



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/00350/2018

THE IMMIGRATION ACTS

Heard at Field House  
On 30<sup>th</sup> May 2018

Decision & Reasons Promulgated  
On 6<sup>th</sup> June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR U S C J  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr D Kumudusena, Solicitor instructed by Liyon Legal Ltd  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Sri Lanka who entered here on 2<sup>nd</sup> October 2010 as a Tier 4 student. He claimed asylum in June 2017 and the Respondent refused his claim. The subsequent appeal before First-tier Tribunal Judge Birk was dismissed in a decision promulgated on 26<sup>th</sup> February 2018. Grounds of application were lodged.
2. The first ground related to the medical evidence in that the judge was said to have inadequately dealt with the evidence of the expert, Dr Mason, who said that the scars were diagnostic (this is highly misleading – the doctor did not use that word) and it was also said that the judge had put herself in the position of an expert in

questioning the medical evidence. The judge's cursory rejection of the medical evidence was not in accordance with the law. The second ground related to the documentary evidence where the judge had said that there was no letter or statement from the lawyer explaining how he was able to obtain the documents and when he obtained them. Reference is made to the case of PJ v SSHD [2014] EWCA Civ 1011 where it was said that there was an obligation on the national authorities to seek to verify the particular documents. The third ground related to discrepancies between the screening interview and the full interview. The fourth ground related to the judge making findings on her own assumptions. The fifth ground said that the judge had failed to make clear findings on the aspect of the Appellant's claim that his release would be recorded as an escape. The final ground related to the delay in claiming asylum in that the judge found he could have claimed asylum at an earlier stage if his claim was genuine. This however discounted the Appellant's evidence as to why he did not claim asylum immediately.

3. The grounds were considered by First-tier Tribunal Judge Pullig who said that the judge may have stated a higher standard of proof in concluding that the medical evidence was neither strong nor weighty. Furthermore, it was arguable that the judge's approach was not in line with PJ. However the judge was said to be careful in her analysis of the discrepancies between the screening and substantive interviews. Judge Pullig found that the judge was not in error regarding the delay in the appellant's departure from Sri Lanka and was drawing a reasonable inference from the evidence. The grounds relating to the fact the judge had failed to make clear findings regarding the Appellant's release was found to be arguable and as was the last ground relating to Section 8.
4. Thus the appeal came before me on the above date.
5. For the Appellant, Mr Kumudusena apologised for reference to the word "diagnostic" in the grounds. The doctor had found the injuries to be highly consistent and typical and the judge had not dealt with that. Reliance was also placed on the other grounds. The judge's reasoning at paragraph 24 was not fair on the Appellant in that the judge said that she found it to be of significance that he denied that he had ever been detained. The judge said this could not be confused with the question about whether he supported terrorism and his credibility was damaged by his answer to these questions. It was said that the judge should have considered the fact that the Appellant had made it clear in an earlier part of his interview that he had been detained and beaten.
6. I was asked to set the decision aside having found an error in law and remit it to the First-tier Tribunal.
7. For the Secretary of State Ms Everett said that the judge had dealt fairly with the medical evidence. There was nothing wrong with her approach, even if the reasoning was brief. The judge was entitled to point out discrepancies in the screening interview and in the full interview and had done so. Whether there was a delay in leaving Sri Lanka or not was not determinative of the outcome and the judge

was entitled to conclude that there was damage to the Appellant's credibility by the fact that he had not claimed asylum when he might have done.

8. I reserved my decision.

### **Conclusions**

9. There were some discrepancies in the Appellant's evidence as highlighted by the judge and it is clear enough that the judge was entitled to rely on those discrepancies as matters which went to her negative credibility findings. Perhaps it could be said that some of the reasoning, for example, in paragraph 24 was quite slender and it may have been better if the judge had referred to the Appellant's earlier answer in the screening interview that he was detained and beaten, which the judge did not do. However, this is not an error in law.
10. There was confusion in the evidence over dates and these were points that the judge was entitled to take, albeit they are not determinative of the outcome. Again, it seems to me that the judge was entitled to take into account that nine months was an exceptionally long time for the Appellant to be in hiding because the judge gave a good reason for that, namely that little detail had been supplied as to why and what was taking so long to affect his exit. No doubt the Appellant could have made his asylum claim sooner and it is arguable that the judge did consider the Appellant's version of events as to why he did not claim asylum when he did, but nevertheless found that he was claiming asylum at such a late date that his credibility was damaged.
11. None of these points are determinative in themselves and the crux of this case is the judge's findings on the medical evidence.
12. I have concluded that the way the judge dealt with the medical evidence was not adequate and that the decision is unsafe.
13. What we have is a very clear medical report from Mr Mason who made various important findings. At paragraph 6.1 he found that the scar on the left index finger was highly consistent with a scar that would result from a wound caused by attempting to ward off a blow from a hard object. At paragraph 6.2 he found that the scars were typical of the scars that would result from being beaten with a bar some years ago. At paragraph 6.3 he found the scar typical of the scar that would result from a wound described by the Appellant. At paragraph 6.4 found that it was "extremely unlikely" that by virtue of their position and appearance that the wounds that resulted in the scars described were self-inflicted or were inflicted with his consent, namely SIBP.
14. His conclusions are that, in paragraph 7, it is his overall opinion that the scars and their appearance are typical of the scars that would result from injuries caused in the manner the Appellant describes, that is because of being beaten and tortured in 2010. He applied the Istanbul Protocol.

15. The judge makes no reference to these findings that the scars were typical and highly consistent. In my view it was necessary for the judge to engage with these findings which she did not do. The judge says that she did not place weight on the medical evidence as being strong written evidence of torture. That seems to me to be an erroneous finding as the expert's report, is strong evidence that he was tortured because the scars were said to be highly consistent and typical with that proposition. The judge does not enter into that arena and to simply say that there is no evidence that there is strong or weighty evidence of torture is a material error in law.
16. It therefore seems to me that despite the discrepancies in his evidence the Appellant has not had a fair hearing because the judge did not deal adequately with the medical evidence which supported his case. Unfortunately, it seems to me that further fact-finding is necessary and this matter will have to be heard again by the First-tier Tribunal.
17. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the additional fact-finding necessary for the decision to be remade is such that it is appropriate to remit the case to the First-tier Tribunal.

**Notice of Decision**

18. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
19. I set aside the decision.
20. I remit the appeal to the First-tier Tribunal.
21. Anonymity order made.

Signed *JG Macdonald*

Date 6<sup>th</sup> June 2018

Deputy Upper Tribunal Judge J G Macdonald