



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

Appeal Number: AA/01432/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 26 January 2016**

**Decision & Reasons Promulgated
On 10 February 2016**

Before

UPPER TRIBUNAL JUDGE STOREY

Between

N P

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy of Counsel instructed by Sriharans Solicitors

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

DECISION AND REASONS

1. The appellant, a national of Sri Lanka who is now 28 years of age, brings this appeal against a decision by First-tier Tribunal (FtT) Judge Ford sent on 15 October 2015 dismissing his appeal on asylum and human rights grounds. The judge did not find credible his account of having suffered ill treatment at the hands of the Sri Lankan security forces during a visit back to Sri Lanka in 2012 whilst pursuing studies in the UK. The judge did accept, however, that he may have been kidnapped by the Kuruna group when he had lived in Sri Lanka earlier, when aged 17.

2. The grounds of appeal were short even if not succinct. It was submitted that the FtT had erred in law by: failing to engage with the fact that the CG case of GJ (post-civil war: returnees) Sri Lanka CG (Rev 1) [2013] UKUT 319 (IAC) (5 July 2013) demonstrates that there is insufficient psychiatric treatment for the appellant in Sri Lanka; by failing to find that the appellant had sustained his poor mental health as a result of being ill-treated in Sri Lanka; by failing to consider the medical report of Dr Lingam as clinically corroborative of the appellant's scars having been caused in the manner claimed; and finally in misapplying the burden of proof by requiring documentary evidence as to the existence of the Grama Niladhari before accepting the probative value of the extracts from the diary and the day book of the Grama Niladhari.

3. I am grateful to the submissions made by both representatives.

4. I am not persuaded that the grounds disclose a material error of law.

5. First of all, it is clear that in GJ the Tribunal's findings at [441]-[456], did not amount to a finding that mental health facilities in Sri Lanka were unavailable to returnees generally and that its specific finding as to risk on return in the case of GJ were based in part on "the severity of this appellant's mental illness" ([456]). Its findings in these paragraphs did not form part of the country guidance in any event. For this ground to have any purchase in the appellant's case would require it to be shown that there was an error of law in the judge's assessment that the appellant's mental health difficulties were not severe. At [34] the judge found that the appellant was not at risk of suicide and that at most he suffered from anxiety and depression ([83]) and there has been no viable challenge to those findings.

6. I turn to consider the challenge to the judge's assessment of the medical evidence insofar as it went to the issue of whether the appellant had suffered ill treatment as claimed. I am not persuaded that the judge failed to give proper consideration or weight to the "clinical corroborative value" of the medical evidence from Dr Lingam. The judge devoted considerable passages in his determination to the medical evidence including the report from Dr Lingam dated 21 April 2015 and a subsequent note. The appellant had claimed to Dr Lingam that in July 2012 he had been beaten and dragged into a jeep by the neck and slapped, beaten and kicked by Sri Lankan security forces and he considered that he was burnt. His neck has already been injured from a fall and possible whiplash injury in the UK in April/May 2012. The judge identified a number of difficulties with Dr Lingam's evidence. First, Dr Lingam inappropriately mixed reference to the appellant's injuries being "consistent" with reference to their being "highly consistent" with the appellant's account. Second the doctor appeared to have accepted without question that the appellant had been diagnosed with PTSD, even though there was no reliable diagnosis to that effect and there was no evidence he ever saw a PTSD report. Third although Dr Lingam said the appellant had three scars typical of scars from burn injury, the diagram did not show any scarring to one of the three areas specified by Dr Lingam (the right scapular area) and the appellant had never claimed to have such a scar in that area. Although Dr Lingam had subsequently said the reference to a scar on the right scapular area was an

error and that the appellant did not have such a scar, the judge considered that this original error was of considerable concern. He observed that Dr Lingam's measurements of Scar 2 were also not consistent with the photograph in the file. He noted that the appellant in his SEF interview when asked about what injuries he had suffered in detention in Sri Lanka made no mention of any burn injuries, even though he had been to a private doctor in Sri Lanka before returning to the UK. He noted that the appellant had not produced a report identifying any burn injuries from either the private doctors in Sri Lanka or the Accident and Emergency doctor he had seen whilst in detention after return from Sri Lanka. Fourth, Dr Lingam had said the injuries he had observed were "old" but did not state how old and as a result, in the judge's view, "... if that is the case then his injuries may date back to the time when the Appellant was in an accident and suffered whiplash or even earlier when the appellant was kidnapped by the Kuruna group".

7. I consider that these reasons given by the judge for finding the report of Dr Lingam unsatisfactory were sound and entirely within the range of reasonable responses. The report showed a lack of regard for the rigours of the Istanbul Protocol hierarchy of causation, a failure to consider the relevance of the fact that the appellant himself in his SEF had made no mention of burn injuries or of his private doctors in Sri Lanka or UK Accident and Emergency observing any burn injuries, an inaccurate treatment of the evidence of scars and a failure to consider causation in the light of the state of medical knowledge regarding the dating of scarring: see KV (scarring - medical evidence) [2014] UKUT 230 (IAC) (23 May 2014 whose head note included the proposition that:

"Whilst the medical literature continues to consider that scarring cannot be dated beyond 6 months from when it was inflicted, there is some medical basis for considering in relation to certain types of cases that its age can be determined up to 2 years."

8. In the appellant's case, even on his own account his scars had been inflicted over two and half years before he was examined by Dr Lingam.

In relation to the contention that the judge erred in his assessment of the copy extracts from the diary and daybook of the Grama Niladhari to whom the appellant's father was said to have complained about the appellant's detention (and also later a search of his own house in February 2015 by an unknown armed group), it is clear that the judge considered this evidence in the context of the evidence as a whole and that notwithstanding "authentication" dated 7 August 2015 from a Sri Lankan Attorney a Law, he identified specific difficulties with it, including the fact that the complaint came from an entirely different division, namely Kalmunai and the implausibility that such a record would record that the father had paid a bribe. There was no reversal of the burden of proof or an undue reliance on fuller corroboration.

9. For the above reasons I conclude that the judge did not materially err in law and accordingly his decision to dismiss the appellant's appeal must stand.

Signed

Date

Judge of the Upper Tribunal