



**Upper Tribunal
(Immigration and Asylum Chamber)**
AA/00737/2014

Appeal Numbers:

THE IMMIGRATION ACTS

**Heard at Field House
On 8th October 2014**

Determination
Promulgated
22nd October 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE FRANCES

Between:

UT

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, instructed by Nag Law Solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting
Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sri Lanka born in 1993. He appeals against the determination of the First-tier Tribunal, dated 23rd May 2014, dismissing his appeal against the Respondent's decision, dated 17th January 2014, to remove him to Sri Lanka under section 10 of the Immigration and Asylum act 1999 on asylum, humanitarian protection and human rights grounds.
2. The Appellant arrived in the UK on 3rd December 2013 and claimed asylum after he was found concealed in the lavatories at Luton airport.

He was interviewed on 4th December 2014 (screening interview) and 13th January 2014 (substantive interview).

3. It is the Appellant's case that in 2008 he was travelling on a bus with his uncle when he was kidnapped by the LTTE. He was trained for 45 days and then taken to Paranthan where he was told to dig bunkers. On 31st December 2008, he was hit by a shell fired by the Sri Lankan army and taken to hospital. On 1st April 2009, the LTTE took him from the hospital and he continued fighting and delivering food for a further 20 days before he left the LTTE. The Appellant surrendered to the Sri Lankan army on 17th May 2009 and was identified as a member of the LTTE. He was arrested and taken to the camp at Karaichikudiruppu. On 18th May 2009, he was taken to Joseph Camp in Vavuniya where he was detained and assaulted regularly for two years. His uncle paid seven Lakh rupees for his release on 28th November 2013. He was told to report to the police station on 4th December 2013.
4. First-tier Tribunal Judge Fox did not find the Appellant to be a credible witness because he was unable to provide meaningful details relating to his time with the LTTE, there were discrepancies in his account and his account of torture was inconsistent. The Judge considered the medical report, but did not accept that the Appellants injuries were caused as he claimed or that he was actively involved with the LTTE.
5. Permission to appeal was granted by Upper Tribunal Judge McGeachy on 9th August 2014 on the grounds that it was arguable that the Judge erred in his assessment of the Appellant's evidence that he had been recruited by the LTTE.
6. At the hearing before me, Ms Anzani relied on the grounds of appeal and submitted that the Judge's credibility findings were unreasonable in light of the Appellant's evidence and the background evidence, and his reasons were insufficient. The Judge identified nine issues which he found undermined the Appellant's credibility. Ms Anzani dealt with each point in turn and submitted that these credibility points, even taken as a whole, were insufficient to undermine the Appellant's credibility. The Appellant had given detailed and consistent evidence in his substantive interview and his witness statement. The Judge's finding that his account was lacking in detail was perverse.
7. Ms Anzani submitted that the Judge had decided that the Appellant was not credible before considering the medical report. The Respondent had not alleged that the Appellant's injuries were self inflicted. Some of the Appellant's scars were consistent with shell attacks during combat which supported the Appellant's account that he was involved with the LTTE. The injuries on his thighs were typical of being beaten with rods, which supported his account that they were deliberately inflicted. Paragraph 64 of the determination was not a proper assessment of the medical evidence. The Appellant would be at risk on return.

8. Mr Tarlow submitted that the Judge's findings were open to him and he gave sufficient reasons for his conclusions. In his determination, the Judge dealt with adverse credibility findings and then the medical report. He then considered the evidence in the round before concluding that the Appellant had failed to make out his claim. There was no error in the determination taken as a whole.

Discussion and conclusions

9. At paragraph 54, the Judge stated that he did not find the Appellant to be a credible witness. He gave his reasons for coming to this conclusion at paragraphs 54 to 64.
10. During his substantive interview, the Appellant could not recall the names of those with whom he lived for 45 days during training with the LTTE. In his witness statement, he explained that he did not know their actual names and referred to them as 'anna' in accordance with cultural tradition. In oral evidence, he stated that he was dizzy during his interview and this was why he could not recall their names at that time.
11. The Judge rejected the Appellant's explanation for his failure to recall the names of his associates with whom he had spent a significant amount of time. I find that it was open to the Judge to conclude that the lack of detail and the discrepancies in the Appellant's explanation for this damaged the Appellant's credibility.
12. In his interview, the Appellant was asked to give more detail about what he learned in political training. He stated that he was told how to talk to people to make them join the LTTE and about the leader Velupillai Pirabakaran and his family. In his witness statement, he stated that he was taught about the history of the conflict with the LTTE and the Sri Lankan Government. He was taught about the history of the LTTE and their goals; the leader of the LTTE and his family; and about how to recruit people. In his oral evidence, he initially stated that the instructors were not interested in whether the trainees engaged with the training process, but later he stated that he was required to memorise the leaders' names and birth places, and the various factions and their composition.
13. The Appellant claimed to have spent two hours per day for 45 days receiving political training. The Judge found that the Appellant was unable to give meaningful details relating to that training. The Appellant's explanation for this given in oral evidence was inconsistent. The Judge found that it was more likely than not that the Appellant had embellished his claim as a reaction to the discrepancies rather than a reliable account of true events. In my view, this finding was open to him on the evidence.

14. The Appellant had given inconsistent evidence about how he was identified as LTTE upon his arrest. In his substantive interview, he stated that he was identified by a lady. In his witness statement, he stated that he was identified by a man wearing a black mask over his face. In his oral evidence, he claimed that he was identified by a lady who shouted out and then he was stabbed in the stomach by an army official.
15. In his interview on 13th January 2014, the Appellant stated that he was tied to a table and beaten twice with a wooden pole. In his witness statement, dated 2nd May 2014, he added to his account and stated that he was also whipped with a thick metal whip and burned with cigarettes. The Judge found these discrepancies significant. This finding was open to him on the evidence.
16. The Judge went on to consider the medical report dated 8th March 2014 and considered the evidence in the round before concluding that he did not accept that the Appellant received his injuries as he claimed because his evidence was unreliable.
17. In the medical report, Dr Mason was of the view that three of the scars to the Appellant's stomach were diagnostic of exploratory surgery. However, he was not certain as to the reason for such surgery. Although the other scar on the Appellant's stomach was highly consistent with being struck by a hard ragged object such as an artillery shell, other accidental causes of such a wound were possible. The scars on the Appellant's legs were consistent with flying fragments from an exploding artillery shell, but could have resulted from wounds caused in everyday life. The Appellant claimed that these injuries were caused whilst he was a member of the LTTE. Looking at the evidence in the round, I find that the Judge's conclusions that the Appellant had failed to show that he was a member of the LTTE and his injuries were caused whilst fighting for the LTTE were findings open to him on the totality of the evidence.
18. The Appellant claimed that the injuries to his thighs and arms were caused when he was detained by the army. The skin staining on his thighs were typical of marks from a forceful beating with a hard thin object such as a whip or metal cord. This supported the Appellant's account given in his witness statement, but not in his substantive interview. The scars on the Appellant's arms were consistent with cigarette burns, but could have been caused by other accidental burns. The Appellant had given inconsistent evidence in relation to his arrest and ill-treatment in detention. The opinion in the medical report did not preclude the Judge's finding that the Appellant had failed to show that the injuries were caused in the manner he claimed.
19. The Judge did not accept that the Appellant was involved with the LTTE or that he had been detained and tortured as a result. The medical opinion was consistent with such a finding. The Appellant had changed

his account in his witness statement and embellished it further in oral evidence.

20. I am not persuaded by Ms Anzani's submission that the nine issues identified by the Judge were insufficient to support an adverse credibility finding. The majority of the arguments, both in the grounds and in submissions, amounted to disagreements with the Judge's findings. Ms Anzani's submission was not that these points could not be relied upon, but that cumulatively they did not lead to a negative credibility finding.
21. Having reviewed the evidence in the Appellant's interview, witness statement and his oral testimony, I find that the Judge's conclusion that the Appellant's account was inconsistent and lacking in detail was open to him on the evidence. There was no error of law in the Judge's findings that the Appellant's account was not credible and he had failed to show that he was a former LTTE cadre. The Appellant had failed to show that he had a previous record as a suspected or actual LTTE member and to establish, to the lower standard, that he was at risk of harm upon return to Sri Lanka.
22. The Judge made no error on any point of law which might require the determination to be set aside. The appeal to the Upper Tribunal is dismissed. The determination of the First-tier Tribunal dated 23rd May 2014 shall stand.
23. There was no application to vary or discharge the anonymity order made by the First-tier Tribunal and therefore that order remains in force.

Deputy Upper Tribunal Judge Frances
21st October 2014