



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

Appeal Number: PA/05963/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 20 March 2019**

**Decision & Reasons Promulgated
On 29 March 2019**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**R S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Halim, Counsel instructed by York Solicitors
For the Respondent: Ms A Everett, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka of Tamil ethnicity. His date of birth is 13 October 1980. He came to the UK on 6 December 2015. He made a claim on protection grounds on 15 January 2016.
2. The Appellant's account in a nutshell is as follow; he is from Jaffna. His brother and sister were members of the LTTE. His sister surrendered to the Sri Lankan Army on 19 May 2009. She has not seen since then. He does not know the whereabouts of his brother. On 10 February 1999 the Appellant was forcibly recruited by the LTTE and underwent compulsory

training until 15 March 1999 when he was released subject to a condition that he returned and completed training. The Appellant and his parents were placed in an IDP camp in 2000. On 4 March 2000 he was detained for ten days. During this time he was interrogated and beaten. He was made to sign a document in Sinhalese which he did not understand. He was taken to court but he did not understand the proceedings. He pleaded guilty and he was released unconditionally.

3. From 2003 to 2017 whilst he was in Colombo the Appellant accommodated people from the LTTE. In addition, he collected money from abroad for the organisation. On 27 June 2007 CID officers came looking for him, he moved and he continued to work for the LTTE looking after the wounded. The Appellant and his family were moved to another IDP camp in 2009 and released after about a month. On 8 March 2015 he was arrested by the CID and accused of being an LTTE member. He was assaulted during detention. He was released on 28 June 2015 subject to a bribe. He was assisted by an agent to leave the country.
4. The Appellant's application for asylum was refused by the Secretary of State on 25 April 2018. He appealed against that decision and his appeal was dismissed by First-tier Tribunal Judge Graham in a decision that was promulgated on 31 October 2018, following a hearing on 19 September 2018. Permission was granted by First-tier Tribunal Judge O'Keefe on 18 February 2019. Thus, the matter came before me to determine whether there was an error of law.

The decision of the FTT

5. The First-tier Tribunal Judge rejected the Appellant's account. The judge found him not credible. She had before her the evidence of Dr Callaway which the Appellant relied on in support of his appeal. The judge made the following findings at paragraphs 34, 35 and 36 of the decision:

"34. I have considered the findings of Doctor Alison Callaway in her Medico-Legal Report dated 23rd May 2018 (appellant's bundle at 7-26) which makes findings on the appellant's mental state and the appellant's scars. Doctor Callaway is the appellant's GP, Doctor Callaway accepts she has no specialist psychiatric training. I find there is no evidence to indicate that Doctor Callaway has undertaken specialist training in torture/trauma injuries. Therefore I am bound to find that Doctor Callaway is not qualified either to make findings on scarring or to make an expert psychological assessment of the appellant's mental state. Accordingly, I am only able to attach minimum evidential weight on Doctor Callaway's psychological findings.

35. In relation to the scars on the appellant's body as detailed in the report, the appellant explains all but three of the scars as resulting from either accidental injury or immunisation. The appellant says the remaining three scars (numbered (1), (4), and (8) in the Report) resulted from injuries sustained during his detention in 2015. In respect of the first scar which consists of a hard swelling on the crown of his head Doctor Callaway

considered that whilst the scar was consistent with a blow to the head as claimed, it could have been sustained in alternative circumstances such as a fall or a car accident. In respect of the other scars (4 and 8) which consist of a scar on the appellant's upper arm and on both sides of his back, the appellant stated that these scars were the result of being burned during torture. Doctor Callaway considered these scars to be highly consistent with injuries caused by burns. Also, as injuries on the back are not a common area for accidental injury, Doctor Callaway could not think of an alternative explanation for the injuries. However, I find that Doctor Callaway conclusions are undermined by her acceptance that it is not possible to date these scars. This means that there is no evidence before me to link the scars to the date of the claimed torture.

36. Even if it were accepted that the scars were intentionally inflicted by a third party, this does not necessarily mean they were inflicted by the authorities, the appellant said he did not complete his training with the LTTE and absconded from the training camp. He moved on a number of occasions to avoid repercussions from the LTTE. In all these circumstances I find the Medico-Legal report does not assist the appellant's appeal and I have attached minimal weight to it."

6. There were other reasons why the Appellant's account was not believed, for example, the judge found that the circumstances that led to his arrest in 2000 were "fanciful". She considered a letter from the regional coordinator of the Human Rights Commission of Sri Lanka dated 15th March 2000 to be unreliable for reasons she expressed at paragraph 39. The judge found that the account of the Appellant moving around to avoid the adverse attention of the authorities and the LTTE was at odds with his account that he had assisted the LTTE (see paragraph 42). The judge found that the circumstances of the attempt by the CID to arrest him in 2007 was lacking in credibility. She did not accept that the Appellant came to the attention of the authorities in 2007 or 2015. She found that the account of the arrest in 2015 was not consistent with the country guidance case GJ (post-civil war returnees) Sri Lanka CG [2013]. The judge did not accept the Appellant's account of having come to the adverse attention of the authorities as a result of his father having made complaints about the disappearance of the Appellant's sister. The judge found that the Appellant's account of his release in 2015 was internally inconsistent. The judge concluded that the Appellant's account was embellished and materially inconsistent and implausible. She rejected the evidence of *sur place* activities would put him at risk.

The grounds of appeal

7. The first ground of appeal challenges the judge's assessment of the medical evidence and the decision of the judge to attach minimal weight to it. It is asserted in the grounds that the judge failed to consider the

medical evidence with anxious scrutiny and failed to consider Dr Callaway's CV detailing her experience and training. She erred in finding that a GP is not qualified to conduct a psychiatric assessment. The judge found that Dr Callaway was not qualified to make findings on scarring or to make an expert psychological assessment.

The error of law

8. There is merit in the grounds, as fully conceded by Ms Everett at the hearing before me. Dr Callaway's CV was appended to the report and it is capable of establishing that she was trained and experienced in the assessment of torture. It is conceded by Ms Everett that the judge did not properly take this into account and that this amounts to a material error.
9. Dr Callaway found that two of the Appellant's scars were highly consistent with injuries caused by burns and that the Appellant suffered from severe depression. The judge attached "minimum evidential weight" to the psychological findings. She concluded that the witness had no specialist training in torture /trauma injuries and was not qualified to "make findings" on scarring or the Appellant's mental state. The judge found that the conclusions in respect of scarring were undermined by the ability to date the scars.
10. In her report, at page 5, Dr Callaway stated that she had no specialist psychiatric training. However, a proper reading of the report and the CV disclosed a level of experience in assessing physical injuries as a result of torture and assessing psychological conditions. The grounds set out the relevant parts of Dr Callaway's CV and parts of the report which the judge in my view did not consider when deciding what weight to attach to that evidence.
11. Whilst a judge may decide to attach more weight to an assessment conducted by a medical expert at consultant level rather than a general practitioner, the reasons the judge gave for attaching minimal weight to the evidence of Dr Callaway are flawed because the judge did not take into account the expert's experience and training in this area.
12. I have had regard to SS (Sri Lanka) v Secretary of State for the Home Department [2012] EWCA Civ 155 specifically paragraph 22 of this decision which states as follows:

"Generally speaking, the weight, if any, to be given to expert (or indeed any) evidence is a matter for the trial judge (here Senior Immigration Judge Spencer). A judge's decision not to accept expert evidence does not involve an error of law on his part, provided he approaches that evidence with the appropriate care and gives good reasons for his decision. Ultimately, therefore, there are only two issues as to the Senior Immigration Judge's treatment of the medical evidence:

Did he address that evidence with appropriate care and did he give good reasons for his conclusion?

Those two questions are interrelated. It is difficult to conceive of a state in which a judge gives adequate reasons for his conclusions on expert evidence, yet he has held to have exercised sufficient care. His reasons demonstrate his care.”

13. I conclude that the judge did not give adequate reasons for the decision to attach minimum weight to Dr Calloway’s evidence. She failed to address the evidence of Dr Calloway with appropriate care. For the reasons that I have given the assessment of credibility is as conceded by Ms Everett materially flawed.
14. It follows that the medical evidence is capable of establishing that the Appellant is a vulnerable witness and the Joint Presidential Guidance No. 2 of 2010 applies. I do not need to engage with ground 3 in any details suffice to say that the judge erred in his approach to the medical evidence and thus the assessment of the Appellant’s credibility is flawed.
15. Having found a material error of law I set aside the decision of the Judge of the First-tier Tribunal to dismiss the Appellant’s appeal. Mr Halim was of the view that the matter should be remitted to the First-tier Tribunal for a rehearing. Ms Everett did not have a particular view on the matter.
Having taken into account the Practice Statement of the Senior President of Tribunals of 25 September 2012, I conclude with specific reference to paragraph 7.2 of the Practice statement, that remaking the decision will require the Tribunal to conduct an extensive fact finding exercise. I remit the case to the First-tier Tribunal for a fresh hearing. No findings are preserved.

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 Joanna McWilliam

Date 25 March 2019

Upper Tribunal Judge McWilliam