



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/08218/2013

THE IMMIGRATION ACTS

Heard at Field House
On 13th February 2014

Determination Sent
On 5th March 2014

Before

UPPER TRIBUNAL JUDGE REEDS

Between

MOHAMMED SAHLAN MOHAMED SALMAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Professor W Rees, Counsel instructed on behalf of Vasuki
Solicitors

For the Respondent: Mr Nigel Bramble, Senior Presenting Officer

DETERMINATION AND REASONS

1. The Appellant is a citizen of Sri Lanka born on 1st August 1990. He appeals with permission against the decision of the First-tier Tribunal (Judge Walters) who in a

determination promulgated on 10th October 2013 dismissed his appeal against the Respondent's decision to issue removal directions and to refuse his claim for asylum.

2. The history can be stated shortly. The Appellant is a Sri Lankan Muslim speaking both Tamil and Sinhalese. Whilst in Sri Lanka in or about 2006 he provided accommodation for various people at the family home, delivered parcels and obtained mobile phones and transport money for a third party. In or about January or February 2009 the Appellant ceased undertaking those duties. Contact was re-established with the third party in or about January 2010 and the Appellant accommodated people at his request in the family home.
3. In October 2010 he obtained a student visa travelling to the UK. However his leave was curtailed on 6th June 2011. The Appellant did not appeal that decision.
4. The Appellant returned to Sri Lanka on 16th January 2013. It is whilst in Sri Lanka the Appellant's claim is that in March 2013 he ran into an acquaintance who had worked at the third party's shop previously. That night the Appellant was arrested from his family home, taken to the police station, photographed and taken to an unknown destination by the army. During that time the Appellant states that he was tortured by being burned with a hot rod and cigarettes. On 20th June 2013 the Appellant was taken to a place outside prison and handed to an agent after his father had paid a bribe for his release.
5. The Appellant left Sri Lanka on 5th July 2013 arriving in the UK on the same day. He subsequently applied for asylum based on his imputed political opinion and fear of the Sri Lankan authorities.
6. The Respondent considered that claim and in a decision letter dated 21st August 2013 refused his claim.
7. The Appellant appealed that decision and the matter came before the First-tier Tribunal on 27th September 2013. The judge considered the Appellant's claim but dismissed it on asylum and human rights grounds having not found the Appellant to be a credible witness and rejecting his account of having being detained, interrogated and tortured.
8. The Appellant sought permission to appeal that decision and on 13th November 2013 First-tier Tribunal Judge Sommerville granted permission he stated:-

"It is arguable that the FTJ erred in law in his approach to the expert medical evidence. At paragraph 49 he concluded that the Appellant's account of his interrogation was not credible. He made this finding before he considered the medical reports, particularly that of Professor Lingam who had opined that the scars were diagnostic of the Appellant's account of his interrogation and torture. The other grounds have less merit but may be argued."
9. The appeal came before the Upper Tribunal. Whilst the grounds advanced on behalf of the Appellant take issue with the judge's assessment of the Appellant's credibility

and the application of the country guidance decision of GJ, the principal ground relied upon relates to the issue of the medical evidence and in particular the judge's treatment of the report of Professor Lingam (see paragraphs 7 and 10 of the grounds).

10. Mr Bramble conceded that the decision of the First-tier Tribunal did disclose an error of law for the reasons set out in the grounds and the grant of permission that dealt with the issue of the medical evidence. In the light of the concession made on the Secretary of State's behalf, there is no basis on which I could possibly do otherwise than accept that concession and find that the determination cannot stand as a consequence. It is therefore common ground between the parties that the judge made an error of law and that the Tribunal must substitute a fresh decision to allow or to dismiss the appeal. In those circumstances it is necessarily only briefly to explain why the Tribunal finds that to be the case.
11. At paragraph 49 the judge made a finding that he did not find the Appellant's account of the content of the interrogation to be credible and thus having rejected that went on to consider the medical evidence. The judge fell into error in the way set out in the Mibanga v the SSHD [2005] INLR 377 where the process of arriving at an adverse credibility finding is based on the Tribunal's view of the Appellant's evidence and then as a separate exercise considered whether that finding might be shifted by the medical evidence. As the case law stands, the evidence must be considered as a whole and reports relevant to credibility must be assessed during that process.
12. Mr Bramble conceded further that when looking at the key focus of paragraphs 53 to 57, taken in the context of the grounds at paragraphs 7 to 10 the judge fell into error, in that, if there appeared to be a discrepancy between the description of the object said to have caused burns to the Appellant, by either a rod or a cambi, that should have been resolved at the hearing. By not clarifying the issue, it had led to the judge to find a discrepancy which was central to his dismissal of the report. At paragraph 6 Professor Lingam considered the scarring which he described as "thick and linear scarring" and that the material used to cause such scarring was described as a "thick heated metal (rod)". Whilst Professor Lingam went on to say that the Appellant was not aware what it was, at paragraph 4 earlier in the report the Appellant had indeed identified the implement used as a "cambi" which, had it been clarified, and is common ground, describes a "rod" which is the implement referred to by Professor Lingam. Furthermore Professor Lingam dated the scarring having been inflicted in March/April 2013 consistent with the time line of when the interrogation and torture took place. Mr Bramble further noted that the judge's focus as to whether the Appellant could see the implement or not was not taken forward in the medical evidence and that there was an element of speculation in the findings made. Thus he conceded on behalf of the Secretary of State that there was an error of law in the assessment of the medical report and the credibility findings and that the determination could not stand.

13. As to the remaking of the decision, both parties before the Tribunal indicated that in their view, by reason of the nature of the error, none of the findings could be preserved and that a fresh oral hearing would be required.
14. Having accepted the concession made on behalf of the Respondent that the determination discloses an error of law the decision should therefore be set aside. As to the remaking of the decision both advocates have invited the Tribunal to determine the appeal with a fresh oral hearing by way of remittal to the First-tier Tribunal. It was not possible for the Tribunal to go on and remake the decision as Professor Rees had provided confirmation of a further medical examination to take place in respect of the Appellant's mental health on 27th February. As there is likely to be a delay for the report to be filed, I am satisfied that the appropriate course to follow is the one that both parties invited the court to adopt, namely to remit the appeal to the First-tier Tribunal. Whilst it is not the ordinary practice of the Tribunal to remit cases to the First-tier Tribunal, there are reasons why in this case such a course should be adopted, having given particular regard to the overriding objective of the efficient disposal of appeals and also that there are issue of facts that require determination which will be required to be assessed.
15. Therefore the decision of the First-tier Tribunal is set aside, none of the findings shall stand and the case is to be remitted to the First-tier Tribunal at Taylor House for a hearing on a date to be fixed in accordance with Section 12(2)(b) of the Tribunals, Courts and Enforcement Act and paragraph 7.2 of the practice statement of 10th February 2010 (as amended).
16. The following directions are made
 - (1) The Appellant's solicitors shall file and serve upon the Respondent any further medical evidence no later than seven days before the hearing.

Decision

The First-tier Tribunal made an error of law the decision is set aside. The appeal is to be remitted to the First-tier Tribunal at Taylor House on a date to be fixed.

Signed

Date 13/2/2014

Upper Tribunal Judge Reeds