



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09394/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 25 March 2014

Determination Promulgated

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Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

MOHIDEEN BAWA MOHAMED ABDULLAH

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr C J Ndubuisi, of Drummond Miller, Solicitors

For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

No anonymity order requested or made

DETERMINATION AND REASONS

- 1) The appellant is a Tamil Muslim citizen of Sri Lanka, born on 28 October 1965. He came to the UK on a visit visa in March 2007, and overstayed. He made an asylum claim on 23 May 2013. The respondent refused it for reasons explained in a letter dated 26 September 2013. Judge Clough dismissed the appellant's appeal to the First-tier Tribunal for reasons explained in her determination dated 20 December 2013.

- 2) The first and principal point raised in this appeal to the Upper Tribunal is that the judge fell into error of the nature encapsulated by Lord Justice Wilson in *Mbanga v SSHD* [2005] INLR 377 at paragraph 24:

What the fact finder does at his peril is to reach a conclusion by reference only to the applicant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.

- 3) The grounds secondly criticise the judge's finding at paragraph 32, where she limits the weight she gives to a Medical Foundation Report regarding the appellant's mental condition because the appellant's GP, who is to be assumed to be competent and aware of likely problems faced by asylum seekers, prescribed him only 20 MG of Citalopram daily, with no further interventions in respect of his mental state. "Even taking into account the limited consultation time with GPs ... I cannot reconcile the ... prescription of a first line anti-depressant given the description of the appellant's mental difficulties ... in the medical report and this is even allowing for the stress an outstanding appeal is likely to have on an appellant." The ground argues that the finding of PTSD resulted from a focused analysis by a doctor trained in detection of medical evidence of torture, whereas there is no evidence that the GP considered the relevant measurement, and that "logically the reliance upon this point is irrelevant."
- 4) The third point in the grounds is that although the judge accepted that the appellant's scars were not self-inflicted, she reached an inconsistent conclusion that they might have been caused in a traffic accident or deliberately.
- 5) The grounds finally make a rather confused point about the appellant potentially falling into risk categories outlined in country guidance case law.
- 6) Further to the grounds, Mr Ndubuisi submitted that the finding related to the GP's prescription was not open to her. He accepted that the judge did not err in her approach to physical findings in the Medical Foundation report, but said there was error in rejecting its finding on the psychological or psychiatric aspects. She fell into the "compartmentalisation" error identified in *Mbanga*. Her determination should be set aside and a fresh hearing ordered in the First-tier Tribunal.
- 7) Mr Mullen submitted that the *Mbanga* point was at best a complaint about the form not the substance of the determination. The judge did not compartmentalise, or approach matters in the wrong order. At paragraphs 22-26 she set out the relevant aspects of the Medical Foundation report in detail. She next found several good reasons for rejecting the credibility of the appellant's account, in particular at paragraphs 28 and 29. She found at paragraph 30 that the physical evidence was of trauma inflicted on the appellant. She noted that the author of the Medical Foundation report accepted the information given by the appellant about his treatment in Sri Lanka, which is of course unsurprising, but that was a matter the judge had to address for herself. The observation that the GP's prescription only of a minor anti-depressant, without further recommended intervention, was sensibly found to be rather inconsistent with the

Medical Foundation report. That was only one aspect of the overall consideration. The judge went on at paragraph 33 to give good reasons for rejecting the appellant's account of the 5 years he spent in the UK prior to making his claim and his explanation that he was unaware of and unable to claim asylum during that period. At paragraph 34, she gave further reasons for the conclusion that the evidence looked at a whole was not credible. The comment thereafter at paragraph 35 that the view of the author of the medical report did not outweigh those findings did not, in proper context, disclose an error of reaching a conclusion first by reference only to other evidence.

- 8) Mr Ndubuisi in response emphasised that there was no evidence before the judge to show that the GP had the same opportunity of making a full mental health assessment as did the author of the Medical Foundation report. The judge might have commented on what the GP ought to have done, but she was not entitled to conclude as she did. Proper assessment of the appellant's mental health condition and of the evidence regarding the availability of medical resources in Sri Lanka might have led a different outcome. Paragraph 35 disclosed the precise error identified in *Mbanga*.
- 9) I reserved my determination.
- 10) Read on its own, the judge's comment at paragraph 35 that the physical findings in the Medical Foundation report do not outweigh her other findings might be construed as an error of approach. However, to focus on that passage alone would be a partial and unfair reading of the determination. The judge did not reach that conclusion before looking all of the evidence relevant to it. She used the report as part of the context to be surveyed prior to coming to any conclusion. She made a fair summary of the report, and its findings on physical aspects are entirely accepted.
- 11) The observation that the GP's prescription does not fit well with the report is one which the judge was entitled to make.
- 12) The determination contains several good reasons for rejecting the appellant's evidence as incredible before that conclusion is stated at paragraph 34. The particular stage in a determination at which a conclusion is stated is not material.
- 13) It is perfectly consistent to accept that scars are not self-inflicted, and to find that they may have an accidental or deliberate cause. By deliberate cause the judge plainly did not mean self-infliction, but deliberate cause at someone else's hands and in circumstances other than those described.

- 14) The fourth point in the grounds remains obscure, but nothing can turn on it, standing the entirely negative findings on credibility.
- 15) The determination of the First-tier Tribunal shall stand.

A handwritten signature in black ink, appearing to read "Hugh Maclemon". The signature is written in a cursive style with a large, stylized initial 'H'.

31 March 2014
Judge of the Upper Tribunal