



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

Appeal Number: AA/06219/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> May 2016**

**Decision & Reasons  
Promulgated  
On 7<sup>th</sup> June 2016**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**RAJEEVAN JEEVAGANESHAN  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Jaisri, Counsel instructed by Kanaga Solicitors  
For the Respondent: Ms J Isherwood, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Judge Hosie, who in a determination promulgated on 19 November 2015 dismissed the appeal of Mr Jeevaganeshan against the respondent's decision of 18 March refusing

his asylum claim and the decision to remove him from the United Kingdom to Sri Lanka,.

2. The challenge to the decision is essentially two-fold as set out in the grounds by Mr Jaisri and the first of these is that the judge's credibility findings were flawed. In that regard there are various points raised, the main one perhaps I will come onto in a moment. There is an argument that a claim by the appellant as to the partial closure of the A9 road lacks plausible reasoning. There is also a contention that there was a failure to give any consideration to the evidence of the witness and references also to the evidential value of letters sent by the appellant's mother and the evidence from his lawyer and the question of whether too much weight was attached to the fact that he did not claim asylum as quickly he might have done. And the final point is the point concerning the judge's conclusion at paragraph 21 that the claim was not credible but followed by reference thereafter to the medical evidence.
3. Dealing with the first points which are I think matters that are less relied by Mr Jaisri and the medical evidence point but nevertheless they are matters that require consideration. I think there is a point about the lack of reasoning in relation to the road closure, though it is not a major point.
4. There is the point concerning the witness and Ms Isherwood makes the point there that he could say nothing in particular because he was in the United Kingdom and that is also relevant to the ability of the appellant to claim asylum at an earlier stage because he was in the country of somebody who knew the procedures well, and I think there is some force in that point.
5. There is then more force, I think, although again it is not a key issue to the letters sent and the evidence from the lawyer, I think as Mr Jaisri says the fact that a question was raised about the lawyer's letter in the decision letter did not absolve the judge from giving some consideration to them.
6. But I think the main concern is that about the treatment of the medical evidence. The judge considered the evidence essentially at paragraphs 17 to 20 and then said "I do not find the appellant to be credible" and then went on to make alternative findings which I will come on to as they form the second part of the challenge. So he gave consideration to what the position was in respect of the appellant's claim and then came on at paragraph 23 to look at the psychological evidence of Dr Dhumad, the diagnosis of PTSD and Dr Martin's evidence concerning the fact that he may have been harmed by others given his analysis of the appellant's scarring, infliction by others by proxy was described in the note and the judge took note of all of the evidence and the claim that he had been detained and tortured by state controlled agents and did not need to show that the fear was well-founded.

7. I think there is real force in the criticism in this regard. There are a number of authorities that have made it clear over the years, Mibanga for example referred to in the grounds, that the evidence needs to be considered in the round rather than making a credibility finding and then going on to say “Well it would not make any difference even if I had looked at the medical evidence” as it has to be looked at overall and perhaps the evidence of Dr Martin in this regard is particularly powerful. He clearly regard to the guidance in the Istanbul protocol. He looked at the scarring carefully and the ways in which it might have been inflicted and came to the view he did, and this needed to be factored into the credibility evaluation.
8. So in my judgement the credibility findings are flawed as a consequence. That might not matter if the alternative findings are sound. As I say, the judge went on to say “Even if I did find him credible I am not satisfied even to the lower standard he is necessarily likely to be a target on return to Sri Lanka.”
9. There is a point picked up by Judge Cox in granting permission to which Mr Jaisri has also referred to about the use of the word ‘necessarily’ which is a matter of concern. It does appear to elevate the standard to a higher one than that of a reasonable degree of likelihood or real risk. And then the judge went on to consider the claim.
10. I think the main problem that I see with this alternative finding is really the point that is encapsulated at paragraph 3(2) of the grounds. The judge does say that even if he had been detained and tortured by state controlled agents he has not shown a well-founded risk. But if it were the case that that happened in 2012 then it seems to me that the judge needed to consider in context and more specifically from the background evidence whether that could give rise to a real risk, I do not ignore Ms Isherwood’s point that the appellant does not on the face of it appear to fall within any of the country guidance factors but if it is accepted that he had been detained and ill-treated as relatively recently as 2012 then there needed to be a more specific and detailed consideration given to why it would be nevertheless that he would not face a real risk on return.
11. So I do not think that the determination is as it were saved by the alternative findings. The flawed credibility findings remain a matter of concern and are unsafe, and therefore the decision is set aside and will be reheard in my view most appropriately on reconsideration in the First-tier Tribunal. So it will be remitted back to Hatton Cross. Tamil interpreter. 2 hours time estimate.

Signed

Date

Upper Tribunal Judge Allen

07.06.2016