



UPPER TRIBUNAL

(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: AA/01394/2015

THE IMMIGRATION ACTS

**Heard at: Field House
On 16 February 2016**

**Decision and Reasons Promulgated
On 14 March 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE MAILER

Between

[S K]

NO ANONYMITY DIRECTION MADE

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Ms A Walker, counsel (instructed by Jein Solicitors)

For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka, born on [] 1989. He appeals with permission against the decision of First-tier Tribunal Judge Freer promulgated on 23 November 2015 dismissing his appeal on asylum and human rights grounds.
2. The Judge stated at [50] that the expert who prepared a medical report noted that the markings on colour photographs produced showed signs of being voluntary. In other words, it is very possible that they are self inflicted in order to boost the case. The Judge accordingly found that the appellant had failed to meet the burden of proof in respect of the scarring which in turn “sets everything else in real doubt that which is inconsistent or uncorroborated.”
3. Ms Walker, who represented the appellant before the First-tier Tribunal, contended that the Judge failed to properly identify the test established by the decision in KV (Scarring) [2014] UKUT 00230 (IAC). He failed to identify some presenting feature within the evidence before he was required to consider SIBP as an alternative cause.
4. She submitted that the Judge erroneously took the view at [60] in suggesting that the medical expert found that the scars showed signs of being “voluntary”. In fact, Dr Longman did not expressly say this at any point, in either her main or addendum report, and it is unclear which part of the expert's opinion the Judge drew his conclusions from.
5. She submitted that the expert is clearly of the view that the burn scarring is likely to be non-accidental. Dr Longman expressly considered and ruled out alternative accidental causation and concludes at paragraph 6.2.6 of her report that the injuries claimed to have been caused by cigarette burns are “diagnostic.” Moreover, the injuries described at 6.2.2 (horizontal scars) are “typical” of being beaten with heated metal. She did not suggest that the scarring is likely to be “voluntary.” On the contrary she concluded at 6.2.12 that the overall pattern of lesions is, in her view, “highly consistent with the history [the appellant] has given of these injuries being caused against his will through torture.”

6. Moreover the Judge's statement that the markings are not of random appearance and appear tidy as if inflicted with a careful plan of deliberation constitutes a subjective observation by the Judge himself without any engagement with the observations made by the medical expert, who observed that the scars are indeed not uniform, expressly identifying the fact that they are "an irregular thickness" and have "tapered ends" which suggests could be a sign of the appellant attempting to avoid the painful stimulus and thus curling or rolling away from the rod.
7. Having initially opposed the appeal, Mr Bramble informed the Tribunal that he accepted that the findings at [60] were indeed flawed. Nor had the Judge considered the expert reports from D Longman in conjunction with the psychiatric evidence produced. He did not give that evidence any corroborative weight.
8. He accepted that the findings at [60] "did not stop there." The Judge went on to say that the finding set everything else in real doubt. Accordingly, that incorrect finding clearly "infected" the other findings. This included the finding that the appellant would not be at risk on return.
9. In the circumstances the parties agreed that the decision should be set aside and would have to be re-made. Both accepted that the appropriate venue was the First-tier Tribunal, Taylor House. Taking into account the practice statement and the extensive findings of fact required, I agree that this is an appropriate case to remit the appeal to the First-tier Tribunal to be made by a Judge other than First-tier Tribunal Judge Freer.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law and the decision is set aside. It shall be re-made in the First-tier Tribunal, at Taylor House, before a Judge other than First-tier Tribunal Judge Freer. There is a time estimate of about two and a half hours.

No anonymity direction is made.

Signed

Date 7 March 2016

Deputy Upper Tribunal Judge Mailer