



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

Appeal Number: AA/09028/2012

**THE IMMIGRATION ACTS**

**Heard at : Field House  
On : 26<sup>th</sup> June 2013**

**Determination Sent  
On : 28<sup>th</sup> June 2013**

**Before**

**Upper Tribunal Judge McKee**

**Between**

**DINESHKUMAR UTHAYAKUMAR**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: No appearance  
For the Respondent: Mr Chris Avery of the Specialist Appeals Team

**DETERMINATION AND REASONS**

1. On 21<sup>st</sup> September 2012 an 'immigration decision' was taken to remove Mr Dineshkumar from the United Kingdom, consequent upon the refusal of his asylum claim. An appeal against that decision came before the First-tier Tribunal on 2<sup>nd</sup> November 2012, but was dismissed by Judge Lever. Permission to appeal to the

Upper Tribunal was sought on the strength of three grounds settled by Shivani Jegarajah, but each of those grounds was examined in detail and rejected by Judge Froom. His reasons strike me as absolutely right, and I would adopt them as part of my own reasoning on the 'error of law' issue. The application was renewed on the same grounds, however, directly to the Upper Tribunal, and this time permission was granted by Judge Allen on the first ground only. Notice of today's hearing was posted to the appellant at his home address and to Raj Law Solicitors on 30<sup>th</sup> May 2013.

2. When the appeal came before me today, there was no appearance by or on behalf of the appellant, and no explanation for the non-attendance. In accordance with rule 38(b) of the Upper Tribunal Procedure Rules 2008 I considered it in the interests of justice to proceed with the hearing in the absence of a party, and heard submissions from Mr Avery. I shall deal first with the two grounds on which Judge Allen did not grant leave to appeal.
3. The appellant was 13 or 14 years old when he claims to have conveyed handguns in his satchel. That was certainly not too young for him to be able to recollect accurately what happened at that time, as asserted in the second ground. As for the medical report by Professor Lingam, it does not greatly assist the appellant. The Professor explains why the appellant's scars have the appearance of lacerations rather than burns, and indeed concludes that they are "diagnostic with lacerations (*sic*)". But he goes on to say that, while they cannot have been self-inflicted (some of them being out of the appellant's reach), there is "no way" he could differentiate between wounds inflicted in the way described by the appellant and wounds inflicted deliberately in other circumstances, though he rules out flagellation in a religious ceremony. What Judge Lever says about the medical report at paragraph 43 of his determination is a very realistic appraisal of this somewhat rambling report, and he emphasizes that he is considering it as part of his overall assessment of credibility.
4. The first ground stems from the series of questions put to the appellant by Judge Lever after a lengthy cross-examination by the Presenting Officer. In a note to the appellant's caseworker after the hearing, Miss Kezia Tobin of counsel said that in her view the judge had intervened "to an extent which I felt was bordering on the inappropriate." That rather moderate view was expanded in the grounds to an allegation that the conduct of the hearing was unfair, bolstered by lengthy quotations from some four authorities. The hand-written notes taken by Miss Tobin were adduced in evidence, and in accordance with directions issued by Judge Reeds the Presenting Officer's notes were typed up and made available for today's hearing. At that hearing, I also considered the hand-written Record of Proceedings taken by Judge Lever.
5. The result of comparing these three documents is that they tally well with each other, and for that reason may be regarded as a reasonably accurate record of what was actually said. They do not show that Judge Lever's conduct of the proceedings was in any way unfair or oppressive. His series of questions was not inordinately long, and was clearly designed to elicit relevant information. He did not step into the shoes of the Presenting Officer, as it were, and continue the cross-examination. Miss Tobin has not said there was anything hostile in his manner.

6. In any event, the reasons given by Judge Lever for not believing the appellant's story go well beyond the matters which he asked the appellant about himself. Those reasons occupy paragraphs 32 to 49 of the determination, and amply justify the adverse credibility finding reached by the judge. As Mr Avery observes, most of those reasons would be cogent independently of how the hearing was conducted. They have not been seriously challenged. The issue about the conduct of the hearing turns out to have been a red herring, with no real substance.

### **DECISION**

The appeal is dismissed.

Richard McKee  
Judge of the Upper Tribunal

26<sup>th</sup> June 2013