



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/05798/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 26 June 2017

**Decision &
Promulgated**

On 05 July 2017

Reasons

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**CHAMAL DISSANAYAKA MUDIYANSELAGE
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Kumdusena, Lyon Legal Ltd

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

DECISION AND REASONS

1. The appellant, a national of Sri Lanka, has permission to challenge the decision of First-tier Tribunal (FtT) Judge Emerton sent on 31 March 2017 dismissing his appeal on asylum, humanitarian protection and human rights grounds.
2. The written grounds of appeal are inordinately long, but in essence raise five arguments to the effect that the FtT Judge materially erred in law in (1) his treatment of the medical evidence; (2) his treatment of the

documentary evidence; (3) giving undue weight to the appellant's delay in claiming asylum; (4) expecting the appellant to prove his claim with corroborative evidence; and failing to make findings about the appellant's claim.

3. I am grateful to both parties for their submissions.
4. I have concluded that the FtT Judge did not materially err in law. It is convenient if I deal with grounds 1, 3, 4 and 5 before addressing ground 2.
5. As regards the medical evidence, I do not consider the grounds have arguable merit. The medical report in question, by Mr A Mason, did not address the respondent's refusal decision or the respondent's reasons for not accepting the appellant's core claims. It does not make clear what details the appellant had provided to the doctor about his adverse experiences in Sri Lanka. Although the doctor made reference to the Istanbul Protocol, he appears to have no understanding of the different thresholds of likelihood set out in that Protocol as between findings of 'consistent' and 'highly consistent'. Although noting in respect of several of the scars and injuries that accidental causes could not be ruled out, he nevertheless finds that they are 'highly consistent' with the appellant's account. That without more is illogical. He nowhere addresses the significant reduction in the ability of medical reports to ascertain the causation of scarring when the latter is said to have happened over seven years ago. It was open to the judge to attach little weight to this report for the reasons given. In attaching little weight to this report, the judge did not seek to act as a medical expert; he simply identified significant shortcomings in it. The judge did not compartmentalise the non-medical and medical evidence, but properly considered the medical evidence in the context of the evidence as a whole.
6. There is nothing in ground 3. The judge properly took into account that the appellant made an asylum claim over five-and-a-half years late. In evaluating what weight to attach to this fact the judge considered the appellant's attempted explanation in terms of reliance on the advice of an agent. It was entirely open to the judge to count against the appellant that he had used professional representation to apply for two extensions of leave which was not indicative of someone misled by an agent. It is nonsense to suggest that the judge took the appellant's delay in claiming asylum "as a starting point of the assessment of the Appellant's credibility". The judge made very clear in paragraph 25 that "I have assessed the evidence in the round before reaching my findings".
7. I see nothing in ground 4 either. The grounds are simply wrong to state the judge errs if he "expects" a claimant "to pursue his claim with corroborative evidence". Article 4(1) of the Qualification Directive requires an applicant to substantiate his application. If there are elements of his application that are not substantiated he may only be excused the needs to corroborate ("confirm") them in specified circumstances. The appellant plainly did not show that he fulfilled all the specified circumstances. The judge was well-aware from cases cited (e.g. **Tanveer Ahmed**) that an

asylum applicant may not be able to corroborate all or some aspects of his account but properly identified certain respects in which the appellant was in a realistic position to provide corroborative evidence but failed to do so.

8. As regards ground 5, it has all the appearance of a make weight. Insofar as it contends that the judge should have made a specific finding in relation to the appellant's uncle, it is not the task of a judge to do anything more than decide the appeal before him by identifying the material reasons for accepting or rejecting the appellant's account. The judge did that.
9. It was not necessary for the judge to make findings on every aspect of the appellant's account. The only documentary evidence relied on in relation to the uncle was a death certificate but its details (both in relation to the cause of death and nature of the uncle's business) was inconclusive.
10. Turning then to ground 2, I am not persuaded that the judge's treatment of the documentary evidence fell into material error. I do not accept that the judge can be criticised for attaching significant weight to the failure of the appellant to produce satisfactory evidence as regards the warrant: At paragraph 33 the judge stated that:

"the main document is an alleged copy of a police report asserting that a case would be presented on 27 July 2010 to obtain a warrant. There is no warrant. The report refers to the magistrate's court having authorised detention in October 2010, but there is no such document from the court."

11. That was correct. The police report was simply a statement of what the police officer had presented to the court; it did not record that the court had issued a warrant or certainly the judge cannot be criticised for reading the translated version as being only a presentation of the police case. I see force in the criticism that the judge was wrong to expect that applicants would be able to apply for copies of arrest warrants (paragraph 18 of the grounds), but I fail to see that this resulted in any legal error since such documents are accessible to Sri Lankan attorneys and the principal reason why the judge found the documents submitted regarding the appellant's claimed arrest on a warrant unsatisfactory was that, despite stating he had instructed a lawyer in May 2016, he had provided nothing from the person who sent these documents: see paragraph 33.
12. A further reason why I consider the judge's treatment of the documents contains no legal error is that the judge made clear that his consideration of them took place in the context of his assessment of the evidence as a whole. This was a case in which the shortcomings identified by the judge in the appellant's account were legion. The judge identified significant inconsistencies and implausibilities in the appellant's account, several of which are not addressed in the grounds, notwithstanding that they run to some sixteen pages. There is no attention, for example, to the judge's reasoning in paragraphs 37-40.

13. The judge can be criticised for seeming to count against the appellant the lack of original documents, but I do not see that this was material to his rejection of the reliability of the copies.
14. The grounds particularise some other challenges to the judge's findings of inconsistencies. In my judgment those made amount to mere disagreements with the judge's findings of fact. In particular, the judge to be fully entitled to consider that the appellant's evidence regarding his past employment in a communications shop run by his uncle was at odds with his own passport entry which states that he was a chef. It was open to the judge to reject the appellant's explanation of the entry in terms of 'chef' being just a part-time job. I entirely concur with the judge that in any event, of more significance was the complete failure of the appellant to provide any evidence of his employment in a telecommunications shop for three-and-a-half years, from July 2006 to October 2009. His claim to have worked in this shop was central to his claim as to why he had been arrested and ill-treated. As the judge said, three-and-a-half years of employment would have generated a significant documentary trail, yet none was provided and no explanation for its lack.

Notice of Decision

15. For the above reasons:

The FtT Judge did not err in law.

The decision of the FtT Judge is accordingly upheld.

Signed

Date: 4 July 2017



Dr H H Storey
Judge of the Upper Tribunal