



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

Appeal Number: AA/09357/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 29 May 2015

Promulgated

On 24 June 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**S K
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Jaisiri, Counsel, instructed by Kanaga Solicitors

For the Respondent: Mr C Avery, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth 23 December 1989, appealed against the Respondent's decision dated 5 November 2014, to make removal directions under section 10 of the Immigration and Asylum Act 1999.

2. An appeal against that decision came before First-tier Tribunal Judge A W Khan who, on 19 February 2015, dismissed the appeal on Refugee Convention, humanitarian protection and Article 3 ECHR grounds.
3. Permission to appeal that decision was given by First-tier Tribunal Judge R A Cox on 13 March 2015.
4. The first ground of challenge is that the judge did not properly approach the assessment of injuries to the Appellant looking at the evidence as a whole and assessing it on the basis of the claims that had been made. Rather, it is said, the judge gave a number of adverse findings against the credibility of the Appellant's claim and then used those to simply reject the medical evidence or to fail to properly assess the medical evidence which it is said tended to show that the injuries caused to the Appellant were likely to have arisen from proscribed ill-treatment or torture. There are then a number of sub-points of criticism as to whether the judge had properly assessed the risks to the Appellant on return.
5. The Respondent relied upon two cases to assist in relation to the assessment of the medical evidence. First, the case of HH (Medical evidence; effect of Mbanga) Ethiopia [2005] UKAIT 164 and KV (Scarring - medical evidence) Sri Lanka [2014] UKUT 230 (IAC). There can be little doubt that for a range of reasons given the credibility of the Appellant was rejected in terms of the basis he claimed to have been of adverse interest to the Sri Lankan authorities.
6. The judge, as a matter of form, laid out his determination sequentially and set out on the journey to decide that the Appellant's claim to have been a victim of persecution was not sustainable. From that it is said he therefore could reject the medical evidence of physical injuries sustained by the Appellant.
7. Mr Avery argued that read as a whole the decision of the judge did not misconsider the claims and the medical evidence relating to the scarring,

and that on a fair reading of the decision it was plain that the judge did have in mind the evidence in the round. Mr Avery then argued that the judge was entitled to raise concerns about the format of the report of Mr Martin, a consultant in accident and emergency medicine with a specialist interest in victims of torture, and to a degree. It is of note that in the declaration Mr Martin set out that he has followed the recommendations considered by the Tribunal in KV.

8. I do not descend into the minutiae of his decision but it is plain, albeit he may not have intended to give this indication, that what he has recorded as the history received from the Appellant of the events is restricted to those aspects which he, Mr Martin, considered relevant to the physical findings. The Appellant claimed to have said to a Dr Salleh Dhumad, a consultant psychiatrist, in November 2014 that he had been subjected to cigarette burns. Yet it is said Mr Martin was unable to see any evidence of cigarette burns and therefore he made no reference to either the fact of any claim of cigarette burns but perhaps more importantly, he could not see any signs of those as claimed.
9. The judge took the point which I do not think is open to criticism, that there was no reference to cigarette burns and the absence of cigarette burns or any evidence of their presence given the time scale in which they and other injuries were said to have occurred, was a matter that at least deserved comment and some consideration in the overall claim of ill-treatment sustained.
10. A different criticism is raised that in the report of Mr Martin he did look at four other groups or types of scarring relied upon of which he concluded groups 1 and 3 were potentially caused by some thinner form of blunt instrument being used against the Appellant and groups 2 and 4 being related to a heavier form of rod or instrument being used to cause those scars.

11. What was said by the judge was that the causes of the scarring have not been properly assessed and weighed, at least in relation to alternatives, by Mr Martin.
12. Accordingly, Mr Avery submitted, the outcome of any failures by the judge in this respect made no material difference because they do not show that had they been differently assessed it was likely to lead to a different outcome.
13. Having considered the submissions made, it seems to me, even if there is perhaps some criticism of the judge's use of English, nevertheless he was entitled to reach the view he did having considered the evidence, heard the Appellant and considered the extensive material put before him. The decision of the judge satisfactorily set out sufficient and adequate reasons. I did not find what ever criticisms there may be of some of the use of English that it demonstrated that there was any material error of law in the judge's conclusion that the Appellant had not been the victim of torture and was not in need of protection against the authorities in Sri Lanka.
14. I do not speculate in reaching that view, nor it seems to me did the judge speculate, on what other cause might there be for the injuries sustained but it seemed to me that the judge did look at the evidence in the round and was satisfied for reasons given why he rejected the credibility of the Appellant's claim. I might not agree with the judge but that does not matter. What matters is whether or not the judge has made any material error of law.
15. For these reasons I am satisfied the Original Tribunal made no error of law. The decision stands.

Anonymity order

An anonymity order was made and in the circumstances it seems that ought to be continued.

NOTICE OF DECISION

The appeal is dismissed.

I have dismissed the appeal and therefore there can be no fee award.

Signed

Date 1 June 2015

Deputy Upper Tribunal Judge Davey