



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: PA/10571/2016

THE IMMIGRATION ACTS

Heard at: Field House
On: 14 August 2017

Decision and Reasons Promulgated
On: 4 September 2017

Before

Deputy Upper Tribunal Judge Mailer

Between

[U S]

~~ANONYMITY DIRECTION NOT MADE~~

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr M Bradshaw, counsel (instructed by Jein Solicitors)
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Sri Lanka, born on [] 1992. He appeals with permission against the decision of the First-tier Tribunal Judge promulgated on 13 January 2017, dismissing his asylum appeal.
2. Upper Tribunal Judge Frances granted the appellant permission to appeal, stating that it is arguable that the Judge erred in law in failing to properly direct herself in relation to the Istanbul Protocol. Certain of the appellant's injuries were described as "typical" and "highly consistent". The medical report states: I have shown the B

scars form (sic) the burn with heated flex on the photographs and body map. They cannot be from any other means than burns.

3. She also stated that it is arguable that the Judge failed to appreciate the different levels of consistency and this affected the weight that she attached to the medical reports.

The background

4. The appellant claimed that he was 15 years old at the time of the explosions in January 2007. That occurred close to his father's garage when nine army officers were killed. He fled the scene after being pursued by the police. Both his and his father's garage were suspected of being involved in that explosion.
5. The appellant was sent to stay with his uncle and in 2009 he was forcibly recruited by the LTTE and was involved in the fighting. He returned to his family home in 2012 but was detained by the army authorities and spent four years in prison from 2012 until 2016 where he was beaten and tortured. He was able to escape when spending time in the hospital on payment of money by his father – [18].
6. The Judge found it implausible that the explosion would have caused the authorities to focus their suspicions on the 15 year old appellant with the consequence that he was forced to flee on account of being suspected by the authorities of involvement with the explosions. She did not accept that he was forcibly recruited by the LTTE in 2009 [24].
7. She did not find it plausible that five years after the explosion the appellant would be detained by the authorities shortly after returning home and then be imprisoned for four years. She did not accept that he was detained by the authorities for the claimed four years [25].
8. The appellant produced a short report from a psychological therapist dated 13 July 2016 in which it was found that the appellant described a number of difficulties consistent with a diagnosis of post traumatic stress disorder. The Judge was not “persuaded” that he was suffering from severe mental health issues [26].
9. The Judge also had regard to the report of Professor Lingam dated 25 September 2016. She set out his findings at [27]. She noted that it was acknowledged that other causes than those claimed could be the reason for certain of the injuries sustained by the appellant and although giving the report its due weight it was not enough to persuade her that the appellant was burned and acquired the scars that he has in the manner that he claimed. [27]
10. Mr Bradshaw who did not represent the appellant at the hearing before the First-tier Tribunal, contended that the Judge erred in failing to give adequate reasons regarding her consideration and conclusions from the medical evidence which was relied on to corroborate the appellant's account of being detained and tortured. The relevant 'anxious scrutiny' was not given.

11. In particular the Judge's reasoning was inadequate because it did not show that she appreciated that the report was produced in accordance with the Istanbul Protocol and could be relied upon to evidence the degree of consistency between lesions found and the claimed history.
12. The Judge described some of the doctor's findings that lesions were "consistent" with the appellant's account whereas in fact the doctor had used the Istanbul Protocol terms showing a high degree of consistency rather than lesions merely being "consistent". Failure to note that the doctor found a higher degree of consistency between some of the lesions and the causes attributed by the appellant is indicative of failure to appreciate the significance of a medical report complying with the Istanbul Protocol. The Judge failed to appreciate the significance of the terminology used, indicating different degrees of consistency.
13. He submitted that in particular the Judge did not record that the scars attributed to chemical burns found by the doctor were not merely "consistent" but were "highly consistent with the history" and according to the Istanbul Protocol the lesion therefore could have been caused by the trauma described and there were few other possible causes.
14. The doctor also found that the scars attributed to the beating with heated flex were clinically diagnostic of burning, i.e. according to the Istanbul Protocol this lesion could not have been caused in any way other than as described. Moreover, there were "typical of the history according to the Istanbul Protocol", i.e. this is an appearance that is usually found with this type of trauma, but there are other possible causes.
15. Moreover, the Judge wrongly said of the claimed cigarette burns that Professor Lingam states that they are consistent with the history. In fact he found them to be "typical."
16. Accordingly, in line with the grounds of appeal Mr Bradshaw submitted that the Judge's reasoning creates a real doubt as to whether the Judge did as claimed give the report of Dr Lingam its due weight given that the report indicated a higher degree of consistency between the appellant's account and the lesions found than the Judge in fact appreciated.
17. Mr Bradshaw referred to the findings of Professor Lingam relating to the scars on the back below his left scapula and chemical burns. He has clinical evidence of severe burns from three separate mechanisms which are clinically obvious. These are highly consistent with chemical burns. Since he worked in a garage it could be from accidental injury at work. However, he went on to state that it is unusual to have it on the back from an accident. On balance he stated that the finding is "highly consistent" with the history.
18. With regard to the burns due to heated electrical flex, the clinical features shown on the photographs cannot be from any other means than burns from heated equipment. These are not permanent as they are less than two years old.

19. Mr Bradshaw submitted that having regard to the appellant's answers at question 52 and question 60 of the interview, these assaults occurred in the second half of his detention, i.e. within the two year period.
20. In reply Mr Tarlow relied on the Rule 24 response. The appellant did not challenge the Judge's reasoning regarding the core of his account. She found that the appellant's evidence was internally inconsistent with letters provided from the Sri Lankan lawyer and the Church of Our Lady of Refuge, in respect of the 2007 explosion and his alleged flight.
21. The Judge considered the appellant's profile and age, namely that he was 15 years old without previous LTTE involvement and had worked at his father's garage. He had not been questioned in 2007 regarding the explosions and yet his father decided to send him away. The Judge also noted that no reasonable explanation had been advanced for why the appellant would fall under suspicion for the explosion.
22. The Judge found it implausible that the explosion would have caused the authorities to focus their suspicions on this 15 year old appellant resulting in his fleeing from the family home. She did not accept his account and did not accept that he was forced to flee by the authorities or that he was forcibly recruited by the LTTE in 2009.
23. With regard to his account of detention from 2012, she did not find it plausible that five years after the explosion the appellant would be detained by the authorities shortly after returning home and then being in prison for four years. She failed to see how the appellant could have been considered such a threat by the authorities in 2012 such that he was in prison for four years until 2016. She therefore did not accept that he was detained or imprisoned as claimed [25].
24. During his submissions, Mr Tarlow has very fairly accepted that the approach of the Judge regarding the report of Professor Lingam "looks to be compartmentalised" and was not assessed in the round.
25. He noted that the Judge had found against the appellant on all the points raised and had not ultimately properly addressed the significance of the fact that the report was produced in accordance with the Istanbul Protocol.
26. He referred to [27] where the Judge stated that having considered the report of Professor Lingam, other causes than those claimed could be the reason for certain of the injuries sustained by the appellant, and having afforded his report due weight, it was not enough to persuade her that the appellant was burned and acquired the scars that he has in the manner than he claimed.

Assessment

27. The Judge in her findings from [18] onwards set out the history of the appellant's claim as well as his evidence. There were areas of significant inconsistency as well as other inconsistencies identified at [22-23].

28. Having considered the claim she did not accept the appellant's account that he was forced to flee following the explosions in July 2007 and therefore did not accept that he was forcibly recruited by the LTTE in 2009 – [24]. Further, she rejected his claim that he was detained by the authorities in 2012 and imprisoned for four years for the reasons referred to in [25].
29. Having made adverse findings against the appellant, she then considered the report of the psychological therapist as well as the report of Professor Lingam.
30. However, she did not have regard to the significance of the Istanbul Protocol and the findings that he gave in accordance with the protocol which differentiates different degrees of consistency.
31. Professor Lingam found a higher degree of consistency between some of the lesions and causes attributed by the appellant than merely “consistent”. Further, the chemical burns were found to be highly consistent with the history rather than merely “consistent” as found by the Judge. There were accordingly few other possible causes.
32. Moreover, the scars attributed to the beating with heated flex were clinically diagnostic according to the Protocol so that this appearance would not have been caused in any way other than that described. Moreover, she wrongly described the claimed cigarette burns to have been consistent with the history. In fact, Professor Lingam found them to be “typical”.
33. I have had regard to the contention raised in the grounds, and in particular that set out in paragraph 2 and 5.
34. It appears that the Judge failed to consider the significance of Professor Lingam's findings on the basis of the Istanbul Protocol when considering the appellant's claims. She was required to consider the evidence provided by the two experts as part of the evidence as a whole and not simply as an 'add on' after making adverse credibility findings against the appellant. That is an impermissible approach.
35. The very inconsistencies referred to by the Judge might well have been explicable on the basis of the reports from the experts. There was in fact an addendum provided to Professor Lingam's statement relating to discrepancies in autobiographical memories which had implications for the assessment of asylum seekers.
36. I accordingly find that the decision of the First-tier Tribunal Judge involved the making of an error on a point of law. I accordingly set it aside.
37. Both parties agreed that in the event that I set it aside this was an appropriate case for the appeal to be remitted to the First-tier Tribunal for a fresh decision to be made.

38. I have had regard to the Senior President's practice statement. I am satisfied that the effect of the error has been to deprive the appellant of the opportunity for his case to be properly considered by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error on a point of law and is set aside. The case is remitted to the First-tier Tribunal (Hatton Cross) for a fresh determination to be made before another Judge.

No anonymity direction made.

Signed

Date 2 September 2017

Deputy Upper Tribunal Judge C R Mailer