



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

**Appeal
Number :
AA/03074/2014**

THE IMMIGRATION ACTS

Heard at Field House

**Decision &
Reasons
promulgated
On 17 June**

On 11 November 2014

2015

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**Nirushan Thiventhiram
(Anonymity order not made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellant: Mr W Rees of Counsel, instructed by L G Law Chambers.

For the Respondent: Mr P Duffy, Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against the decision of Designated First-tier Tribunal Manuell promulgated on 11 September 2014 dismissing the Appellant's appeal against the decision of the Respondent dated 27

April 2014 to remove him from the UK consequent to refusing an application for asylum.

Background

2. The Appellant is a national of Sri Lanka born on 24 September 1990. He entered the UK on 18 August 2011 pursuant to a Tier 4 (General) Student visa with leave valid until 31 May 2014. On 19 October 2012 he applied for asylum. The application was refused for reasons set out in a 'reasons for refusal' letter ('RFRL') dated 27 April 2014, and a removal decision was made on the same date in consequence.

3. The Appellant appealed to the IAC.

4. The First-tier Tribunal dismissed the Appellant's appeal for reasons set out in its determination.

5. The Appellant sought permission to appeal which was granted by Designated First-tier Tribunal Judge MacDonald on 1 October 2014.

Consideration

6. It was a feature of the Appellant's case that he was detained in Sri Lanka between 23 June 2010 and 21 October 2010, during which time he was subjected to ill-treatment and torture. He claimed that he still bore the physical scars of his experiences. The Respondent, at paragraph 28 of the RFRL, whilst noting that the Appellant had provided photographs of his scars, also noted that there was no supporting medical report. Overall, the Respondent accepted the fact of the scars but did not accept that they had been sustained in the circumstances claimed.

7. On appeal to the First-tier Tribunal the Appellant relied, in part, on a medical report prepared by Professor S Lingam dated 8 August 2014 (based on an examination on 22 May 2014).

8. Complaint is made in the grounds in support of the application for permission to appeal that the First-tier Tribunal erred in

according no weight to the medical report. Although other matters were raised in the Grounds, it was in respect of the medical report that Judge MacDonald granted permission to appeal. In this context I also note that Mr Rees acknowledged that the only 'real point' was in respect of the medical report.

9. In his determination Judge Manuell indicates that he has directed himself to applicable law (paragraphs 4-7), before setting out in some detail the evidence that was before him (paragraphs 8-18), and summarising the parties' submissions (paragraphs 19-20). The Judge then sets out at some length and in some detail his evaluation of the evidence, his findings, and conclusions (paragraphs 21-42). The medical report was but one feature of this 'in the round' evaluation.

10. The Judge expressly addresses the medical report at paragraphs 27 and 30. However, it must be borne in mind that his observations in this regard are only one factor in an overall consideration of the Appellant's narrative account, testimony, and other supporting evidence. Accordingly, paragraph 27 commences with an observation in respect of the Appellant's testimony, before turning to a consideration of the supporting medical evidence. Similarly, paragraphs 28 and 29 make further comment and observation in respect of the Appellant's account of having been detained and tortured, before returning to the specifics of the medical report at paragraph 30.

11. Bearing in mind, then, that they are not to be read in isolation, nonetheless paragraphs 27 and 30 are in the following terms:

"27. The Appellant's claim that he had been tortured by the Sri Lankan authorities made little sense. Professor Lingam in his report states that the scars he noted were "diagnostic" of the causes attributed by the Appellant, but obviously the report could do no more than rule out accidental causes. The report could not identify the perpetrators. Professor Lingam stated that the scars were "certainly over two years in age" but he was in the tribunal's view unable to find anything better than his opinion that the scars were consistent with having been caused "circa four years ago". He identified no source for that opinion other than what the Appellant had told him."

"30. Strangely, when asked at his asylum interview about medical attention for his injuries... the Appellant's response was vague. He said that he had seen a GP "within [the] last

two months”, i.e., of his asylum interview. The Appellant was unable to say how and when and by whom he had been treated in Sri Lanka, or how otherwise he had been helped to recover from what [on] his account was a terrifying ordeal. Professor Lingam records no enquiry on his part in his report on medical treatment obtained by the appellant and its effectiveness. The tribunal gives no weight to the medical report, which is superficial.”

12. I pause to note that it does seem to me to be a matter of some significance that no apparent enquiry was made of the Appellant by Professor Lingam as to any treatment he had received following his release from detention: even if such an enquiry was made, the report is silent on the matter. Necessarily, the nature of any treatment may be relevant to the healing of injuries, which in turn may be relevant both to the appearance and, more particularly in this context, the ageing of any scars. Indeed, the report itself is overt on the point: *“In diagnosing and dating the age of a cigarette burn, one has to be aware that the distinction between a second degree burn possibly caused accidentally and a third degree burn (with subsequent scar formation) can only be made on the basis of the healing process”* (page 6 of the report). The omission of any enquiry, therefore, seems to me effectively to disregard relevant matters that should properly inform the medical opinion. Depending upon facts, any such omission might not only undermine the value of any report on the specific issue, but might also devalue the opinion of the particular expert more generally as not having had a due and proper regard to all relevant matters. In the context of this particular case it seems to me plain that the Judge had it in mind that the omission of such an enquiry or reference to post-injury treatment justified characterising the report as ‘superficial’.

13. Be that as it may, Mr Duffy acknowledged in the course of submissions that neither such a circumstance nor anything else in the Determination warranted a conclusion that ‘no weight’ could be accorded to the medical report. The report was not, he said, completely without value – even if that value was limited to a ‘superficial’ confirmation of the existence of scars consistent with the account of how they had been inflicted. However, Mr Duffy urged me not merely to focus on the words at the end of paragraph 30, but to consider the Judge’s other observations and comments in respect of the report: the Judge have had regard to the report, and had reached findings and conclusions in the appeal that were open to him on an overall ‘in the round’ evaluation.

14. I accept Mr Duffy's submission. This is not a case where it could reasonably be said that the Judge did not have regard to the report: he clearly considered its contents and commented upon those contents in the passages set out above. There is nothing in those comments that it was not reasonably open to the Judge to state. It is clear that the Judge considered that there was nothing of sufficient substance in the report that in effect remedied those aspects of the Appellant's account and testimony that the Judge found undermined the credibility of his account.

15. Even if it were otherwise, the Appellant would not have succeeded on his appeal. The Judge considers matters in the alternative - including in the event that he were to be wrong in respect of the Appellant's claimed detention. In this context it is to be noted that in terms of claiming current risk factors in the event of a return to Sri Lanka the Appellant was primarily concerned to establish that he had previously been detained - rather than specifically that he had been tortured. Given that the background evidence demonstrates that during the relevant period in Sri Lanka it was reasonably likely that a Tamil detainee would have been subjected to ill-treatment and/or torture, necessarily therefore the primary significance of the medical evidence was the extent to which it corroborated the Appellant's claim to have been detained *via* its possible corroboration of his ill-treatment / torture. Although he rejected the Appellant's claim to have been detained, in the alternative the Judge had regard to the risk to the Appellant in the event that he had been detained - but was still not satisfied that he would be at risk.

16. Paragraph 39 provides a clear and unambiguous rejection of the Appellant's claim in all material respects. Below I have underscored the passage in which the Judge considers the risk in the event that the Appellant had been detained. There is nothing in this alternative assessment that has been challenged in the grounds or in the submissions of Mr Rees.

"It would be possible to examine the Appellant's claims further but in the tribunal's view his credibility when assessed in the round with anxious scrutiny is so manifestly deficient that it is unnecessary to do so. The Tribunal finds that the Appellant is a Sri Lankan Tamil, originally from the north. He is not an LTTE member. The tribunal rejects his evidence that his father was prominent in the LTTE and that the Appellant's brother is in prison in Sri Lanka because of his LTTE activities. The Appellant has never been charged with any offence in Sri Lanka, on his own account. The Appellant was issued with a valid Sri Lankan passport through the usual channels. His

behaviour on arrival in the United Kingdom or subsequently was not that of a person fleeing in fear of persecution. Even if (which is not accepted) the Tribunal were wrong about events in 2010 when the Appellant claims to have been detained following denunciation by an informer, any records of the Appellant which are accessible will show that there was insufficient evidence to charge him with any terrorist offence, as shown by his unhindered departure from Sri Lanka. That falls short of showing that he will face ill-treatment reaching the level of persecution for any Refugee Convention reason on return. The Appellant's time in London has all been post the LTTE's defeat and will not be of interest to the Sri Lankan authorities who monitor such activity. The Appellant claimed no continuing interest in the LTTE or in Tamil secession, indeed no political inclination at all. The Appellant's scars do not show that he was ever on active service and are not visible in normal clothing.

17. In all such circumstances, and notwithstanding the Respondent's acceptance that the medical report could not properly be characterised as being of no value to the Appellant's case, I find no *material* error of law in the approach taken by the First-tier Tribunal.

Notice of Decision

18. The decision of the First-tier Tribunal contained no material error of law, and accordingly the decision stands.

19. The appeal is dismissed.

20. No anonymity order is sought or made.

Deputy Judge of the Upper Tribunal I. A. Lewis 12 June 2015