



IAC-FH-NL-V1

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

Appeal Number: AA/11834/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 16 July 2015**

**Decision & Reasons Promulgated
On 21 July 2015**

Before

UPPER TRIBUNAL JUDGE TRIBUNAL BLUM

Between

**MR H K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Mills, Counsel instructed by Kanaga Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a Sri Lankan national, date of birth 1 May 1990. He appeals against the decision of Judge of the First-tier Tribunal Malins promulgated on 12 May 2015 dismissing his asylum appeal. The basis of the asylum claim is as follows.
2. The appellant is a Tamil. He claims that he joined the LTTE aged 16 in May 2006. He claims he received basic training and was then informed by the LTTE to return home and that they would get in contact with him if needed. He maintains that between 2006 and 2007 he was required by

the LTTE to deliver up to ten parcels. He does not know the content of those parcels.

3. Following the conclusion of the conflict in Sri Lanka in May 2009 the appellant claims that he helped, via an NGO, individuals, including two LTTE members, to escape detention camps. In September 2009 the appellant applied for a student visa to the UK. This was rejected. On 2 May 2010 the appellant maintains he was arrested. He claims that he was questioned concerning his involvement in the LTTE and his assistance in facilitating the escape of the LTTE members. He claims he was mistreated. He maintains that his father arranged payment of a bribe for his release on 26 May 2010 and he was given weekly reporting conditions.
4. On 15 July 2010 an application was made by him for a student visa to study in the UK. This was granted. The appellant left Sri Lanka in October 2010 and entered the UK. He was subsequently granted further periods of leave until January 2015. However, the college at which he was studying had its licence revoked and his leave was curtailed. He made an application for further leave to remain but this was refused on 3 September 2014. On 11 October 2014 he was encountered working illegally and he claimed asylum on 13 October 2014.
5. The respondent refused the asylum claim finding the appellant entirely incredible. The appellant appealed and the First-tier Judge also found the appellant's claim seriously lacking in credibility. The judge rejected the appellant's credibility on a number of bases and this included the timing of the appellant's departure from Sri Lanka, the circumstances surrounding the infliction of injuries present on his body, his claimed relationship with the LTTE, his proven dishonesty in dealing with the British High Commission and the immigration services in the United Kingdom and the delay in his asylum claim. The judge concluded that the appellant would not be at risk on return to Sri Lanka.
6. The grounds of appeal against that decision contend that the judge failed to follow **GJ** and ignored objective evidence. The grounds take issue with the judge's credibility findings in relation to, in particular, the medical evidence, and the grounds maintain that the judge failed to apply anxious scrutiny.
7. There were two medical reports before the judge. One was from a Dr Saleh Dhumad who qualified as a doctor in Iraq before obtaining psychiatric qualifications in London. Dr Dhumad is now a Consultant Psychiatrist in the Central and Northwest London Foundation NHS Trust. The second medical report, a scarring report, was written by Mr Andres Izquierdo-Martin, Consultant in Emergency Medicine. His report is dated 15 March 2015. Dr Dhumad's report is dated February 2015 although strangely it does make reference to Mr Martin's report.
8. At paragraph 10 of her determination the judge considered various aspects of the appellant's claim and found him incredible. Between 10.1

and 10.7 of the decision the judge considered, *inter alia*, the timing of the appellant's departure from Sri Lanka, his injuries, his relationship with the LTTE and his dishonesty in dealings with the UK authorities and the judge gave a number of relatively detailed reasons for those findings. Of particular relevance for the purposes of the error of law hearing is 10.7. Having considered a range of matters relating to the appellant's credibility the judge stated:

"It must accordingly follow, not just on the appellant's total want of credibility, but also from some of the specific findings I have made, that I am not able to accept the appellant's claim to have been either a member of the LTTE who worked for them or that he was tortured as described by the Sri Lankan authorities. With a certain degree of perplexity but in a spirit of enquiry, I shall make my findings upon the detail of the medical evidence below."

9. In my view this is a classic error of law on the basis of a failure to holistically consider the medical evidence in relation to other findings. It is irresistibly clear at 10.7 that the judge had already rejected the appellant's account before then considering the two medical reports. This was in effect putting the cart before the horse. The Judge reached conclusions on credibility prior to and without reference to the expert reports, an approach which is unlawful (**Mbanga v Secretary of State for the Home Department [2005] EWCA Civ 367**). I am reinforced in my conclusion by reference to paragraph 10.8 of the determination where, after considering the psychiatrist's report, the judge states:

"I find that even on the lower standard of proof I am unable to rely upon this report because in my judgment the appellant heavily embellished the original accounts of events given (see my findings on credibility above)."

10. I am further reinforced by reference to 10.10(a) of the judge's determination where the judge says in respect of the scarring report:

"Doctors consider the presentation before them in the round: this physician did not of course consider the patient in the context of the adverse credibility finding I have made with the resulting exaggeration from the appellant."

This in my view suggests that the judge had already made those adverse credibility findings.

11. In his Rule 24 response Mr Melvin has argued that the judge did adopt the proper procedure at the hearing and stated that paragraph 9 of the determination reveals that the written evidence/medical reports were taken into account prior to the findings being made, the medical evidence being assessed alongside the oral/written evidence of the claim. I do not accept this. The judge in my view at paragraph 9 was doing no more than identifying the evidence before her including the medical evidence. The paragraph says nothing about the approach adopted by the judge in her assessment of the evidence. Mr Melvin has also reminded me that the Upper Tribunal should not normally set aside decisions where no misdirection of law is made and the fact-findings process cannot be

criticised. For the reasons already given I am however satisfied that the Judge materially misdirected herself in law by failing to adopt the correct approach to consideration of the medical evidence.

12. In these circumstances the appeal is remitted back to the First-tier Tribunal to be considered '*de novo*' by a Judge other than Judge Malins

Notice of Decision

The appeal is allowed; the matter is remitted to the First-tier Tribunal to be considered afresh, all issues open and no factual findings retained.

Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

21 July 2015
Date

Judge Blum
Upper Tribunal Judge