



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

Appeal Number: AA/07947/2014

THE IMMIGRATION ACTS

**Heard at Bennett House, Stoke-on-Trent
On 5th May 2016**

**Decision & Reasons Promulgated
On 17th May 2016**

**Before
UPPER TRIBUNAL JUDGE SMITH**

**Between
MR R K K
(ANONYMITY DIRECTION MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Syed-Ali, Counsel instructed by Vasuki solicitors
For the Respondent: Mr McVeety, Senior Home Office Presenting Officer

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

No anonymity order was made by the First-tier Tribunal. However, as this is a protection based claim, I consider it appropriate that an anonymity direction is made.

DECISION AND REASONS

Background

1. The Appellant appeals against a decision of First-Tier Tribunal Judge Gladstone promulgated on 16 January 2015 ("the Decision") dismissing

the Appellant's appeal against the Secretary of State's decision dated 22 September 2014 to remove the Appellant to Sri Lanka and rejecting his protection claim.

2. The basis of the Appellant's protection claim is set out in the Decision at [13] to [25] and his evidence (written and oral) is at [40] to [65]. The Appellant submitted a medical report prepared by Dr Moulson. That was not considered by the Respondent as it post-dated her decision. The Judge sets out the main elements of the report at [73] to [102] in the context of her findings about the Appellant's credibility. The Judge did not believe the Appellant's claim ([106]). The Judge also concluded that even if the Appellant's account were true, he would not be at risk on return to Sri Lanka ([107] to [108]).
3. The Appellant's criticism of the Decision as set out in written grounds and expanded upon by Mr Syed-Ali can be summarised as follows:-
 - The Judge, when assessing the Appellant's credibility, took into account trivial inconsistencies in the Appellant's account;
 - The Judge questioned Dr Moulson's expertise and findings and reached conclusions different to those of the expert concerning the Appellant's comprehension and memory;
 - The Judge's reasoning concerning the Appellant's escape from detention was unreasoned;
 - The Judge ignored submissions made on behalf of the Appellant that he would be at risk on return due to the paranoia of the Sri Lankan authorities concerning the LTTE and Tamils more generally; it is plausible that the Appellant would be on a stop list at the airport.
4. Permission to appeal was granted by First-tier Tribunal Judge Macdonald on the basis that the Judge may have minimised the importance of the medical evidence and the reasons given by her for not accepting that evidence are "lightweight".
5. This matter comes before me to decide whether the Decision contains an error of law and if so to re-make the Decision or remit the appeal to the First-Tier Tribunal for re-hearing.

Discussion

6. At the start of the hearing, Mr Syed-Ali sought to introduce a letter from Dr Juliet Cohen of the Medical Foundation which was said to address some of the Judge's criticisms about Dr Moulson's report. Mr Syed-Ali accepted however that if there were no application to adduce this further evidence (which there was not) he could not rely upon it. Mr McVeety had no prior notice of this evidence. I refused to admit this further evidence. An application could be made to adduce this evidence in the event that I found a material error of law. If I did not, it

would be open to the Appellant to make further submissions to the Respondent if the evidence remains relevant following my decision.

7. The focus of Mr Syed-Ali's submissions was the Judge's treatment of the medical evidence. He pointed me to [70] where the Judge accepted that the Appellant had been consistent about the core of his claim. However, as is clear from that paragraph and the Respondent's refusal letter, the Appellant has not been consistent in the details of his account.
8. It is notable that Dr Moulson himself recorded inconsistencies between the Appellant's accounts ([73] of the report). Dr Moulson provides possible explanations for why those inconsistencies might exist at [74] and why in his opinion the Appellant's account might still be true [75]. At [76] of the report, Dr Moulson suggests that several factors ought to be taken into account when considering the apparent discrepancies. Those factors are repeated by the Judge in summary form at [78] of the Decision. It cannot be said therefore that when assessing the credibility of the Appellant's account, the Judge was not aware that there might be alternative explanations for the inconsistencies and that she should consider the Appellant's evidence against that background. However, as she then records, it is for her to assess credibility [80]. In so doing, she rejects some of the explanations put forward by Dr Moulson but provides reasons for doing so.
9. Mr Syed-Ali then referred me to Dr Moulson's analysis of the scarring and the doctor's conclusions that of the sixteen relevant lesions one was highly consistent with the Appellant's account, nine were typical of the report given and six were diagnostic of their attributions ([83] of the report). Again, the Judge has recited those conclusions at [76] of her Decision. The Judge however casts some doubt on the doctor's conclusions at [84] where she points out that, according to the case of KV (scarring-medical evidence) Sri Lanka [2014] UKUT 00230 (IAC), it would not be possible to date scarring which is over two years old. In the Appellant's case, he claimed that the injuries were sustained in the first six months of a period of detention of eight years which on his account ended in 2014. In light of the findings in KV the Judge was entitled to be sceptical about the possibility of dating the scars (as Dr Moulson appears to do at [84] of his report).
10. Nonetheless the Judge considers the content of the medical report in relation to the scarring and other injuries at some length at [84] to [96] of the Decision. The Judge observes however that medical evidence concluding that injuries are consistent with reports may or may not add credence to the claim.
11. The Judge does not there or elsewhere question Dr Moulson's expertise. Although the Judge notes at [75] of the Decision that Dr Moulson does not state whether he has carried out the minimum

number of reports required by the Medical Foundation to maintain expertise, she accepts that he has. The Judge also notes that she does not know from Dr Moulson's report whether the Tribunal has accepted his reports in other cases but that is noted as a matter of fact and not as criticism of his expertise. She does note at [100] that Dr Moulson does not have qualifications in relation to psychiatry or psychology but that does not then lead to any adverse finding in relation to his opinion. Instead, at [106], the Judge indicates that she has taken account of that medical report and the findings in relation to scarring but does not consider that the medical evidence means that the Appellant is credible.

12. Another matter which Mr Syed-Ali raised in submissions was the inconsistency in relation to the length of the medical interviews between what was said by Dr Moulson and what was said by the Appellant. The Appellant was interviewed on three occasions by Dr Moulson over a six hour period. The Appellant by contrast thought that he had been interviewed by the doctor for three to four hours on each occasion. This inconsistency is noted at [73] of the Decision but no finding is reached in that regard and it is not relied upon by the Judge in the section dealing with her credibility findings.
13. As Mr McVeety pointed out in his submissions, although the Appellant's core claim was found to be consistent, there were inconsistencies in the detail which were remarked upon not just by the Respondent but also by Dr Moulson. Whilst Dr Moulson did give an opinion about why this may be so, the Judge was not bound to accept that opinion and gave reasons why she did not do so at [80] of the Decision.
14. Mr McVeety pointed out that the Appellant's case amounted to a submission that the Judge was obliged to accept as binding the opinions expressed in a medical report produced on behalf of the Medical Foundation. He pointed out that the Judge had not rejected the evidence but found that it did not alter her views on the Appellant's credibility and gave reasons why that was so.
15. Mr McVeety pointed out that the Judge's reasoning on credibility was based not on minor inconsistencies but significant implausibility in the Appellant's account particularly for example in how he had been able to escape capture by the LTTE when guarded by ten persons all of whom had fallen asleep whilst they were supposed to be guarding him ([70]). In reply Mr Syed-Ali pointed out that those guarding him were LTTE members who were not imprisoning those they were guarding and would assume that they did not need to guard Tamils who they would assume to be on their side. However, that submission is inconsistent with the evidence given by the Appellant ([53] of the Decision).

16. In fact, as noted by Dr Moulson himself, far from resolving the inconsistencies in the Appellant's account to which the Respondent had already drawn attention, his report served to add to those inconsistencies. As I note above, Dr Moulson was of course entitled to offer an opinion about why this may be so. However, it was for the Judge having heard the Appellant's evidence to decide whether she accepted that opinion or found that the inconsistencies undermined the Appellant's account.
17. The Judge also drew attention to other inconsistencies and implausibility which form her reasons for rejecting the Appellant's credibility. Those are as follows:-
- The Appellant said at his asylum interview that he was taken by five people at gunpoint and described their uniforms in some detail but told Dr Moulson that they were in civilian clothing [81];
 - The Appellant had not mentioned some of the injuries he claimed to have sustained during detention by the authorities until he was interviewed by Dr Moulson [85];
 - The Appellant gave different accounts of the work he was required to do in detention in the course of his asylum interview, to Dr Moulson and to the Judge [101];
 - The Judge finds implausible the Appellant's account of how he was able to secure better treatment from the cook at the camp [102] and that the cook had been able to contact his family easily as the Appellant claimed [103];
 - The Appellant did not mention until later that it was his father who bribed the authorities to release him, stating in initial interview that "someone" had done so [104];
 - At the time when the Appellant says that his father was detained by the authorities in Sri Lanka, the Appellant was on his account in their detention - there would be no need for them to ask about the Appellant's whereabouts [105]. This led to a further inconsistency between the Appellant's answers at interview and in oral evidence at the hearing ([59] and [64]).
18. It is not the case that the Judge held minor inconsistencies against the Appellant. She notes at [69] of the Decision that she does not find the Appellant's delay in claiming asylum as damaging to his credibility. The Judge accepts at [71] that the LTTE did take people by force so that the objective evidence was capable of supporting the Appellant's account. She also notes inconsistencies between the answers given by the Appellant during the asylum interview and those given to Dr Moulson regarding capture by the army but does not consider those to be of major significance.

Decision and reasons


19. The Decision contains a very careful analysis of the medical evidence. The criticisms made of the Judge's treatment of that evidence are not borne out on a careful analysis of the relevant paragraphs of the Decision. The Judge does not question Dr Moulson's expertise. She does not criticise the report other than in very minor regards and there is no suggestion that she finds those matters to undermine the report. As she points out, though, the medical evidence can only go so far in establishing the credibility of an account. As Mr McVeety points out, the Appellant's submission amounts to requiring a Judge to accept opinions expressed in a report as binding. The Judge has given her reasons for not accepting the expert's opinion on certain issues (for example as to the Appellant's recall).
20. The Judge was of course required to take account of the opinion of Dr Moulson in reaching her views on credibility. That she has done. She has however rejected the evidence as establishing credibility when balanced against the inconsistencies in the Appellant's account (and taking account of the possible reasons for those inconsistencies). As the Judge notes, however, it is for her to decide whether the Appellant's account is credible and that she has done at [106] taking account of all evidence which includes the medical evidence.
21. For completeness, I add that even if I had accepted that there was an error of law in relation to the findings about credibility, I would not have found this to be material when coupled with the findings on the issue of risk on return.
22. The Judge deals with this issue at [107] and [108] as follows:-
"[107]Nonetheless, even if I consider the alternative and find that the appellant's account is credible and truthful, I refer to the country guidance case of GJ and Others (post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). This is referred to in KK included in the appellant's bundle. The headnote in KK states 'There is no merit in the argument that the country guidance given by this tribunal in GJ is not rational or that it is inconsistent with the evidence accepted by the tribunal'. The headnote in GJ is reproduced at the end of KK setting out those at risk on return. I do not consider that this appellant falls into any of the categories listed, without setting them out here. For example, there has been no suggestion that his is the subject of an extant court order or arrest warrant. On the basis of accepting his account, despite signing a document confirming that he was a terrorist, with his photo attached, the appellant was still able to pass through the airport, with a false passport but with his photo. He explained that the agent had arranged this, directing him to a specific counter. Yet GJ refers to the Sri Lankan authorities having sophisticated intelligence. It continues that, in post conflict Sri Lanka, an individual's past history would be relevant only to the extent that it was perceived by the Sri Lankan authorities as indicating a present risk to the unitary Sri Lankan state or the Sri Lankan government.

[108] On his own evidence the authorities appeared to lose interest in the appellant after the first six months of his detention. The respondent noted that the Sri Lankan government had gradually released many, but not all, of the more than 11,000 suspected LTTE members detained, indicating a lack of concern, and I consider the same would apply to this appellant. He has a family to whom he can return.”

23. The suggestion at [19] of the Appellant’s grounds that “the Sri Lankan government remains paranoid about the LTTE and suspects Tamils generally” is not borne out by the findings in GJ ((7) and (8) of the headnote). Those findings were upheld by the Court of Appeal in MP (Sri Lanka) and NT (Sri Lanka) v Secretary of State for the Home Department [2014] EWCA Civ 829. The Court of Appeal in MP (Sri Lanka) expressly upheld KK and rejected the submission that previous LTTE connections without more would lead to a risk on return.
24. There is no suggestion that the Appellant has been involved in separatist activities whilst in the UK. In fact, his case is that he has never been a LTTE sympathiser.
25. There is no evidence that the Appellant is the subject of an arrest warrant. Although Mr Syed-Ali appeared to question in his closing submissions whether there was an arrest warrant in being against the Appellant, there is nothing in the Appellant’s bundle or statement to suggest that there is. Absent an arrest warrant, the submission in the grounds that it is “plausible” that the Appellant is on a stop list is nothing more than supposition and, as the Judge remarks, appears inconsistent with his ability to leave the airport unchallenged and his family remaining in Sri Lanka without it appears any problems. In any event, the Appellant would need to show a “real risk” that the Appellant would be on a stop list and not simply that it was plausible.
26. Even if the Appellant’s account were accepted to be credible, therefore, there is no error of law in the Judge’s finding that the Appellant would not be at risk on return to Sri Lanka.
27. I am therefore satisfied that there is no material error of law in the Decision and I uphold it.

DECISION

The First-tier Tribunal Decision did not involve the making of an error on a point of law. I therefore uphold the First-tier Tribunal Decision of First-tier Tribunal Judge Gladstone promulgated on 16 January 2015 with the consequence that the appeal of the Appellant is dismissed.

Signed 

Date: 10 May 2016

Upper Tribunal Judge Smith