



IAC-FH-NL-V1

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

Appeal Number: AA/00532/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 28 July 2015**

**Decision & Reasons Promulgated
On 23 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

**MR CHINNADURAI AYYADURAI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Pascoe (Counsel instructed by Vasuki Solicitors)
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This matter comes before me as an error of law hearing. The appellant has appealed a decision of the First-tier Tribunal (Judge Prior) (FtT) who dismissed his asylum claim in a Decision and Reasons promulgated on 13 May 2015. The appellant is a citizen of India and fears attack from the family of a woman with whom he had a relationship in India. He is from a lower caste and fears that he would not receive sufficient protection. Further he assisted the LTTE from 2004 to 2006. In June 2010 he claims to have been arrested and tortured by the authorities. Since arriving in the

UK he has suffered mental health difficulties and on 2 August 2014 took an overdose.

FtT determination

2. The FtT set out in detail the appellant's case and the reasons for refusal [1-17].
3. From [18] the FtT found the appellant's account to be lacking in credibility, taking the view that the appellant was "quite capable of seeking to bolster his case to remain in the UK by falsely exaggerating the degree of his depression and suicidal thoughts." The FtT found that the discharge sheet from the hospital was "the only objectively verified evidence before me of suicidal ideation on the part of the appellant." The FtT placed little weight on the expert report of Dr Dhumad which it found contained little indication of any attempted objective verification of the appellant's account and was further undermined by careless references to the appellant as being female gender and to the appellant as being from Sri Lanka.
4. At [19] the FtT found the appellant's evidence to be incoherent and implausible and thus lacking in credibility. It referred to unsatisfactory features of the appellant's case such as the implausibility of his evidence as to "the uncanny and unbelievable ability of the girlfriend's family to track down the appellant and the appellant's family in three different sets of circumstances."
5. At [32] the FtT discounted the expert evidence as to scarring "since it did not reach the conclusion that the scars were diagnostic in nature, that is to say were such as to preclude any other possible cause of the scars other than the cause claimed by the appellant in his evidence."
6. The FtT dismissed the appeal on all grounds, asylum, humanitarian protection and human rights grounds.

Grounds of the application

7. The appellant contended that the FtT failed to engage with all of the evidence as to the appellant's mental health and suicidal ideation. It was contended that the appellant had adduced at least six additional sources which were capable of objectively verifying the appellant's account. (See grounds of application, paragraph 4(i)-(vi)).
8. The FtT incorrectly concluded that Dr Dhumad's report did not contain objective verification of the appellant's suicidal ideation. Dr Dhumad particularised the sources he had sight of which included a letter from Harrow Assessment and Treatment Team and IAPT Service. It was submitted that the FtT failed to properly consider the scarring report of Professor Lingam whose clinical findings were discounted by the FtT on the basis that the findings did not meet the Istanbul Protocol diagnostically. Professor Lingam found the findings highly consistent, the cigarette burns

were found to be diagnostic on clinical grounds and “typical” pursuant to the Istanbul Protocol.

9. The FtT incorrectly attached no weight to the clinical findings of Dr Dhumad given that there was additional evidence from the NHS and Professor Lingam.
10. Further the FtT, whilst finding the evidence as to contact between the appellant and his girlfriend to be implausible, gave no reasons in support of this finding.
11. The grounds of appeal refer to the FtT’s findings of fact that were considered to be “remarkable” but no reason was given in support [22, 23, 24, 25 and 27].

Permission to appeal

12. Permission was granted by First-tier Tribunal Judge R A Cox who found all of the grounds arguable in terms in which they are set forth.

Rule 24 response

13. In a letter dated 18 July 2015 the Secretary of State contended that the appellant’s grounds were a mere disagreement, the Tribunal gave adequate reasons for finding that the appellant’s account was not credible and the grounds amount to wanting further and better particulars from the judge for his dismissal of the case. The Tribunal took into account the appellant’s suicide attempt in August 2014 and found that this was a cynical attempt to bolster an otherwise weak claim for protection.

Error of law hearing

Submissions

14. I heard submissions from Mr Tarlow who relied on the Rule 24 response. He acknowledged that there was certainly more than one report relied on by the appellant as medical evidence. However the findings made by the Tribunal were open to it having regard to that evidence, in particular that of Dr Dhumad. Mr Tarlow submitted that the determination should be taken as a whole and was a detailed, carefully written and adequate determination. The findings as to scarring were open to the Tribunal to make. Mr Tarlow submitted that any challenges to the determination were not material given the conclusion as to internal relocation being a practical possibility.
15. Ms Pascoe relied on the grounds of appeal and expanded on the same. The FtT had dismissed the expert witness without investigating other evidence that was before the Tribunal which amounted to objective sources. The medical evidence was at the core of the appellant’s credibility claim. Typos in Professor Lingam’s report were not material to his clinical findings which were soundly made. Professor Lingam made a

diagnostic conclusion which the Tribunal dismissed and further Professor Lingam considered alternative causes to the scarring. Ms Pasco acknowledged that had there been no criticism of the First-tier Tribunal's consideration of all the evidence, in particular the medical evidence, then an alternative finding as to internal relocation being a possibility could have been made. However the criticisms of the Tribunal effectively infected all of the determination.

Discussion and decision

16. At the end of the hearing I announced my decision that I found a material error of law in the determination which shall be set aside. My reasons are as follows.
17. I heard submissions made by Ms Pascoe with reference to the detailed grounds settled by Counsel. The main concern is the FtT's failure to consider and take into account all of the medical evidence that amounted to "objectively verifiable evidence" of the appellant's mental health and suicidal ideations. There was considerable evidence before the FtT which was discounted. This includes correspondence from the Harrow IAPT, Northwick Park, dated 10 October 2014, 10 September 2014, 15 September 2014 and 25 September 2014 together with the GP medical records/history confirming that the appellant had been seen at Northwick Park A & E and had previously been seen at the same hospital in an urgent care centre on 3 March 2014.
18. In respect of Dr Dhumad's report which I have read, I am satisfied that the report clearly particularises the letters and records that Dr Dhumad had sight of in concluding that the appellant was suffering from a moderate depressive episode and an adjustment disorder. The FtT has dismissed the report of Dr Dhumad for relying "very heavily" on the appellant's account but yet has failed to consider the conclusions made in that report having regard to the additional documentation from the NHS and the report from the expert, Professor Lingam. It is certainly arguable that the FtT erred by discounting the report for its failure to meet the Istanbul Protocol diagnostic criteria. The report considers the cigarette burn scars to be typical and highly consistent with the history given and further considers alternative courses.
19. As to the remaining grounds I am satisfied that the FtT, whilst expressing its views that the appellant's account was in terms remarkable, amazing and implausible, the FtT fails to qualify these findings with any or any adequate reasoning in support.
20. Accordingly I conclude that the failure by the FtT to consider all of the medical evidence available led to the making of credibility findings that did not reflect the totality of the medical evidence before the Tribunal. Further findings as to other aspects of the appellant's claim with regard to his girlfriend's family were inadequately reasoned. Whilst there was some validity in the argument put by Mr Tarlow as to materiality in terms of

internal relocation, I am nevertheless persuaded that the failure to consider the medical evidence is material to the findings and conclusion as regards internal relocation.

Notice of Decision

21. There are material errors of law in the determination. The determination is set aside. Given the issues raised the findings of fact made by the FtT cannot be preserved and the matter must be heard de novo. **The matter is remitted to Hatton Cross (excluding Judge Prior) for rehearing on 29th October 2015, Listed for 2 hours and with a Tamil interpreter.**

22. No anonymity direction is made.

Signed

Date 22/9/2015

GA Black
Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

No fee is paid or payable and therefore there can be no fee award.

Signed

Date 22.9.2015

GA Black
Deputy Upper Tribunal Judge G A Black