



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10165/2017

THE IMMIGRATION ACTS

Heard at Field House
On 10 August 2018

Decision & Reasons Promulgated
On 22 August 2018

Before

UPPER TRIBUNAL JUDGE FINCH

Between

[S T]

(ANONYMITY ORDER IS MAINTAINED)

Appellant

-and-

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant:

Mr. S. Muquit of counsel, instructed by V J Nathan Solicitors

For the Respondent:

Mr. I. Jarvis, Home Office Presenting Officer

DECISION AND REASONS

BACKGROUND TO THE APPEAL

1. The Appellant is a national of Sri Lanka. He is a Tamil who was born in Jaffna. He arrived in the United Kingdom on 20 August 2016 and applied for asylum that same day. His application was refused on 6 November 1993. He appealed against this decision and First-tier Tribunal

Judge Rodger dismissed his appeal in a decision promulgated on 27 April 2018. First-tier Tribunal Judge Murray granted him permission to appeal on 24 May 2018.

ERROR OF LAW HEARING

2. Counsel for the Appellant submitted that the manner in which First-tier Tribunal Judge Murray considered the medical evidence of scarring amounted gave rise to errors of law. He also submitted that, as the First-tier Tribunal Judge was required to undertake a holistic assessment of the Appellant's credibility, errors made in relation to one aspect of his credibility, in this case his account of being tortured, had an adverse and cumulative effect on her overall findings about the credibility of the Appellant's account. Having heard counsel's submissions and having reviewed the grounds, the Home Office Presenting Officer accepted that the First-tier Tribunal Judge had misread the expert report.

ERROR OF LAW DECISION

3. It is the Appellant's case that he had a cousin who was a member of the LTTE and that he introduced him to other LTTE members and that he started to assist them to move weapons brought in by sea at Point Pedro to other locations in the area. He also asserted that he was arrested by the Sri Lankan authorities on 24 January 2016 and detained in Mathakal camp until 14 February 2016. He said that, whilst he was in detention, he was interrogated, tortured and forced to sign documents in Sinhalese.
4. His father was able to pay a bribe a soldier for his release and he was given into the care of an agent, who kept him hidden until it was possible to arrange for him to leave Sri Lanka. He also said that once in the United Kingdom he attended about ten demonstrations in support of the Transnational Government of Tamil Eelam and that the Sri Lankan CID had taken photographs of his at demonstrations and sent them back to Sri Lanka.
5. In order to succeed in his appeal the Appellant had to bring himself within the guidance given in *GJ & Others (post-civil war; returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC).
6. At paragraph 26 of her decision, First-tier Tribunal Judge Rodger stated:

“I have carefully looked at the evidence in the round, having regard to the background material as provided in both the appellant and the respondent’s bundles and the country guidance relating to Sri Lanka”.

7. As a consequence, as recognised by counsel for the Appellant, it is necessary to analyse whether the First-tier Tribunal Judge’s findings on individual parts of the evidence was sustainable.
8. In paragraphs 31 to 32 of her decision, the First-tier Tribunal Judge considered the expert scarring report by Dr. Iquierdo-Martin. Her finding in paragraph 32 that the expert’s opinion taken at its highest was that the Appellant’s scars were consistent with his account of torture is factually incorrect. Instead, the expert found that scars 2 and 4 were “typical of unwillingly and intentionally caused injuries with at least two different implements described by the [Appellant]”. This was significant because the term “typical”, as recommended by the Istanbul Protocol, denotes the second highest gradation of consistency and the term “consistent” is a much lower gradation of consistency. This went directly to the question of the credibility of the Appellant’s account.
9. In addition, in paragraph 32 of her decision, the First-tier Tribunal Judge noted that the appellant’s description in his asylum interview of the torture that he alleges to have received does not sit entirely well with the information provided to the expert. However, in paragraph 3.3 of his report, Dr. Andres Izquierdo-Martin, noted the different types of physical torture said to have been suffered by the Appellant and they did not differ in any significant manner from the description given by the Appellant in his substantive asylum interview.
10. In addition, at paragraph 2.3 of his report he stated that:

“The history in this report is restricted to those aspects that I consider relevant to the physical findings. The absence of reference to an incident in the report does not necessarily mean that it was not described to me”.
11. As a consequence, the expert’s failure to mention sexual assault did not undermine the Appellant’s account as it could not have been expected to leave scarring so long after the event.

12. In paragraph 32 of her decision First-tier Tribunal Judge Rodger also stated that the expert report was inconsistent with the Appellant's account of being tortured in January 2016. However, what the expert actually stated in his report at paragraph 5.3 was that:

“After six months it is usually impossible to estimate the date of an injury with any degree of accuracy making the dating of a wound even more uncertain”.

13. In addition, at paragraph 5.1 at pages 44 of the Appellant's Bundle, he stated that:

“Determining the age of the scars by just visual inspection is not a precise science and often it is just possible to say that the injuries are mature or immature, enough to give a very approximate range of time when the injuries could have been caused. In the claimant's case the scars are quiescent, fully matures and without any doubt older than six months, also in view of the degree of maturity it is consistent with injuries older than two years old”.

14. Therefore, what the expert was saying was that without any doubt they were older than six months but that they could have been older than two years.

15. Furthermore, to the extent that the First-tier Tribunal Judge gave no weight in paragraph 37 of her decision to the Appellant's mother's evidence because it was said to be self-serving, she also erred in law. In *MJ (Singh v Belgium : Tanveer Ahmed unaffected)* [2013] UKUT 00253 (IAC) the Upper Tribunal found that:

“... if by self-serving the adjudicator means they assist the appellant, then most documents produced by the appellant would, by definition, be condemned in this way. In the absence of any more specific criticism “self-serving” is not sufficient reason for not accepting that a document is reasonably likely to be genuine...No doubt an appellant will generally, if not always, find it of assistance to put forward evidence which assists his case and to that extent such evidence may be regarded as self-serving but that cannot in any sense be said to be the reason for marginalising it”.

15. The appropriate approach would have been to give some weight to the letter from the Appellant's mother when taken together with the other evidence. .

16. As a consequence, I find that First-tier Tribunal Judge Rodger did make errors of law in her decision.

Decision

- (1) The Appellant's appeal is allowed.
- (2) The decision of First-tier Tribunal Judge Rodger is set aside.
- (3) The appeal is remitted to Taylor House for a *de novo* hearing before a First-tier Tribunal Judge other than First-tier Tribunal Judge Rodger.

Nadine Finch

Signed

Date 10 August 2018

Upper Tribunal Judge Finch