IAC-AH-VP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: DA/01455/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 March 2016	**On 14 April 2016**

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

MISS SK
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms C Physsas, of Counsel instructed by CK Law Solicitors
For the Respondent: Mr S Whitwell, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Sri Lanka born on 17 October 1986, appeals, with permission, against a decision of the First-tier Tribunal (Judge of the First-tier Tribunal Woolley and Mrs L R Schmitt JP) who dismissed the appellant's appeal against a decision to make a deportation order dated 2

July 2013. That decision followed a conviction of the appellant on 29 January 2013 for the offence of possessing false identity documents contrary to Section 4 of the Identity Cards Act 2010 for which the appellant was sentenced to twelve months' imprisonment.

2. The appellant had entered Britain on 21 October 2011 as a student having been issued a visa valid from that date until 28 October 2014. In her witness statement she stated that she had completed an HND in Software Engineering and had then applied to Northumbria University to study for a BSc. That application was refused as she had failed to meet the financial requirements. She had not applied to any other university as at that stage she knew that the next intake was not until September.

3. The appellant claimed asylum on 3 April 2013 and was interviewed on 23 May 2013. On that occasion she said that she graduated from the University of East London in 2013 with a BSc in Technology and E Commerce.

4. At interview she stated that one of her brothers had been killed by the Sri Lankan Army in 2006 and her sister and surviving brother both lived in Colombo. She had studied English and E Commerce and then studied for an HND in Management. She joined the Rotary Club whilst she was in school in 2000 and had volunteered for them thereafter working on a number of social service projects for them. This included helping people to get an education, helping at orphanages and old people's homes and homes for the deaf mute. When Jaffna had been cut off in 2006 she had taken food, clothes, money and medicine into the city. She had an uncle who was studying at the University of Jaffna who would ask her to take food into camps he could not visit and clothing parcels to people who were his friends. Her younger brother was injured in a grenade attack in July 2006. He was later questioned by the army and in September that year was kidnapped. A week later his body was found on the road.

5. In October 2007 her uncle gave her an aid parcel to deliver but as she had another commitment she asked a friend to deliver it. She then learned that later that day her friend had been shot and killed. Her uncle was arrested in 2009 in Vavuniya while travelling in possession of weapons. Only then did the family learn that he was in fact a senior member of the LTTE intelligence unit. The appellant, her remaining brother and sister relocated to Colombo. The family home in Jaffna was raided, her computer was seized and her father arrested. She had resumed her studies in Colombo but was arrested there on 11 May 2011 and transferred to Kalyjura prison where she was detained for three months. She said that she had been kept naked in water in a dark room and verbally abused. She had cooperated with the authorities to disclose information regarding the location of people she had assisted with her uncle. She said that she had not been taken to court. In September 2011 her father paid a bribe to one of the prison officers who helped her escape and took her to his home.

She had remained there until 21 October 2011 and then had travelled to the airport and onto the United Kingdom.

6. The Secretary of State considered the application in the light of recent documentary evidence including Human Rights Watch Reports and the latest Amnesty International Report. In the light of relevant country guidance it was consider that it was important to focus on the appellant's particular circumstances. Having set out the list of relevant factors in the determinations in **LP (LTTE area – Tamils Colombo – risk?) Sri Lanka CG [2007] UKAIT 00076** and **NA v UK ECHR [2008] – risk on return to Sri Lanka for Tamils,** the Secretary of State considered that the appellant's claimed circumstances raised five of the twelve relevant factors. These were considered to be at the lower level of risk. They were her Tamil ethnicity, a previous record as a suspected or actual LTTE member, a previous criminal record and/or outstanding arrest warrant, return from London or other centre of LTTE fund raising and having made an asylum claim abroad. It was accepted that the appellant was of Tamil ethnicity but it was not accepted that that would lead to a real risk on return as a failed asylum seeker. It was pointed out that the appellant had not known that her uncle had been connected with the LTTE and it was stated that the fact that the appellant's father had been released and that he had been able to pay a bribe to an officer to arrange for her to leave Sri Lanka indicated that the authorities did not have an adverse interest in her or her immediate family members: the fact that the appellant may have been detained but had been able to leave the camp with apparent ease showed that she was of no adverse interest to the authorities. Moreover it was considered that that fact would not increase the risk to the appellant from the Sri Lankan authorities – the authority for this was a letter from the British High Commission dated November 2011 which stated that large numbers of ex LTTE cadres in Sri Lanka had been released and others were to be released in batches over the next few months. Further reference was made to the rehabilitation process and the respondent concluded by saying that the appellant's claim that she would be arrested and killed by the Sri Lankan authorities was not found to be credible. It was stated that her involvement with the LTTE, which she claimed to be unaware of, was low level and was not likely to lead to her incarceration or death on return.

7. It was noted that she did not have a criminal record or outstanding arrest warrant and the Secretary of State did not consider that the fact that she was returning from London where she had studied would mean that she would come to the adverse attention of the Sri Lankan authorities. Similarly neither would the fact that she had made an asylum claim abroad. Indeed, she would be removed in such a way that it would not be known that she had claimed asylum in Britain.

8. On 10 August 2014 the appellant signed a witness statement which amplified what she said had happened to her in 2011. She said that she had been arrested on Friday 6 May 2011 and remembered that day very

well. She had been held in detention for about four months. She claimed that she had been stripped and beaten and tortured for information. She claimed that she had been kept naked in a dark room and kicked and in paragraph 26 she said that during her time in prison she was also raped. She said that details of that rape had been recorded in the Medical Foundation Report.

9. She stated initially she had not disclosed to anyone that she was tortured in Sri Lanka or the extent of the torture and ill-treatment because she was embarrassed by the torture and had not wanted to reveal that she had been sexually assaulted. She said that none of her previous solicitors had asked if she was ill-treated or tortured whilst in detention.

10. As well as being kicked she said that nails had been use to cause injury to her legs. She had been burnt with cigarettes on her legs and she had been kept in solitary confinement as well as being hung by her feet upside down with her hands being tied behind her. She had said that she was affected mentally by her torture and ill-treatment in Sri Lanka before she was helped to escape. She asserted that she was still of interest to the authorities.

11. A medical report was prepared by a Dr Jackie Applebee who saw the appellant on 21 March and 4 and 25 April 2014. Dr Applebee began by setting out what the appellant had told her of her history. It is evident that the first interview ended because of the appellant's distress and it was not until the second interview that the appellant gave further details of what she claimed had happened to her in prison. The appellant talked of the beatings she had received and also said that one of the guards had cut her above her vagina and that she was then tied to a table, beaten and burned all over with cigarettes. She had indicated that she had been raped by one of the guards and that thereafter the guards came to her room regularly and raped her. She could never see them because it was dark.

12. Dr Applebee stated that the appellant had been reluctant to show her scars and would only tolerate the examination of her lower legs and therefore most of the scars she documented were on her legs. She had however seen a scar which was shown to her when the appellant pulled down her undershorts.

13. At paragraph 67 onwards of her report Dr Applebee set out details of the appellant's scars. In paragraph 72 she stated:-

> "In my opinion Ms K would not inflict injuries on herself. She has clearly been traumatised by the torture she endured, but she has an underlying robust personality and is not someone that I suspect would indulge in self-harm."

14. She stated that she had not been allowed to perform a vaginal examination or genital inspection for signs of rape but stated:-

> "In my opinion this is further evidence of the trauma she experienced at the hands of the torturers."

15. Her view was that the appellant had suffered the injuries she claimed in the way that she claimed and that the appellant had been raped and tortured at the hands of the Sri Lankan Army. She concluded that the appellant was suffering from PTSD.

16. At the hearing of the appeal the Tribunal heard evidence from the appellant. In their determination they set out their findings of credibility and fact in paragraphs 31 onwards. They first made general comments in paragraph 31 stating that they had considered all the evidence presented in the appeal and giving the proper self-direction in the following paragraph regarding the burden and standard of proof.

17. In paragraph 33 onwards they dealt with the issue of the events in Sri Lanka before arrest, in paragraphs 36 onwards they detailed the appellant's arrest and detention and in paragraph 38 considered the medical report starting that paragraph by stating that:-

> "We now address the medical report which informs our overall assessment".

18. The detailed findings of the Tribunal in paragraph 33 through to 41 are set out as follows:-

> "33. The appellant has given an account in her asylum interviews, her statement, her medical report and at the hearing of the events in Sri Lanka that happened before her arrest. She gives an account that she was an active and robust young woman who was active in studying and in public life as secretary of the local Rotary club (which she describes as 'Rotoract'). Her family lived in Jaffna. She was unaware of any connections which her family might have to the LTTE. In particular she and her family were not aware that her maternal uncle was a senior member of the intelligence arm of the LTTE. It was put to her that this was not plausible as her uncle and her mother had been brought up by the LTTE. She says she and her organisation were used by her uncle in giving aid to injured persons (she describes some of these as being without limbs). She says that she only realised that her uncle was connected to the LTTE when he was arrested in December 2009. At about the same time the government banned the Rotoract in Jaffna as they became aware of the pro-LTTE work that it had undertaken. Some time before in October 2007 she had been handed a package by her uncle to deliver but she had given it to another man to do so and this man was sot dead the same evening by army officers. We find this account to be lacking in credibility. We find that the appellant was either

aware of, or at best was wilfully blind to, the possibility of her uncle being involved in the LTTE. She knew that he had been brought up by the LTTE; she must have had her suspicions over the parcel if a friend was shot and killed after having just been given it; and she must we find have suspected that her uncle in directing her organisation to help obviously injured people was using it to help the LTTE. We also find it not to be credible that her uncle would have wished to expose his niece to danger in this way when there might have been other volunteers willing to do the same work. Equally we find it is not credible against the totality of her whole account that she would have declined to do what her uncle asked her to do when she had undertaken other work for him without question. Her own mother is not said to have experienced any interest from the authorities, yet if she had been so profoundly affected by the death of her son we find it not to be credible that she would have allowed her daughter to run the risks she claims.

34. She says that earlier in July 2006 her brother had been injured in a grenade blast and was questioned by the army. He was released. The appellant says that she and her family were under surveillance by the army after this but there is no evidence of this and we find that it is mere supposition. In September 2006 her brother was abducted (she suspects by the army) and a week later his body was found on the road. Again we find that it is mere supposition that the army was involved, and no reason is given as to why the army could not just arrest her brother (as he had been questioned before) rather than abducting him. There is no evidence that the army killed him. We note that this incident did not cause the family any difficulties (they were not for instance taken into custody themselves) and the appellant was able to carry on working for Rotary and to study.

35. Between 2007 and 2011 the appellant pursued her education in Sri Lanka. It is evident that she is an intelligent woman and that she obtained good results in her examinations. She told us that she completed her studies in 2009 and thereafter had to submit coursework. She says in her statement that after her uncle's arrest in December 2009 that she became fearful for her life, relocated to Colombo, and stayed inside the house apart from attending English language lessons. She says she kept a low profile in all this time. She was questioned closely about this by Miss Lewis, who asked pertinently why she needed to undertaken English language studies if she had already completed a Diploma Certificate at Jaffna College through the medium of English (Certificate at page 118 of the bundle) and had obtained a credit in the four subjects taken including English I and II. We find that this point is well made. The appellant would have had no need to risk detection by leaving the house to undertake an English

course as she describes with her background and proven ability in the subject. We find this not to be credible. We find in addition that her account as in her statement of keeping a low profile between 2010 and 2011 is not in keeping with her other accounts and indeed with the objective evidence. In her interview at the British High Commission on 2nd June 2011 she was asked at Question 6 'What do you do now' and she responded 'Just I finished software engineering'. She went on to say that she had been doing this for two years. The purpose of her British education was relating to her earlier software engineering course (Question 14). The appellant has produced a letter from IIS City Campus dated 11th December 2010 confirming that she had followed the course of BTEC in software engineering and had completed it in September 2010. This contradicts her account in her asylum interview that she had ended all her studies in January 2010. She has produced the relevant certificate which show (at pages 105 – 107 of the bundle) that she had passed in no less than 25 modules at IIS City Campus. According to this certificate she qualified for this award in August 2010 which again contradicts her account in her statement and asylum interview. We find that she is not credible when she says that she was keeping a low profile and only going out to do an English course. This account is contradicted by her own answers in interview and by her certificates. We find it is not credible that she could have passed 25 modules at IIS City Campus in August 2010 without ever attending any course or examination there, yet this is the implication of her account in her statement. We find that she was fully engaged in this course as she says in her admission interview and was not in hiding or keeping a low profile in the period between January 2010 and September 2010, or indeed up to her admission interview on 2nd June 2011. We note further that the copies of her examination results are stamped 'Ministry of Foreign Affairs 15th December 2010' and are endorsed to the effect that 'this statement is issued for use outside Sri Lanka'. If the appellant was fearful of the Sri Lankan Authorities it is not consistent with that fear that she (even through an agent) would have approached the Ministry of Foreign Affairs for such a certificate as it would have indicated her intention of moving abroad.

Her arrest and detention

36. The appellant in her asylum interviews, her statement, and her medical report gives a very consistent account of her arrest. She says in her statement that she was arrested on Friday 6th May 2011 and that she remembered this date very well. She says that after her arrest her father took her brother and sister back to Jaffna – in the light of the country evidence as to conditions in Jaffna at that time we find that this is not credible. She anchors

the date of 6th May 2011 by saying it was the day after the 5th May 2011 when she applied to the University of Northumbria. At the hearing she confirmed to Miss Lewis that what she had said in her interviews about this date was correct. The 6th May is specified in her asylum interview, her statement and in her medical report (in her screening interview she says it was the 5th May 2011). She also said in evidence that after her arrest on this date she was kept continuously in prison until she escaped in September 2011. Miss Lewis put to her that her account was not correct as she had attended at the British High Commission on 2nd June 2011 for interview. We have noted the precautions which the British High Commission take to ensure they have the right person at interview and indeed the appellant admitted that she had attended at the interview. We found that the appellant was not credible in her attempts at the hearing to resolve this contradiction. She firstly said that she may have got the date in May wrong, which does not sit easily with her earlier insistence that 6th May was the date of her arrest. She then said that she had relied on her family for the dates, but was unable to answer the point made by Miss Lewis that at Question 82 of her asylum interview she had said that her family did not know she was in detention. She changed her account at the hearing to say that her family knew she was in detention but did not know where. Ms Dipnarain in her closing submissions pointed out that the Asylum interview is not tape recorded and that this allows the respondent to take things out of context. While we acknowledge that this may sometimes happen we find that it has not happened here. The appellant has given a clear date and also a clear indication that her family did not know about her detention. She cannot now suggest that she got the wrong date because her family misinformed her. We find that the appellant was not in detention on 2nd June 2011 and that her account that she was taken into detention on the 6th May 2011 is not true.

37. We note the account of her detention in her asylum interview. She says that she was mistreated but that this mainly consisted of verbal abuse and humiliation. She in fact specified that they kept her in water so that no scars would be shown. She says that the guards did not beat her and that they were unable to rape her. She was kept naked and they pulled her breasts but she does not specify any other mistreatment. It is an important part of her account that she was in fact saved from torture by the intervention of an officer who said he was not going to stand by and see her tortured. It was this 'High Officer' who saved her from rape. He then arranged for her escape. We note that the interviewing officer was a woman and the interview record does not indicate any reluctance to give this account. The appellant at the hearing said that she had been detained for three months but could not remember the dates. We have found that the start

date for the detention as given by the appellant cannot be correct and we find this undermines the credibility of her whole account of detention. We find that the account itself is inherently not credible in several of its aspects. To begin with it is not apparent from the Asylum interview that the army asked her any questions about LTTE involvement of her uncle which calls in question the purpose of her confinement. More fundamentally we do not accept as credible her account as to how she came to leave detention. She says it was a 'High Officer' who in some way took pity on her. She gives no reason why he would single her out of the many detainees to take pity on. It is not credible that someone of such a high position would risk that position by taking the initiative to help her escape. After that she says he sheltered her in his house and then arranged for her to get through the airport safely. We find that this is not credible. She says that a bribe had been paid by her father but on her own account this officer intervened before any bribe was paid as her family did not know she was in detention. Even if a bribe had been paid we find it not to be credible that a senior officer would have harboured her in his house and then arranged for her to get through the airport. We are on our guard against ethnocentricity but even in a Sri Lankan context we cannot accept that a senior officer would take these risks on behalf of an LTTE suspect held in prison.

The medical report

38. We now address the medical report which informs our overall assessment. The medical expert approached was a Dr Applebee, who is a GP rather than a consultant. We find nevertheless that she can be regarded as an expert given her experience and specialist training. We note that Dr Applebee was provided with the appellant's statement (dated 4th March which was not supplied to us) and her interviews, as well as the notice of decision. She was, we find, thereby in a good position to understand the progress of the claim and the appellant's earlier accounts. In her section on 'History' Dr Applebee summarises her account and adds the comments that the appellant made to her. She says boldly at paragraph 14 'Ms K was not able to tell me about the torture she had suffered'. We find this comment surprising as it is evident at this stage of the examination that Dr Applebee had not been told anything about events in Sri Lanka and yet Dr Applebee was already proceeding on the basis that she had been tortured. While this may have been her account in her statement dated 4th March 2014 Dr Applebee does not appear to have registered that her account in her Asylum interview is quite different. At paragraph 33 she accepts the appellant's account that she had been raped without enquiry or question. This is particularly surprising not only in terms of what

is said in the Asylum interview but also because of what the appellant told us at the hearing. She said that she had not mentioned to Dr Applebee that she had been raped and did not know how this had got into the report. In her asylum interview she denied that she had ever been raped. Dr Applebee then goes on to state that she did not examine the appellant intimately in view of her reluctance. While we accept Dr Applebee's opinion that physical examination very rarely can reveal a rape the fact remains that Dr Applebee comes to a conclusion about rape in the absence of any physical examination when the appellant at the hearing denied ever telling her about rape, and when at least some of the evidence stated that it did not happen. We of course have not been given access by the appellant or her representatives to the statement dated 4th March 2014 which Dr Applebee refers to (we cannot speculate as to the reasons for this and it is entirely for the appellant and her representatives to choose what evidence to submit), and so we cannot say whether there was any reference to rape in that. From what the appellant told us at the hearing this appears unlikely but this cannot be excluded. What can be said however is that on the evidence before us there appears to be no basis on which to justify Dr Applebee's conclusion at paragraph 89 that 'Ms K is a young Tamil woman who has been raped … at the hands of the Sri Lankan army'". She should have specified on what evidence this conclusion was based and did not. At the very least there should have been some acknowledgment of the contradictory evidence in the appellant's account. We find this to be a serious flaw in the medical report.

39. Dr Applebee makes further observations in the report about the physical injuries suffered by the appellant. We accept that the appellant bears the scars which she describes, although her examination was limited to those parts of the body which the appellant permitted her to see. She drew attention at Para 69 to scars which she finds 'highly consistent' with cigarette burns, at Para 70 scars 'highly consistent' with being beaten with a blunt object, and at Para 71 a horizontal scar at the level of her pubic bone which was 'typical' of her attribution of having been slashed with a knife. Dr Applebee finds that this scar was not self-inflicted as such self-inflicted scars tend to fade towards one end. She concludes at Para 72 that the appellant would not inflict injuries on herself. She also conducted a psychological assessment in which she concludes that 'the above symptoms and signs provide clear evidence that Ms K is suffering from PTSD'. We note however that there is no other medical evidence produced (e.g. from her GP) to this effect. In her statement she says at Para 39 that she is not on medication or undergoing counselling. Dr Applebee summarises her conclusions 'she was beaten, burned with cigarettes, slashed with a knife, and

repeatedly raped'. The circular scars are diagnostic of multiple cigarette burns. She speculates 'I could not help wondering what other scars would be revealed if she had allowed me to examine her torso' but we find that this is supposition only and not a basis on which we can find that there are other marks on the appellant's body apart from what Dr Applebee has seen. As we observe below it may equally be an indication that the appellant has no other marks on her body.

40. The respondent referred us to the authority of **KV (scarring – medical evidence) Sri Lanka [2014] UKUT 00230 (IAC)**. This concludes that where there is a presenting feature of the case that raises self-infliction by proxy (SIBP) a medical report will be expected to engage with that issue. Similarly a judicial fact finder will be expected to address the matter in deciding whether, on all the evidence, the claimant has discharged the burden of proving that he or she was reasonably likely to have been scarred by torturers against her will. **KV (scarring)** reminded decision makers that medico-legal reports 'cannot be equated with an assessment to be undertaken by decision makers in a legal context in which the burden of proof rests on the claimant and when one of the purposes of questioning is to test a claimant's evidence so as to decide whether (to the lower standard) it is credible'. At paragraph 286 and following **KV (scarring)** engaged with the issue of when it was proper for a medical report to consider SIBP, and concluded that this was appropriate 'when there is a tension or mismatch between what is revealed by a physical examination of the scarring and the patient's account of how he came to have it'. We find that there was such a mismatch in the present case. The Asylum Interview with which Dr Applebee was provided does not mention cigarette burns, denies that any rapes took place, and states that the appellant was held in water so that bruises should not show. Dr Applebee should have realised that this account did not square with the account she was being given (or assumed she was being given in respect of the rapes). She was therefore obliged we find to grapple with the issue of SIBP, to indicate that SIBP was as possible cause and then comment on the presenting features which might make it more than a mere possibility (for example we note from **KV (scarring)** that SIBP injuries are likely to occur in certain parts of the body but not in others). Dr Applebee however makes no mention of SIBP anywhere in her report. We find this is a serious flaw. Ms Dipnarain in her submissions suggested that she had done so, pointing for example to paragraph 72 of the report 'Ms K would not inflict injuries on herself'. With respect to Ms Dipnarain's argument we find that these passages are only talking about self-infliction – they are not talking about SIBP. The comment about the scar (no 57) at paragraph 71 not being self-inflicted because it did not fade

away towards one end is deprived of much of its force if SIBP was involved as another person would not have suffered the pain which such slashes cause. Ms Dipnarain in her closing submissions suggested that 'Given the location of the scar it is unlikely that the appellant would allow such a scar in a private area of her body' and 'She is distressed by the scars and if the appellant is worried about showing the doctor the scars and shows symptoms of embarrassment it is unlikely that she would have inflicted them by proxy or by herself'. We find that these conclusions do not follow. If SIBP was involved the appellant may have allowed injury to a private part of her body and may not have been embarrassed in this process. We come back to the reluctance of the appellant to show Dr Applebee certain parts of her body (e.g. her torso). There is a possibility that this reluctance was because she had no scars in these areas of her body and did not want the doctor to pick this up. At the very least Dr Applebee should have considered this possibility. Furthermore Dr Applebee gives no aetiology on the knee scars which are of a much older vintage (2007) than the ones the appellant claims were acquired under more recent ill-treatment. There is no comparison or analysis of these by Dr Applebee, and the lack of any such analysis (at her paragraph 68) undermines the credit which she attributes to the appellant therein. We note the OGN as to the weight which should be given to such medical reports but find that this does not affect our overall analysis of this particular medical report.

41. Under **KV (scarring)** we are not obliged to make any definitive finding as to whether scarring is the result of SIBP (Para 295). We are obliged however to say whether we think that SIBP is a real possibility. We find that there are several presenting features of the case that makes SIBP a real possibility. We have found that the appellant was not in detention when she says she was in detention (on the 2nd June 2011) and that she has therefore given an untrue account of that detention, and we also have found that her account of her treatment in detention in her asylum interview has radically changed by the time of the hearing. We consider the implications of this in our holistic assessment of the evidence below".

They then dealt with the appellant's flight from Sri Lanka and the issues relevant to a consideration of the provisions under Section 8 of the 2004 Act. In paragraph 44 they set out their "global conclusions on credibility" as follows:-

"44. We undertake a holistic assessment of all the evidence in assessing the appellant's credibility. Considering the evidence as a whole, including the background country evidence, the evidence of the appellant and the medical evidence, we find that

her account is not credible and we are not satisfied even on the lower standard that she had made out her claim. We find that her account of events up until her alleged arrest cannot be accepted, and find that she was a normal student undertaking computer software studies and not of any adverse interest to the authorities. We find that her account of arrest and detention cannot be accepted as the truth, in that it has been demonstrated that at a time when she says she was in detention she was in fact attending at the British High Commission for an interview. She has changed her account of her treatment in detention markedly as between her asylum interviews and her evidence at the hearing and we find that these changes undermine its overall credibility. In relation to the medical evidence it left us with only two possibilities – either that the appellant was tortured as claimed or that her scarring was SIBP. Of these possibilities we exclude on a holistic assessment the former and have found when all the evidence is taken into account that it does not stand scrutiny. SIBP is left as the only real possibility that is left to us, given that we are satisfied that she has not shown that her account is reasonably likely to be true. We find that she never came to the attention of the Sri Lankan authorities and was able to come to the UK to study on her own passport without any problems. Although there is evidence of burns and scars to her body, and evidence of PTSD, and although we apply the lower standard of proof, we find that the appellant has not shown that the burns and scars were acquired as she has claimed. We do not accept her account of detention and torture by the Sri Lankan State".

19. Having applied the law as set out in **GJ and Others (Post civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** the Tribunal concluded that the appellant did not come within any of the risk factors identified in that determination pointing out that not only had the appellant never given evidence to the commission, that there were no extant court orders or arrest warrants in force for her nor was there any evidence that her name would appear on a "stop" or "watch" list as they had found that she had been able to leave Sri Lanka without problem, that she had never had any role in relation to post conflict Tamil separatism within the Diaspora and she had not described attending any demonstrations or meeting Tamil groups while in Britain nor, they concluded would she be perceived of any significant role in respect of renewal of hostilities in Sri Lanka. They stated "Even on her own account she only had a low level role in assisting the LTTE during the conflict". They concluded, in paragraph 47 by stating:-

> "Applying **GJ (Sri Lanka)** we have to say that even if we are incorrect in our assessment of the appellant's credibility and that she was detained and tortured by the Sri Lankan authorities as she claims she

would still not appear to come within any of the four risk factors that are defined there".

20. The grounds of appeal argue that the way in which the Tribunal had approached the medical evidence was unfair. They argue that the judge should have given first consideration to the medical evidence before considering the evidence as what had happened to the appellant in Sri Lanka and it was clear from the determination that the Tribunal had reached their findings on credibility before considering the medical report. It was also suggested the criticisms of the medical report were unreasonable and failed to have regard to the totality of the report.

21. They state that the Tribunal should not have criticised the doctor for proceeding on the basis that the applicant had been tortured or for accepting that she had been raped and that they should not have rejected the conclusion that the appellant was suffering from PTSD. It was also stated that neither the applicant nor her representatives were put on notice that the expertise of the doctor was in issue. Moreover it was argued that the Tribunal should not have considered the issue of scarring being inflicted by proxy because that matter was dealt with in a determination which had come out after the doctor had met with the appellant. Finally it was argued that given what had happened to the appellant in the past she would be at risk in the future – it was of note that her injuries were inflicted after the end of the conflict rather than before.

22. Although permission was refused in the First-tier, Upper Tribunal Chalkley granted permission on the basis that the Tribunal had failed to deal first with the medical evidence and to make findings on the basis of it rather than making findings first. He did not however seek to limit the grounds.

23. At the hearing before me Ms Physsas relied on the grounds of appeal and stated that clearly the Tribunal had dealt with the medical report separately having made credibility findings – these indeed had been made in a vacuum before the medical report had been considered. Moreover she stated that the Tribunal had not taken into account the fact that the first interview had ended when the appellant was distressed and that then a second and third interview had taken place.

24. She stated that the Tribunal were wrong to place weight on the fact that rape had not been mentioned in interview stating that there was clear evidence in the interview that the appellant had stated that the guards had been unable to rape her but said that this had been dealt with in the witness statement by the appellant where the appellant had said that she had been embarrassed by the torture had revealed that she was sexually assaulted. Indeed the witness statement dealt fully with the way in which the appellant had been ill-treated. She went on to refer to the fact that Dr Applebee had recorded quite clearly that the appellant had not wanted to talk about what had happened to her. The reality was that the doctor was more likely to obtain from the appellant evidence of what had happened

rather than an interviewing officer. She stated that the Tribunal had been unfair to refer to Dr Applebee being a GP rather than a consultant stating that was not an issue taken at the hearing. Moreover the appellant was recorded as saying she felt she had been let down by her GP who had not referred her for counselling. She again emphasised that what had happened to the appellant had happened post conflict and therefore was likely to happen again.

25. In reply Mr Whitwell took me through the various parts of the determination which the Tribunal had made it clear that they were looking at the evidence holistically and placed weight on the judgment of the Court of Appeal in **S v SSHD [2006] EWCA Civ 1153** at paragraph 21 where the judgment in **Mibanga [2005] EWCA Civ 367** was distinguished and at paragraph 32 the Tribunal in **HH (Medical evidence effective, Mibanga) Ethiopia [2005] UKAIT 00164** was endorsed. He said that the Court of Appeal could not be regarded as laying down any rule of law as to the order in which judicial fact-finders should deal with the evidential material before them. He argued that the Tribunal had properly considered the medical evidence and the way in which the evidence of the appellant had changed and that in any event they had properly considered the risk on return now. They had properly considered relevant country guidance. Moreover it could not be argued that the appellant was a "lone female". He referred to other points relating to credibility of the appellant including the date on which the visa was obtained when she had claimed she was in prison.

26. In reply Ms Physsas stated that it was clear that the appellant had had difficulty with concentration and argued that they had not properly considered the witness statement or taken into account the appellant's distress. That she argued was procedurally unfair.

Discussion

27. The principal arguments in the grounds of appeal and made by Ms Physsas before me was that the Tribunal had erred in that they had reached findings and conclusions on the credibility of the appellant before considering the medical report and then had wrongly dismissed the conclusions of the judge therein. I consider that there is no merit in the argument that the Tribunal had reached their conclusions before considering the medical report. It is clear from the determination that they, for the sake of clarity, divided into sections their consideration of the appellant's evidence dealing with the matters raised chronologically. That is a perfectly logical way to proceed. The reality is moreover that they made it clear throughout the determination that they were dealing with the evidence holistically. In paragraph 31 they state that they had considered all the evidence. In paragraph 32 they refer to taking into account all relevant factors. In paragraph 38 they stated that they were considering the medical report "which informs our overall assessment". In paragraph 44 they refer to holistic assessment of all the evidence in

assessing the appellant's credibility. It simply cannot be said that they did not have in mind the medical report when they reached their findings and conclusion and indeed the reality is that during the hearing the appellant was asked about various matters raised in the medial report and indeed she made comment thereon relating to, in particular how the doctor had known about the allegations of rape. They specifically referred to the judgment of the Court of Appeal in **JT (Cameroon) v SSHD [2008] EWCA Civ 878** with regard to the application of Section 8.

28. The Tribunal did consider in detail all aspects of the appellant's story. They were entitled to place weight on the fact that it was the appellant's evidence that neither she nor her family had known of any involvement of her uncle with the LTTE. Their conclusion that the appellant's mother and father would not have allowed her to undertake any or have any involvement with the LTTE was clearly open to them and indeed they were entitled to take into account the appellant's evidence that the family was largely apolitical. The appellant's own work for the Rotary was not in any way contentious consisting, it appears in the delivery of humanitarian aid. They were entitled to place weight on the appellant's claim that what had happened to her had happened after the ceasefire.

29. They took into account the fact that the appellant was clearly an intelligent young woman who had passed exams both in Sri Lanka and here and had been able to study successfully in this country. Again they were entitled to place weight on the fact the appellant had not claimed asylum on arrival and indeed had only claimed when she decided that she wished to go to France and had been found travelling on a passport which was not her own. Moreover, the Tribunal were entitled to place weight on the fact that the appellant's story had varied over time. It is simply impossible to accept that this intelligent young woman would state that the guards had been unable to rape her when interviewed but then went on at a later stage to claim that she had been raped. Moreover she had obtained a visa after an interview at the embassy at a time when she claimed she was detained. I also consider that the Tribunal did properly analyse in detail the report of Dr Applebee and their comments thereon are apt. I consider that the reality is that the Tribunal were entitled to find that the appellant's story lacked credibility and gave clear reasons for their conclusions.

30. Finally the reality is that the Tribunal did apply up-to-date country guidance properly, considering all relevant factors. They were entitled to conclude on the basis of those factors that this appellant whose involvement with the LTTE, even taken at its highest was minimal, who had not been served with an arrest warrant, who had been able to leave Sri Lanka without difficulty, had not taken part in any Diaspora activities and whose family remain living in Sri Lanka would have no difficulty on return.

31. In all I consider that there is no material error of law in the determination of the Tribunal and their decision, dismissing this appeal on asylum and human rights grounds shall stand.

Notice of Decision

The appeal is dismissed.

Signed Date

Upper Tribunal Judge McGeachy