severe. He had claimed experience of torture and harassment of his parents. He did not receive medication for almost three weeks from the date of his detention on 26 February 2015 until a medical review. Stopping medication in those circumstances led to the serious deterioration in mental health and a high level of distress. He remained unwell and was unfit to attend the interview. He was unfit for detention and there was an ongoing risk assessment in relation to suicidal ideation [38].
32. The Judge noted evidence produced from the International Centre for Prevention and Prosecution of Genocide. A letter was written to UK Immigration Authorities stating that the claimant had exposed the Sri

Lankan government “as being genocidal and that he was a potential witness and may be asked to provide evidence in person against the Sri Lankan authorities” [43]. In the event of his deportation to Sri Lanka he was more likely to be tortured. The Judge was also referred to 'credible evidence' produced in his bundle of the claimant attending a protest in the UK outside the US Embassy on 25 February 2015. There were several pages of photocopied photos depicting the claimant, 'who was identifiable' [43].

33. In the Judge's 'findings of credibility and fact', he stated that he had considered the evidence in its totality. He has sought to focus on the core and centrepiece of the claim and the evidence in the round [48].
34. He noted “... that it is a duty of a an Immigration Judge to give reasons for a decision and that this does not entail a requirement to deal expressly with every point, but to demonstrate that a duty has been discharged to ensure that the parties to a decision understand why one has won, and the other has lost” [50].
35. In allowing the appeal he found that the claimant had provided a credible account of having been involved in LTTE training and anti-state protests. He provided credible evidence of his arrest and detention. He had been beaten with a number of weapons 'in terns of the circumstances he explained in his statement'. There was also credible psychiatric evidence that as a result he was the subject of post traumatic stress disorder, flashbacks, insomnia and general anxiety [53].
36. He had regard to the medical reports of Dr Kogulanathan, and expert medical reports from Mr Martin which he found to be clear and comprehensive. The latter had properly engaged with his assessment by reference to the Istanbul Protocol [54]. He found the scars to be overall highly consistent with the circumstances claimed and were typical of having been intentionally caused injuries [55].
37. He then found that when considered cumulatively and in the round, the claimant had shown to the lower standard following the decision in GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 319 (IAC) that he fell into a current category of persons at real risk of persecution or serious harm on return, namely those who are or are perceived to be a threat to the integrity of Sri Lanka as a single state because they are, or are perceived to have had, a significant role in relation to post conflict Tamil separatism within the diaspora and/or their renewal of hostilities within Sri Lanka. The Judge has set out the country guidance from that case in full [56].
38. In arriving at his conclusion, he found that his LTTE role in Sri Lanka had been to pursue separatist policies for Tamils and to destabilise the Sri Lankan government generally. He had trained with the LTTE and pursued their aims. He cannot internally relocate. He is also likely to appear on a 'stop list' or 'watch list' [58].

39. The claimant had been the subject of physical and mental torture; he found that he is at risk of persecution on return based upon previous political activity and will be of direct interest to the authorities in Sri Lanka [59].
40. Mr Whitwell relied on and adopted the grounds of appeal. The Judge had failed to give adequate reasons for findings on material matters. In finding at [52] that the claimant is a genuine refugee and that he has provided a credible account that he was involved in the LTTE training and anti-state protests, no reasons were provided to support those findings. The finding constitutes a bare statement that he is credible.
41. Further, at [53] the Judge accepted that there is credible evidence that he had been arrested and detained and beaten in the circumstances and with weapons which he explained in his statement. That is also a 'bare statement' without adequate reasons.
42. They do not satisfy the requirements to give reasons as set out in authorities including MK (duty to give reasons) Pakistan UKUT 00641 (IAC). That is particularly the position as he failed to attend an asylum interview.
43. Nor did the Judge provide reasons why he found the medical evidence to be highly consistent with the circumstances claimed. The claimant did not attend his asylum interview and it is "unknown" as to what evidence provided by the claimant is consistent with his account – ground 1(e).
44. Nor is it known what risk category the claimant fits into '...or why they do on the facts of his account as no reasons were provided by the Immigration Judge'. Nor had reasons been provided as to why he should succeed on the basis of his suicide risk.
45. Moreover, the Judge failed to treat the medical evidence as part of the overall evidence to be considered in the round – Mbinga [2005] EWCA Civ 367. He has taken medical evidence as determinative evidence in the claimant's case rather than considering it in the round. Nor has he correctly applied the six state test in Mbinga [2005] EWCA Civ 629.
46. The Judge had failed to take into account the delay in his claim and the fact that he failed to attend his asylum interview, all of which were issues raised in the reasons for refusal letter.
47. In making his submissions Mr Whitwell referred to the individual paragraphs in the Judge's determination which I have accordingly set out above in some detail.
48. On behalf of the claimant, Ms Olley, who represented the claimant before the First-tier Judge, submitted that if the secretary of state "did not push points" they cannot be blamed on the claimant.
49. As this is a reasons challenge, the decision must be read as a whole. The appellant's claim was accepted. There is no cogent point of challenge put

forward 'to upset and defeat the decision'. The claim that the Judge simply accepted that he is a genuine refugee and that he had provided a credible account which lacked proper reasoning ignores the fact that the Judge had set out the facts and the supporting evidence, emphasising that he had considered the evidence in the round.

50. With regard to the claimant's claim that he had been detained, the Judge had before him the claimant's witness statement which set out in great detail the background to that claim including his LTTE political wing activities promoting the ideology.
51. The Judge also had before him the report of Dr Dhumad who noted his claims of having been tortured. He has provided two reports. There are also extensive notes from his GP.
52. Dr Dhumad interviewed the claimant on 24 June 2014 and prepared a report as set out from pages 97 and following. He also prepared a second report dated 19 March 2015. From that report the claimant gave him a personal history. He also set out his symptoms, having contended that he was tortured and raped by the Sri Lankan authorities in 2007. He noted that the claimant's mental health had deteriorated.
53. She submitted that the Judge had thus considered these reports and taken them into account at [54]. The finding that the claimant's account is credible is supported by those reports and in particular the injuries he suffered.
54. Ms Olley referred to the report of Mr Martin. The Judge referred to this in great detail at [32-36]. Mr Martin has set out in detail the basis for his opinion and prognosis at page 58 of the bundle. He had regard to his claim of having sustained injuries during his detention in 2007 and during training with the LTTE. He also had regard to the fact that the scars had occurred many years before.
55. She submitted that the s.8 submission is dealt with in the claimant's witness statement. At its highest, and in taking matters in the round, the claimant has explained why he did not make a claim for seven years. That was because he was scared that he would be sent back to Sri Lanka. However, there was credible evidence of torture and even though this is a matter that could detract from his credibility, it does not follow that he would not be at risk.
56. With regard to the risk factors identified in GJ, supra, she submitted that he has been active in the UK. The stop list is not published. He has also been involved with the ICPPG organisation. At paragraph 11 of his witness statement he referred to the Sri Lankan army which warned all NGOs perceived to be the "LTTE's front arm". He joined "Action Faim", an NGO, which received threats from the army. In August 2006, 17 staff members were shot and killed by the Sri Lanka army. He was an organising committee member and was on the front. There was a protest rally which

included picketing and protests, which were filmed and photographed by the army.

57. She accordingly submitted that this was not “a valid reasons challenge”.
58. Nor was the decision in J v SSHD relied on by the Judge in respect of an Article 8 consideration relevant. This did not form part of the Judge's assessment as to risk on return.
59. In reply, Mr Whitwell submitted that 'he would have to extrapolate' the basis upon which the Judge accepted the credibility of the claim. In this respect he would have to go to his witness statement as well as to the other evidence. There would be “an awful lot of joining up to do”.

Assessment

60. There is undoubted force in Mr Whitwell's submission that the First-tier Judge in this appeal should have set out more clearly and coherently the reasons why he came to his decision, particularly in the light of an assertion by the secretary of state challenging the credibility of a claimant's account.
61. In MK, supra, the Tribunal noted that it is axiomatic that a determination should disclose clearly the reasons for a Tribunal's decision. If a Tribunal finds oral evidence to be implausible, incredible or unreliable or a document to be worth no weight whatsoever, it is necessary to say so in the determination for such findings to be supported by reasons. A bare statement that a witness was not believed or that a document was afforded no weight is unlikely to satisfy the requirements to give reasons.
62. The First-tier Judge, who has considerable experience, has set out the claimant's claim in some detail. He has had regard to both his and the secretary of state's bundles of evidence, “together with the objective evidence” [6].
63. It was noted at the outset that the claimant was not able to give oral evidence due to mental health issues highlighted in the report from Dr Dhumad dated 19 March 2015. The claimant however did adopt his witness statement of 9 September as accurate and truthful. The appeal accordingly proceeded by way of submissions [6].
64. The Judge has had regard to that witness statement, as well as the psychiatric reports and the findings relating to his injuries, namely his scars.
65. The evidence of the claimant in his statement dated 7 September 2015 was set out in some detail by the Judge at [25-31].
66. When it came to making findings of credibility and fact, the Judge stated at the outset that he had considered the evidence in its totality. He has also sought to focus upon the core and centre piece of the claim, looking

at the evidence in the round, and taking into account all relevant circumstances [48]. He also expressly noted that it is the duty of a Judge to give reasons for a decision, but that this does not entail a requirement to deal expressly with every point but to demonstrate that the duty has been discharged so as to ensure that the parties understand why one has won and the other has lost.

67. A substantial bundle of evidence was produced on behalf of the claimant at the hearing. This included two psychiatric reports, one relatively recent in relation to the date of the hearing, and a report from Mr Martin, whose qualifications and expertise were accepted by the Judge. Mr Martin has given evidence in hundreds of similar matters. His qualification to give opinion evidence had never been challenged.
68. Accordingly, as submitted by Ms Olley, the Judge did not simply accept the credibility of the claimant based on his own assertions. He had regard, as stated, to the evidence as a whole, which included detailed reports given by these experts.
69. When interviewed by these experts the claimant had set out the core accounts of his history prior to coming to the UK. Moreover, he had been treated for a considerable period by his GP.
70. On 27 December 2012, there was a mental health assessment in which it was noted that he has a poor sleep pattern; is thinking a lot and feels a little low. He cannot get back to sleep after 2am. It was also noted that when examined on 27 December 2012, he did not appear to be knowledgeable about the asylum process and was fumbling a bit when explaining his situation. He also reported to those doctors multiple distinct scars on his back, which he attributed to burns that he sustained. He also referred to detention and torture in Sri Lanka in 2007 (page 21 of the bundle).
71. Mr Martin's report has described in detail the position of each wound relied on. He has complied with the Istanbul Protocol and has set out in some detail his findings regarding the scars on the claimant's back, the upper and lower limbs. The most likely cause regarding scars 2 and 3 was the claim that they were caused by burns with a hot rod and hot wires during his detention in 2007. It was noted that there are not presenting facts making it more than a remote possibility that SIBP cannot be discarded. He has considered alternative causes but has ruled them out for proper reasons given at page 59 of the bundle.
72. Mr Martin has followed the "recommendations" referred to in KV (Scarring - medical evidence) Sri Lanka [2014] UKUT 00230 (IAC).
73. The findings in relation to the scars on his back were typical of the events described by him of being intentionally burned. The rest of the scars are less specific but did not show any inconsistencies with the description of the events by the claimant (page 60). Overall his expert opinion was that

most of the scars are typical of intentionally caused injuries and were likely to have been caused by a third party as described by the claimant.

74. He also had regard at p. 60 of the bundle, to the fact that the scars are matured, which he found to be consistent with injuries that occurred “approximately several years ago”.
75. It is evident that in arriving at his findings, the Judge has also had regard to the report of Dr Dhumad, a consultant psychiatrist. He too followed the principles set out in the Istanbul Protocol. He was asked to provide a detailed assessment of the mental health of the claimant.
76. He had access to the relevant documentation, including an interview with the claimant for two hours at Harmondsworth IRC where a Tamil interpreter was present. He has set out the personal history given to him at paragraph 6 of his report. He set out his mental state examination at paragraph 16 and concluded that there are a number of psychological stressors that have contributed to his depression, including the traumatic experience of torture, the harassment of his parents and their death as well as the ongoing fear of deportation. There is no doubt that the experience of torture has complicated his life. His symptoms appear to have always been present but fluctuated and worsened at times of stress. This is consistent with the nature and cause of the illness.
77. He found that the nature of his symptoms and his emotional distress is typical of PTSD as psychological reaction to traumatic experience such as torture. It is very unlikely to be caused by other experiences other than torture.
78. He remains unwell and unfit to attend an interview. His PTSD symptoms have deteriorated dramatically during his detention and his concentration is very poor. He would not be mentally able to participate in a court hearing in any meaningful way and his mental health will very likely worsen if he is cross examined.
79. In accepting that there is credible evidence that the claimant was arrested and detained, the Judge properly relied on the witness statement of the claimant as well as the expert reports that were produced. It was agreed as a preliminary matter that the claimant was not able to give oral evidence on account of mental health issues highlighted in Dr Dhumad's report dated 19 March 2015.
80. In concluding that the claimant's account was credible, the Judge accordingly had regard not only to the claimant's own assertions but to the findings in the reports from the experts, including the significant evidence relating to his scarring which remained unchallenged.
81. The evidence of his scarring as well as evidence relating to his psychological or psychiatric condition, namely PTSD, constituted significant evidence tending to corroborate the claimant's assertions. He

had set out his account to the authors of the reports. His symptoms of depression were noted in the GP's notes.

82. The Judge noted that the presenting officer asked him to consider s.8 issues in relation to credibility given his failure to claim asylum for several years. Although he did not explicitly deal with s.8, the claimant dealt with that issue in his witness statement which the Judge did consider.
83. He had been instructed by his agent not to claim asylum when he arrived in the UK in January 2008 as that would jeopardise his work. He was told that he would be assisted to extend his visa after it expired. He was warned that if he tried to claim asylum, "we would be sent back to Sri Lanka as asylum claims were no longer accepted."
84. Although the Judge should have considered the s.8 issues, he nevertheless stated that he had considered the matters in the round. Moreover, the fact that the claimant failed to claim asylum much earlier did not mean that his credibility was adversely affected. He still presented evidence relating to his mental state and the scars that he claimed to have suffered following torture in Sri Lanka which together with his own assertions were considered in the round.
85. Moreover, the Judge had regard to his diaspora activities which he was involved in whilst in the UK. He had regard to the evidence from ICPPG in terms of the letter written to the immigration authorities which stated that the claimant had exposed the Sri Lankan government of being genocidal and that he was a potential witness and may be asked to provide evidence in person against the Sri Lankan authorities. There were also photographs depicting the claimant at the protest outside the US embassy in February 2015. He was 'identifiable' from them.
86. In summary, the Judge relied on credible evidence supporting the claimant's claim that he had been arrested, detained and beaten up with a number of weapons.
87. Although the Judge might have set out in greater detail the basis upon which he found the claimant's account to be credible, there was a body of substantial evidence available, including the claimant's own statement, sustaining his findings. Even though there might be some 'joining up to do', the findings were based on a consideration of the evidence as a whole and are sustainable. They are neither irrational or perverse.

Notice of Decision

The decision of the First-tier Tribunal did not involve the making of any material error on a point of law. It shall accordingly stand.

Anonymity order made.

Signed

Date 11 April 2016

Deputy Upper Tribunal Judge Mailer