



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/05224/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 11 July 2016**

**Decision &  
Promulgated**

**On 20 July 2016**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**GUNALASINGAM MUKUNTHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr P Lewis, Counsel, instructed by Theva Solicitors

For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Broe who, in a decision promulgated on 17 July 2015, dismissed the Appellant's appeal against the Respondent's decision of 09 March 2015 to refuse his asylum application and to remove him from the UK.

**Background**

2. The Appellant is a national of Sri Lanka, date of birth 25 June 1987. He arrived in the United Kingdom on 25 January 2010 pursuant to a student entry clearance. He was granted a further period of leave to

remain valid until 28 November 2014. He went back to Sri Lanka on 14 July 2013 and returned to the UK on 4 August 2013. He made an asylum claim on 31 August 2013.

3. The appellant, who is of Tamil ethnicity, claimed to have volunteered for the LTTE in October 2002 and officially joined in January 2006. He claims that he was recruited into an intelligence unit. He received brief training. As a result of attacks by the LTTE on an army base the appellant moved to Colombo. He moved to Colombo in January 2007. Whilst in Colombo he was involved in financing and organising accommodation for LTTE members. At the same time he continued his studies. Following the defeat of the LTTE, the appellant feared that he would be identified as a result of his involvement and came to the UK to continue his studies.
4. The appellant maintains that his mother became seriously ill and, as a result, he returned to Sri Lanka on 14 July 2013. His passport was allegedly seized at the airport and he was told that he would be subject to further investigations within 14 days. Instead of attending a CID office the following day, as requested, he went to Jaffna to see his mother. Following the visit to his parents he was taken by the military and CID at a checkpoint on his way back to Colombo. He maintains that he was tortured by the authorities this included being burnt and beaten with metal bars sticks and cables on his back arms and legs. His uncle secured his release by paying a large bribe. The appellant stayed with his uncle in Colombo after his release. The appellant's uncle arranged for his travel out of the country and for the recovery of his passport. Because he was accompanied by the agent the appellant did not encounter any difficulties at the airport.
5. The respondent did not find the appellant's claim to be credible. The respondent refused to grant the appellant asylum and decided to remove him from the United Kingdom. The appellant gave evidence at his appeal hearing. The appellant produced two bundles of documents in support of his appeal. The first bundle contained a medical report from Dr Andres Izquierdo-Martin. Dr Martin had considered a number of scars on the appellant's body. In his summary the medical expert stated that most of the scars on the appellant's body were typical of intentionally caused injuries and were likely to have been caused by a third party.

### **The decision of the First-tier Tribunal**

6. The first-tier Tribunal judge did not find the appellant a credible witness. From paragraphs 25 to 29 of the decision the judge gave a number of reasons why he did not find the appellant credible. These include, inter-alia, the appellant's failure to make claim asylum in the UK, the implausibility of the appellant returning to Sri Lanka in 2013 in circumstances where he held a fear of the security forces, the absence of any reference in a document given to the appellant when he first arrived at the airport in Sri Lanka telling him to report to the

CID officers the following day, the unlikelihood of the appellant's previous activities being in possession of the army at the checkpoint rather than on his arrival at the airport, the absence of any explanation as to how he regained possession of his passport, and implausibility is relating to the dates contained in E ticket receipts for the appellant's departure from Sri Lanka.

7. At paragraph 30 the judge said this:

for these reasons, and taking into account the low standard of proof applicable, I do not accept his account of the events on his return to Sri Lanka in 2013.

8. Having rejected the appellant's version of events following his return to Sri Lanka the judge, at paragraph 33, then considered the medical report from Dr Martin. In assessing the medical report the judge was guided by the findings in *KV (scarring - medical evidence) Sri Lanka* [2014] UKUT 230 (IAC). At paragraph 34 the judge stated:

I note that Mr Martin found that it was likely that the appellant's injuries were caused by a third party. He found that self-infliction by proxy could not be discarded as a possible cause there was no presenting fact making it more than a remote possibility. In the light of my conclusions above I cannot be satisfied that the appellant's injuries were caused in the way he claims.

9. Having made these credibility findings, and on the basis of the facts as he found them to be, the judge applied the guidance issued in *MP (Sri Lanka)* [2014] EWCA Civ 829. The judge concluded that the appellant did not come within any of the risk categories. The appeal was consequently dismissed.

### **The Grounds of Appeal**

10. The grounds of appeal focused on a discrete point. It was contended on behalf of the appellant that the judge failed to consider the medical report when assessing the appellant's credibility. The judge considered various matters that caused him to doubt the reliability of the appellant's evidence in paragraphs 25 to 29. It was not however until paragraph 33, after having found the appellant's account of his return to Sri Lanka incredible, that the judge considered the scarring report. It was submitted that the judge reached his conclusion that the appellant's evidence was not credible without first of all considering whether the medical evidence provided support for the appellant's account, to be weighed against the matters identified in paragraphs 25 to 29 as counting against him. It was submitted that such an approach was contrary to the case *Mibanga v Secretary of State for the Home Department* [2015] EWCA Civ 367, *KV* and *MT (Credibility assessment flawed Virjon B applied) Syria* [2004] UKIAT 00307.

### **Submissions at the Upper Tribunal hearing**

11. At the hearing Mr Lewis relied on the grounds of appeal and reiterated that the judge had effectively put the cart before the horse. The failure to include the medical report as an integral part of the judge's credibility findings amounted to a material error of law. Ms Isherwood, on behalf of the respondent, fairly accepted that she was in some difficulty. She invited me to consider the determination, particularly at paragraphs 19 and 21 and 22, which did make reference to medical evidence before the tribunal. She also invited me to consider paragraph 34 where the judge specifically assessed the expert report. Having pointed out to Miss Isherwood that the judge's conclusions in paragraph 34 were premised upon his earlier adverse credibility findings Miss Isherwood once again accepted that she was in a difficult position in defending the decision.
12. I indicated at the hearing that I was satisfied the decision was vitiated by a material error of law. The judge had reached his conclusions in respect of the appellant's credibility without taking into account the medical evidence.

## Discussion

13. In paragraphs 25 to 29 the judge gave a number of reasons for rejecting the appellant's account of what happened to him following his return to Sri Lanka in 2013. In so doing it is apparent that the judge did not take into account the expert scarring report that was before him.
14. At paragraph 24 of *Mibanga* the Court of Appeal stated,

It seems to me axiomatic that a fact finder must not reach his or her conclusion before surveying all the evidence relevant thereto ... What [expert reports] can offer is a factual context in which it may be necessary for the factfinder to survey the allegations placed before him; and such context may prove a crucial aid to the decision whether or not to accept the truth of them. What a factfinder does at his peril is to reach a conclusion by reference only to the appellant's evidence and then, if it be negative, to ask whether the conclusion should be shifted by the expert evidence.
15. The scarring report was clearly a relevant factor to the appellant's credibility. The first-tier Tribunal judge should have dealt with it as an integral part of his findings on credibility rather than just as an add-on, which does not undermine the conclusions to which he would otherwise come. Given the need for anxious scrutiny in determining an asylum claim it cannot be said that the judge would inevitably have reached an adverse credibility conclusion had the medical report been an integral part of his assessment.
16. In circumstances where the judge has failed to adopt a holistic, integral approach to the totality of the evidence, a fresh hearing will

be required. Any new judge must ensure that the medical evidence is considered in a holistic manner.

**Notice of Decision**

**The First-tier Tribunal decision contains a material error of law. The matter is remitted back to the First-tier Tribunal, all issues at large.**

Signed

A handwritten signature in black ink, appearing to read 'D. Blum', written in a cursive style.

Upper Tribunal Judge Blum

Date: 19 July 2016