



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal no: PA/02534/2017

THE IMMIGRATION ACTS

At Royal Courts of Justice, Belfast
on 23.07.2018

Decision signed: 30.07.2018
sent out: 06.08.2018

Before:

Upper Tribunal Judge
John FREEMAN

Between:

[A A]

appellant

and

Secretary of State for the Home Department

respondent

Representation:

For the appellant: *Stuart McTaggart* (counsel instructed by MSM)

For the respondent: Mr A Govan

DETERMINATION AND REASONS

This is an appeal, by the appellant, against the decision of the First-tier Tribunal (Judge Francis Farrelly), sitting at Belfast on 7 September 2017, to dismiss an asylum appeal by a citizen of the Sudan, born 1965.

*NOTE: (1) no anonymity direction made at first instance will continue, unless extended by me.
(2) persons under 18 are referred to by initials, and must not be further identified.*

2. The appellant had first come here on a visit visa, for an international Scout gathering in 2007. Later that year he had returned to the Sudan, and then come back, by way of Dubai. He was arrested on return on 26 April 2008, and at that point claimed asylum, on the basis of events which he said had taken place when he went back to the Sudan. That was refused in 2010, when his appeal was dismissed by Judge Sean Fox, and was finally refused permission to appeal on 22 December that year.
3. Over the next few years the appellant made various sets of further submissions, all refused without any steps being taken to remove him, till a refusal decision was given, with a removal window, on 15 February 2017, allowing him a further right of appeal. Judge Farrelly of course referred to the effect of *Devaseelan* (Second Appeals - ECHR - Extra-Territorial Effect) [2002] UKIAT 702*, making Judge Fox's decision the starting-point for his own, and set it out impeccably at paragraph 21.
4. The appellant's case was that he had been detained on his return to the Sudan in 2007, as a result of contacts he had had with Israeli Scout leaders at the gathering here. He had been ill-treated, but released and then heard he would be re-arrested and killed, so took flight. In 2010 He produced medical evidence by way of letters from his GP here, Dr Linda Agnew.
5. The main addition to the appellant's evidence in 2017 was further medical evidence, this time by way of a report dated 3 September 2016, and an addendum on 21 August 2017, commenting on the treatment of the previous report in the refusal letter. The author of these was Dr Frank Arnold FRCS, a wound specialist with many years' experience, both clinical and forensic. The main point Judge Farrelly needed to deal with was what Dr Arnold's specific conclusions, at paragraphs 51 – 65, had added to the evidence before Judge Fox. (Dr Arnold also refers to the results of a further examination of the appellant by Dr Droogan, a consultant neurologist).
6. Dr Arnold's own conclusions are helpfully set out by reference to numbered findings on examination, set out at 30 – 44. I will confine myself for the moment to those he considered 'typical' of the injury related by the appellant, in terms of the Istanbul protocol. Others, including Dr Droogan's findings, were 'consistent', including S1, a slightly irregular scar on the top of the appellant's head: while Dr Arnold rates that as 'diagnostic' of some blunt trauma, it is no more than consistent with the blow or blows described.
7. The findings which were typical of the injuries related by the appellant were as follows:
 - S5 & S9 small transverse scars on the front of the appellant's right and left arms, below the elbow crease; the appellant had put these down to having had his arms restrained by wires tied round them
 - S6 & S7 small linear scars close to the front of the appellant's right wrist, which he put down to injuries caused by handcuffs. Taken together with the 'shooting sensation' produced by tapping (see 36), Dr Arnold regarded them as typical of such injuries.

Finally, there are Dr Arnold's findings on examination of the appellant's feet: at 45 he says "There is marked tenderness over the whole of the soles of both feet, extending from heels to the balls of the feet. Dorsiflexion of the right great toes is abnormally painful". Dr Arnold concludes at 53 that these were typical of the recurrent blunt trauma to the soles, related by the appellant (the procedure known as *falaka*), because (see 54) they got worse as the day went on, rather than being worst first thing in the morning, as could be expected of non-traumatic conditions otherwise producing the same effect.

8. The judge relates Dr Arnold's conclusions at 29, and sets out the effect of *KV (Sri Lanka)* [2017] EWCA Civ 119 at 32, including the definition of 'typical' as "... usually found with this type of trauma, but there are other possible causes". However, the only one of the 'typical' or 'conclusive' conclusions he comments on is the scar on the appellant's head. Here I have already accepted that the injury was no more than consistent with the particular history he had given.
9. In Dr Arnold's addendum report he gives his opinion at 12 as to the possibility of the appellant's scars being self-inflicted. This would have been physically possible, but "... medically implausible because the scars are so numerous and widely distributed". He goes on to note from his experience that self-inflicted wounds are most commonly done with the dominant arm on the other one.
10. The judge does set out this conclusion by Dr Arnold at 30, and accepted it at 36. However, he goes on at 37:

"The medical evidence is not determinative nor is the Istanbul protocol. Rather, all the evidence must be considered. The respondent did raise significant credibility points which were maintained by Judge Fox. I find merit in these points. They are aspects which detract from the claim significantly."
11. The judge goes on to consider these points, and to reach what appear to be entirely tenable conclusions on them. In his conclusions at 39 he says this

"When I consider all matters I am not satisfied as to the truth of [the appellant's] account of past persecution. I find he has not demonstrated he is wanted by the authorities in his home country. I do not find the content of the medical evidence so strong that it can outbalance the very significant credibility issues arising."
12. While that might have been a conclusion open to the judge at the end of the day, it seemed to me that he could only properly reach it after specifically considering how the the 'typical' injuries to the appellant's wrists and the soles of his feet could have been inflicted, if not as he said. I put this suggestion to Mr Govan, who conceded that to do so would have been helpful.
13. In my view, particularly given the judge's acceptance of what Dr Arnold says in his addendum about the possibility of self-infliction, he did need to deal specifically with the injuries to the appellant's wrists and soles. It follows that there will have to be a fresh hearing.

Appeal allowed: : first-tier decision set aside

Fresh hearing in First-tier Tribunal at Belfast, not before Judge Farrelly

A handwritten signature in black ink, consisting of stylized, overlapping letters that appear to be 'JL' followed by a horizontal line.

(a judge of the Upper Tribunal)