



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/03782/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 10 May 2017**

**Promulgated**

**On 31 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RAMSHAW**

**Between**

**MR PALLIYA RALALAGE CHRISHANTHA BRIAN DE ALMEIDA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Kumudusena

For the Respondent: Ms A Fijiwala

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka who was born on 6 April 1976. He arrived in the United Kingdom on 3 May 2015 pursuant to a visit visa which had been issued on 16 March 2015. The visa was valid until 16 September 2015. He made a claim for asylum on 4 August 2015. The respondent refused the appellant's claim for asylum on 4 December 2015. The respondent did not accept that the appellant was at risk of persecution. The appellant appealed against the respondent's decision to the First-tier Tribunal.

2. In a decision promulgated on 20 December 2016 First-tier Tribunal Judge D Ross dismissed the appellant's appeal. The First-tier Tribunal rejected the appellant's account of having been arrested and tortured in Sri Lanka. The judge also dismissed the claim under Article 8.
3. The appellant applied for permission to appeal against the First-tier Tribunal's decision and on 29 March 2017 First-tier Tribunal Judge Ford granted the appellant permission to appeal.

### **The Hearing before the Upper Tribunal**

4. The grounds of appeal, as amplified during the hearing by Mr Kumudusena, set out a number of grounds of appeal. However the grant of permission was in respect only one ground of appeal, namely, that the judge approached the medical report incorrectly particularly with regard to the interpretation given to the phrase 'consistent with'. The grounds of appeal in relation to the medical evidence are that the First-tier Tribunal Judge erred in law as he made findings on the medical evidence based on his own assumptions. Mr Kumudusena submitted that the judge effectively placed himself as an expert in the analysis of the appellant's injuries. He asserted that the judge misdirected himself with regard to what 'consistent' meant. He submitted that the judge did not identify any significant inconsistencies but referred specifically to the appellant saying that he had been hit on the back of the neck with a rifle but not on his face. He referred to the questions asked of the appellant in interview and submitted that those questions were general questions about what the appellant had suffered not specific questions with regard to where he had been hit and that there was no real inconsistency. The judge has failed to give adequate reasons for rejecting the medical evidence.
5. Ms Fijiwala submitted that the expert did consider that the injuries could have been caused accidentally. The judge identified an inconsistency with regard to where he was hit with the rifle butt. She submitted that the judge was not using the word 'consistent' by reference to the Istanbul Protocol but in terms of whether or not it is consistent with the appellant's account. She referred to paragraph 15 of the grounds of appeal and submitted that what was set out there was incorrect. It is not the role of the doctor to assess credibility. She referred to paragraph 29 of the case of **S v Secretary of State for the Home Department [2006] EWCA Civ 1153** where it sets out that it is not the role for a doctor to assess credibility. This is exactly what the judge is required to do - that is exactly what the judge is doing.
6. Although oral submissions were made on the other grounds of appeal I have not considered because I have found a material error of law in any event.

### **Discussion**

7. The First-tier Tribunal Judge considered the evidence in the round. It is clear that the judge had taken all the evidence into account when arriving at conclusions on credibility. At paragraph 25 the judge dealt with the medical evidence. He set out:

“25. The appellant also relies on the report into his injuries, but I can give this report little weight because whilst the injuries are consistent with his account, all this means is that they could have been caused in the way described, but there are many other possible causes. The appellant did not mention in his evidence that he had been struck in the face by a rifle butt, which is one of the possibilities raised by the expert, although he does mention being hit with a gun butt on the neck. It follows that the injuries may have been caused in the way described by the appellant, but they could equally have been caused by his falling off a bicycle, or a myriad of other possibilities. I also consider that bearing in mind the very severe beating which the appellant claimed to have received, in which he describes being beaten on every part of his body, I note that there is no evidence of multiple injuries all over his body. For example there are no injuries to his back, which are still visible, or to the top half of his legs, or to his face, apart from his eyebrows, or to his head. The injuries, in this case are mainly confined to the extremities of the body, the lower arm and the lower leg, and the eyebrows, plus of course the injury to his hand. I do not consider that these injuries are consistent with the very severe beating which the appellant received. It may of course be argued that the injuries have subsided after a period of some months, but the fact remains that there is no substantial evidence which tends to support the appellant’s account.”

8. A judge is entitled to place little weight on an expert’s evidence. However, it is not clear why the judge in this case considered that he was unable to place little weight on this evidence. It might simply be because the injuries could have been caused by many other possible causes. As set out above the judge said “I can give this report little weight because ... all this means is that they could have been caused in the way described, but there are many other possible causes.” Whilst it may be the case that the judge had reached the conclusion that little weight could be placed on the report as a result of certain factors in the case, an alternative reading of this is, as I set out above, that the judge proceeded on the basis that because the expert found only that the injuries were consistent then automatically little weight must be given to the report. The judge also appears to have erred by entering into speculation with regards to alternative reasons for the injuries. Further, the judge again entered into speculation and made a finding himself as to whether the injuries noted by the expert were consistent with the severe beatings that the appellant received. This is a matter for a medical expert and is not a matter that a judge has expertise in. I accept Mr Kumudusena’s submission that the questions about where the appellant had been hit in the asylum interview were not detailed so there was no real inconsistency with regard to the evidence concerning being hit with a rifle butt. The judge has failed to give sufficient reasons for rejecting the expert’s report. Whilst the judge was entitled to reject the medical evidence he must give sufficient reasons for that rejection and

must not stand in the shoes of the expert in determining for himself whether the injuries are consistent with the account give by the appellant.

9. Although I consider that this is a borderline case it is not clear that the judge would have arrived at the same conclusion if the medical evidence had been considered correctly.
10. I find that there is a material error of law in the First-tier Tribunal decision. I set that decision aside pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 ('TCEA').
11. There was no appeal against the findings of the judge on Article 8.
12. I considered whether or not I could re-make the decision myself and whether any findings could be preserved. I do not consider that it is possible to extricate the findings for each other. I considered the Practice Statement concerning transfer of proceedings. I am satisfied that the nature and extent of judicial fact finding that is necessary in order for the decision in the appeal to be re-made is such, having regard to the overriding objective, that it is appropriate to remit the matter to the First-tier Tribunal.
13. I remit the case to the First-tier Tribunal for the appeal against the asylum decision to be heard at Hatton Cross before any judge other than Judge D Ross pursuant to section 12(2)(b) and 12(3)(a) of the TCEA. A new hearing will be fixed at the next available date.

### **Notice of Decision**

14. The decision of the First-tier Tribunal contained a material error of law. The decision on the asylum claim is set aside. This matter is remitted to the First-tier Tribunal for a de novo hearing at Hatton Cross to be heard before a judge other than Judge D Ross to be heard on the next available date in relation to the asylum claim only.

Signed P M Ramshaw

Date 28 May 2017

Deputy Upper Tribunal Judge Ramshaw