



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

Appeal Number: AA 08144 2012

THE IMMIGRATION ACTS

Heard at Field House

On 30 May 2014

Determination

Promulgated

On 24 June 2014

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Before

UPPER TRIBUNAL JUDGE PERKINS

Between

P M

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paul Turner, counsel instructed by Greater London,
Solicitors

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

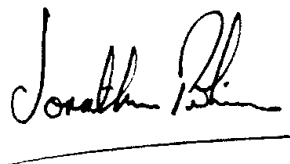
DETERMINATION AND REASONS

1. This is an appeal by a citizen of Sri Lanka against a decision of the First-tier Tribunal dismissing his appeal against a decision to remove him from the United Kingdom. It is his case that he is entitled to international protection because he is a refugee.
2. The case has taken a rather unusual procedural turn. The appeal was dismissed by the First-tier Tribunal in what is in many ways a careful determination. Permission to appeal was refused by a different First-tier Tribunal Judge and the renewed application to the Upper Tribunal was also refused, all judges involved thinking that the determination was legally sound.
3. However, the appellant felt so strongly about the matter that he took legal advice and began proceedings in the Administrative Court where his case came before an experienced Deputy High Court Judge who was persuaded there was something at least arguably wrong, and following his decision

the Upper Tribunal intervened and Upper Tribunal Judge Lane gave permission to appeal on the original grounds.

4. I note that there is a Rule 24 notice signed by Miss Powell, a Senior Home Office Presenting Officer, saying the appeal would be opposed but the letter with the Rule 24 notice giving that information made it plain that it was said without sight of the determination. Unconsidered letter like that are rarely helpful.
5. There is really a very narrow point and it is basically this. It is the appellant's case that his feet had been whipped by agents of the Sri Lankan state. In very simple terms, having been persecuted once he says that he is at risk of being persecuted again because he has not changed and he is sufficiently active to be amongst the category of people who are at risk.
6. The claim that he has been beaten in this way is supported by medical evidence which, in the absence of any proper challenge to it, is apparently very strong. The First-tier Tribunal Judge was aware of this and acknowledged it expressly in the determination but found that when set with the other evidence in the case it was not an acceptable explanation for the injuries caused.
7. The difficulty is that the evidence that he had been beaten in that way was very strong and not undermined in any way, and it was thought arguable by the Deputy High Court Judge that this skewed the whole determination.
8. Before me Mr Tarlow took what might be considered a realistic view and decided that he could not responsibly oppose the appeal. The error of the First-tier Tribunal is not giving a satisfactory explanation for discounting strand of evidence relating to the appellant being tortured. Although the judge has considered it with the rest of the evidence, which in some ways is the right approach, he has not given any reasons for disregarding the evidence for the conclusions of the medical practitioner and that is what has led to the difficulty.
9. It is not just a matter of balancing evidence but of analysing it and explaining the decisions reached. The result of this is that the determination as a whole is unsatisfactory and has to be decided again and it has to be done in the First-tier because it is necessary to have a rehearing. This is not something that can be repaired and so, with the consent of the parties, I find an error of law as indicated and allow the appeal with the result that the case will have to be decided again in the First-tier.

Signed
Jonathan Perkins
Judge of the Upper Tribunal



Dated 23 June 2014

