



IAC-FH-NL-V1

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

Appeal Number: AA/11621/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 28 August 2015**

**Decision & Reasons Promulgated
On 7 September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**K N
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit, Counsel instructed by Kanaga Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought in relation to the determination of First-tier Tribunal Judge Housego which was promulgated on 13 April 2015. The appeal is brought with the permission of First-tier Tribunal Judge Heynes who on 8 May 2015 gave reasons for permission as follows:

“The grounds of appeal complain that the Judge made irrational credibility findings and erred in considering risk on return.

There is an arguable error of law in that the Judge accepted that the Appellant had been tortured (para 50) but appears to contradict that finding (para 61).”

2. The submissions that I have heard on this appeal have been focused on the apparent contradiction between those two paragraphs and I am grateful to Mr Muquit of Counsel for the appellant and to Mr Walker, the Home Office Presenting Officer, for the pragmatic and realistic manner in which they have both approached this appeal. I hope that I can state to the background relatively shortly bearing in mind the narrowness of the issue.
3. The appellant is a citizen of Sri Lanka born on 2 May 1975 who travelled to this country via both Turkey and France and made his claim for asylum on 14 October 2013. The issues raised both in the refusal letter and in the determination of the First-tier Tribunal concerned injury inflicted during a shell attack in 1992 together with allegations of torture and involvement in the LTTE, bringing the appellant to the attention of the Government of Sri Lanka.
4. Having set out the conflicting evidence and then dealt with the submissions made on behalf of the Home Secretary and the appellant, the First-tier Tribunal Judge made a number of findings of fact. The first of those so far as is material to this appeal is at paragraph 50 which reads as follows:

“At some point the appellant has suffered torture. The medical evidence of Dr Martin is clear. The physical location of the scars is such that not all of them could have been self-inflicted. The circular scars are not consistent with shell injuries nor random so as to be consistent with an accident. They are of a magnitude such as to make it unlikely that they would be self-inflicted. The report contains a series of descriptions of the scars making it likely that they are the result of torture inflicted upon the appellant. The age of the scarring cannot be dated precisely, only that it was at the date of the report, more than one or two years old.”
5. Later in the determination, at paragraph 61, the First-tier Tribunal Judge says the following:-

“Given the appellant’s life history from 2007 onwards there are a number of possible explanations for the infliction upon the appellant of these injuries. I find that they were not inflicted as the appellant asserts.”
6. It is impossible, reading the determination in its entirety, to reconcile the judge’s apparent findings in paragraph 50 with set out in paragraph 61. It seems to me that when first addressing this issue the judge appears to accept that the appellant suffered torture and in doing so accepts at face value the evidence of Dr Martin which, amongst other things, discounts possible alternative explanations as to the cause of that scarring.
7. Paragraph 61 is diametrically opposed to this and is a positive finding that the scarring, which is the only material injury in dispute, was not inflicted as the appellant asserts. It is not possible to reconcile that contradiction. The First-tier Tribunal Judge has given no explanation or reason as to coming to the conclusion which he did at paragraph 61. This is perhaps a little surprising because elsewhere in the determination there is clear evidence of a careful balancing of conflicting versions and an appropriate

fact-finding process being undertaken. This clear inconsistency amounts to an error of law and one that requires the decision to be made again.

8. I have turned my mind today as to whether any of the findings of fact by the First-tier Tribunal can properly be preserved and whether I, in the Upper Tribunal, can properly re-make the decision. Both Mr Muquit and Mr Walker incline to the view that the only proper course in these circumstances, where a finding is central to the issue of credibility and plausibility, the only proper course is to remit the matter to the First-tier Tribunal in order that the determination can be made afresh and it seems to me that this common view must be correct.
9. The matter must be remitted so that a fresh hearing can take place before a different First-tier Tribunal Judge, who, looking at all the evidence in the round, can come to proper conclusions on the issue of torture. It is because the matter requires a re-hearing that I have been circumspect and economical in what I have said regarding the disputed facts because clearly they remain contentious and by setting aside the determination of the First-tier Tribunal Judge they will need to be looked at afresh. Therefore, I decline to express any view.
10. This appeal is allowed. The matter is remitted to the First-tier Tribunal for rehearing.

Directions:

1. Remit to First-tier Tribunal at Hatton Cross
2. Not to be heard before First-tier Tribunal Judge Housego.
3. Tamil interpreter required.
4. Time estimate - 3 hours.
5. All evidence to be relied upon to be submitted in compliance with standard directions.

Notice of Decision

The appeal is allowed.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill*

Date 4 September 2015

Deputy Upper Tribunal Judge Hill QC