



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

Appeal Number: AA/00342/2014

THE IMMIGRATION ACTS

**Heard at IAC Manchester
On 31 March 2016**

**Determination Promulgated
On 13 April 2016**

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

LINGESWARAN SANMUKAM

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy instructed under the Public Access Scheme

For the Respondent: Ms C Johnstone, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a national of Sri Lanka born on 6 April 1981. He entered the United Kingdom on 23 October 2010 with leave as a Tier 4 general student migrant valid until 24 February 2012, but was refused further leave to remain

on 8 November 2012. He claims to have then returned to Sri Lanka in June 2013 and to have re-entered the UK on 11 November 2013 using a British passport belonging to another person. He claimed asylum on 13 November 2013. His claim was refused on 13 January 2014 and a decision was made the same day to remove him to Sri Lanka.

2. The appellant appealed against that decision. His appeal was initially allowed by the First-tier Tribunal in August 2014, but following a successful application by the respondent for permission to appeal to the Upper Tribunal, the First-tier Tribunal's decision was set aside with no findings preserved. The case was remitted to the First-tier Tribunal to be heard afresh. The appellant's appeal was then heard by First-tier Tribunal Judge Ransley on 10 March 2015 and was dismissed in a decision promulgated on 18 March 2015. Permission has been granted again to appeal to the Upper Tribunal.

The Appellant's Case

3. The appellant claims to be at risk of persecution in Sri Lanka on the basis of his involvement with the LTTE. He claims that, whilst working from 2005 to 2007 for a non-government organisation (NGO) named Foundation for Co-Existence (FCE) as a community care coordinator helping victims of the tsunami, he was ordered by his senior officer to assist the LTTE by transporting and burying landmines, weapons and bombs. He was forced to issue equipment to made-up victims of the tsunami which was in fact given to the LTTE. He was stopped and questioned by the army on 21 November 2007 when the LTTE attacked an army camp, but was released. He then decided to leave the NGO, in December 2007, and he worked for his father as a farmer. He received a call from members of the LTTE who were planning to attack an army base and who asked him to assist with transporting their people in his tractor. He assisted but then decided to leave the country as they would not leave him alone. He found an agent who arranged a student visa for him and he left Sri Lanka on 23 October 2010 and came to the UK. When his application for further leave was refused in the UK, he returned to Sri Lanka on 27 June 2013.

4. The appellant claimed that on 26 October 2013 he was arrested from his home by TID officers and taken to a police station where he was interviewed and accused of being a member of the LTTE. He was taken to a derelict house and then to the ground where he had previously buried the weapons for the LTTE and was told to dig them up. He feared that the LTTE members who had told him to bury the weapons had been caught and had given his name. He was given water mixed with urine to drink and was taken to an army camp. He was questioned and tortured. The following evening he was taken to Colombo and the next day was taken to a court in Colombo where he heard the charges against him. He was then returned to the army camp and was again tortured. He confessed to having assisted the LTTE but upon the orders of his senior officer at the NGO. He was not taken back to court but was ill-treated for the next two days and on three days he was anally raped by the chief officer. On 2 November 2013, when the chief officer was driving him back to his room after raping him, he fell asleep at the wheel as he was intoxicated. The appellant

claimed that he managed to escape as a result and on 11 November 2013 he left the country with the assistance of an agent. His family contacted him after he had arrived in the UK to tell him that the authorities had visited his home looking for him on 15 November 2013 and that an arrest warrant had been shown to them.

5. The respondent, in refusing the appellant's claim, did not accept his account of having worked for an NGO and did not accept that he had assisted the LTTE. His account of his arrest, torture and escape was rejected as lacking in credibility. The respondent noted that the appellant had scars on his body but did not accept that they had been caused in the way that he claimed. The respondent did not accept that the appellant would be at risk on return to Sri Lanka and considered that his removal would not breach his human rights.

6. The appellant's appeal against that decision was heard by Judge Ransley in the First-tier Tribunal on 10 March 2015. In her decision promulgated on 18 March 2015, the judge dealt with some procedural matters which had arisen. The appellant had claimed to have problems with the court interpreter, but the judge considered that no such problems had arisen. She noted further that, part-way through cross-examination, the appellant had produced some notes from his GP and some photographs showing him holding placards, neither of which his representative had had knowledge of, and she had decided to admit that evidence although she considered that the late submission of the evidence reflected adversely on the appellant's credibility. Having considered the appellant's oral and documentary evidence, including the appellant's medical records and two medical reports, the judge accepted that the appellant had worked as a community care coordinator for the FCE between 2005 and 2007 providing assistance to victims of the tsunami. However she rejected the rest of his account. She did not accept that he had been ordered to carry out activities for the LTTE and did not accept that he had been arrested, detained and tortured by the Sri Lankan authorities. She gave no weight to the arrest warrant relied upon by the appellant and she rejected his claim, made at the hearing itself, as to his activities in the diaspora. She dismissed the appeal on all grounds.

7. Permission was sought on behalf of the appellant to appeal to the Upper Tribunal, on several grounds and was granted on 11 May 2015 on the ground that the judge had not made a finding on the claimed rape and had failed to consider aspects of the psychiatric report which had been before her.

8. At the hearing Mr Paramjorthy expanded upon the grounds of appeal and Ms Johnstone responded to those grounds in her submissions.

Consideration and findings.

9. Mr Paramjorthy asked me to find that the judge's finding on the appellant's behaviour, at [25] and [31], was troubling. He submitted that the judge had erred in law by making adverse findings against the appellant because of his claim to have had problems with the court interpreter, when

concerns had been raised about the interpreter at the outset of the hearing. However, as I advised Mr Paramjorthy, there was nothing in the judge's very clear record of proceedings to suggest that any concerns had been raised at the outset of the hearing. On the contrary, the judge had recorded that there was confirmation from the interpreter and the appellant that they both understood one another and that is reflected at [22] of her decision. Both the record of proceedings and the record of the evidence in the judge's decision state that the first indication from, or on behalf of, the appellant of any interpretation problems arose after the close of oral evidence and before submissions, when there had been a recess. The judge noted that the appellant's solicitor had supported the appellant's complaint, but had not raised any issues at all throughout the oral evidence. It is relevant to note that the judge's record of what occurred is fully supported by the presenting officer's record, who indicated in his summary that, aside from a couple of questions which had to be put again, the appellant's answers matched the questions put to him.

10. The judge, at [25] and [26], gave detailed consideration to the appellant's complaint about the interpretation and provided cogent reasons for concluding that the appellant's complaint was not genuinely made out. It seems to me that she was entitled to conclude as she did in that regard. Likewise, I find no error of law in the judge's findings in regard to the late submission of new documentary evidence by the appellant. Mr Paramjorthy submitted that the judge did not particularise why she considered the appellant's behaviour in that regard to be manipulative. However I consider that it is very clear from her findings at [31] why she found that to be the case. Whilst the description of the appellant's behaviour as manipulative may perhaps not have been the best use of language, I find no reason to conclude that the judge was not entitled to draw the adverse conclusions that she did from his behaviour or that there was anything irrational or perverse in so doing. I therefore find no merit in that ground of appeal.

11. The second ground challenges the judge's findings at [40], whereby she found the appellant's account of his FCE vehicle never being stopped and searched at checkpoints between 2005 and 2007 to lack credibility because the Sri Lankan army was engaged in armed conflict with the LTTE at the time. The grounds assert that the judge's findings in that regard failed to engage with counsel's submission that there was a ceasefire at the time. However, whilst the judge did not specifically refer to the ceasefire, it is relevant to note that the appellant's own evidence at questions 105 and 106 of his interview when asked about the ceasefire, was that there was still fighting prior to the end of the ceasefire. Accordingly I find nothing material about the judge's failure specifically to address the ceasefire and consider that she was entitled to make the adverse findings that she did in that regard.

12. The third and fourth grounds relied upon by Mr Paramjorthy related to the judge's findings on the two medical reports - the psychiatric report of Dr Lawrence and the scarring report from Professor Lingam. Mr Paramjorthy criticised the judge's finding that the experts were not reliable. However that

was clearly not her finding. She made no adverse findings about the expertise of both doctors, but found that the reports were not reliable evidence in support of the appellant's asylum claim for the reasons that she gave.

13. With regard to Dr Lawrence's report, it is relevant to note that permission to appeal was granted in this case by First-tier Tribunal Judge Grimmett on the basis of the judge's findings in relation to that report. However I find no grounds for concluding, as the decision suggests, that Judge Ransley had had no regard to Appendix III of the report or to the psychiatrist's conclusion about the appellant's claim to have been raped. It is clear that Judge Ransley gave careful consideration to the report and, at [52] to [58], she provided detailed reasons for placing the limited weight that she did upon it. Such reasons included, at [52], the circumstances under which the report was produced, and also Dr Lawrence's failure to explain the scores referred to at page 12 of his report, which Mr Paramjorthy accepted were not explained anywhere in the report. Judge Ransley also noted Dr Lawrence's reliance upon a rule 35 report which, albeit referring to concerns arising out of the appellant's claim to have been tortured, did not actually make any diagnosis. All of these were matters which the judge was entitled to take into consideration when considering the weight to be attached to the report.

14. Likewise, the judge gave careful consideration to the GP's notes and to Professor Lingam's report in assessing the credibility of the appellant's account of his arrest and ill-treatment. With regard to Professor Lingam's report, she gave detailed reasons, at [61] to [64] for placing the weight that she did upon the report. Whilst she did not make any specific reference to the case of KV (scarring - medical evidence) [2014] UKUT 230 there was nothing in her findings that was inconsistent with the decision in that case and nothing to suggest that she had had no regard to the relevant guidance therein. The judge noted that there were two different kinds of scarring on the appellant's back and was entitled to place weight upon the fact that the appellant was unaware of the longer marks which, significantly, were not consistent with the forms of torture he had described. Having considered the appellant's evidence as a whole, she was entitled to conclude that the scarring on the appellant's back could have been caused by other means than those claimed and to accord the weight that she did to that evidence. She was not required to make a finding as to how the scarring was in fact caused but was entitled to reject the appellant's account of its causation.

15. Accordingly, and contrary to the assertions in the grounds, it seems to me that the judge did not err in law in her approach to the medical evidence. She gave careful consideration to the two reports and to the GP's notes and assessed those documents in the context of the appellant's own evidence, providing cogent reasons for giving the weight that she did to that evidence. She was entitled to reject the appellant's account of his arrest and ill-treatment for the reasons given.

16. Whilst the grounds challenged the judge's findings on the arrest warrant produced by the appellant on the basis that she had had regard to the findings

of the First-tier Tribunal in the previous decision which had subsequently been set aside, Mr Paramjorthy properly withdrew his submission on that ground upon an acceptance that the appellant had in fact raised the matter himself in his supplementary statement. Judge Ransley went on to give full and detailed consideration to the arrest warrant and to the explanation offered by the appellant in his supplementary statement in response to the concerns raised previously by the First-tier Tribunal. She provided detailed and cogent reasons for concluding that the arrest warrant was not a reliable document. Indeed, other than criticising her for referring to the decision of the previous Tribunal, the grounds do not challenge her findings in that regard.

17. Mr Paramjorthy's final submission was that the judge had erred, in her adverse findings at [73], in her recording of the evidence that the appellant had escaped from Welikade prison. However it seems to me that the judge made no such error. The point made by the judge at [73] was that the letter from the appellant's lawyer in Sri Lanka referred to the appellant having escaped from Welikade prison, which was inconsistent with the appellant's own evidence that he had escaped from the army camp in Batticaloa. That is clearly the case. The letter from the lawyer, R M Imam, is to be found at Annex C of a bundle of documents produced for the appeal before the First-tier Tribunal, behind the arrest warrant, and is referred to at [17] of the judge's decision. In that letter the lawyer clearly states that the appellant escaped from Welikada prison. Yet the appellant made no such claim in his evidence. The judge was accordingly perfectly entitled to rely upon that inconsistency in the evidence in making the adverse findings that she did.

18. Mr Paramjorthy agreed that the remaining grounds depended upon the preceding grounds being made out. However, for the reasons given, I do not accept that any of the grounds are made out. It seems to me that, contrary to the assertions in the grounds and to Mr Paramjorthy's submissions, Judge Ransley was entitled to approach the appellant's evidence in the way that she did and that she gave full and careful consideration to all the evidence including the medical reports and provided cogent reasons for giving the weight that she did to that evidence. She was entitled to make the adverse findings that she did and the conclusions that she reached were entirely open to her on the evidence before her.

19. I find no errors of law in the judge's decision.

DECISION

20. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed
Date

Upper Tribunal Judge Kebede