



**Upper Tribunal
(Immigration and Asylum Chamber)** Appeal Number: AA/03968/2014

THE IMMIGRATION ACTS

Heard at Field House

On 17th November 2014

**Decision and Reasons
Promulgated**

On 25th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**MN
(Anonymity Direction Made)**

Appellant

and

Secretary of State for the Home Department

Respondent

Representation:

For the Appellant: Mr Lee instructed by M& S Solicitors.

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Sri Lanka born on 7th November 1980 and he appeals against a decision made by the Secretary of State to remove him from the UK following a decision to refuse him international protection.
2. In essence the respondent had accepted that the appellant had worked whilst in Sri Lanka for the LTTE but contended that there had

been no interest in him after 2008 and that he had not, as the appellant claimed, been detained and tortured and then released on bail in 2013 before leaving the country illegally. He feared return at the hands of the authorities.

3. In a determination Judge of the First Tier Tribunal M A Khan dismissed the appellant's appeal but an application for permission to appeal against that decision, initially refused by the First Tier Tribunal, was granted by Upper Tribunal Judge Kebede on 15th October 2014.
4. At the hearing before me, Mr Tufan attempted to defend the decision but did concede that this was an uphill task.
5. I find that the judge did not engage with the medical evidence of Professor Lingam adequately. For example the judge stated that 'the appellant states that he told Dr Lingam of the incidents of a rod being inserted in his rear passage and kicking of his testicles. Both of these crucial incidents are not mentioned in the medical report. This is inconsistent with the appellant's evidence before me and his asylum interview. I find that if the appellant had suffered the torture he claims, he would have mentioned it to Dr Lingam'.
6. This does not address the report itself of Dr Lingam in relation to scarring and injury and the reference to the report appears in the determination as an afterthought contrary **to JL (medical reports credibility) China** [2013] UKUT 145 (IAC) and **Mibanga v SSHD** [2005 EWCA Civ 367. Indeed, I note, the medical report does in fact refer to the appellant being kicked on his body.
7. In addition the letter of the Complaint to the Human Rights Commission in Sri Lanka made reference to the appellant's abduction and no reference was made to this at all in the determination.
8. I find thus that the judge failed to take proper account of the documentary evidence which would have had a material effect on the decision.
9. The Judge erred materially for the reason identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Both representatives agreed that there would need to be a re-hearing. Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (ii) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction :All further evidence should be served on the Tribunal and the opposing party not later than 14 days prior to the substantive hearing.

Signed

Date 17th November 2014

Deputy Upper Tribunal Judge Rimington