



IAC-FH-AR-V3

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

Appeal Number: AA/02653/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 November 2015**

**Decision & Reasons Promulgated  
On 13 January 2016**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**and**

**V S**

**(ANONYMITY DIRECTION MADE)**

Respondent

**Representation:**

For the Appellant: Ms A Holmes, Senior Home Office Presenting Officer

For the Respondent: Ms F Allen, instructed by S Satha & Co.

**DECISION AND REASONS**

1. This is the Secretary of State's appeal against the decision of a First-tier Judge allowing the appeal of the respondent against the Secretary of State's decision of 30 January 2015 to remove her from the United Kingdom as an illegal entrant by way of directions. It will be convenient to refer to the Secretary of State as the respondent and to Ms Surharshan as the appellant, as they were before the First-tier Judge.
2. The judge found the appellant to have given a credible account of her history, including detention and serious ill-treatment in Sri Lanka, save

with regard to one matter and that concerns an injury she had sustained to her back. Her claim was that she had been imprisoned and mistreated on three occasions. At the end of the second occasion she was released on payment of a bribe which was paid by her aunt. The third occasion took place in or around January 2014 when she was arrested again and taken away in a white van and ill-treated including being raped several times and burned with cigarettes. Her aunt again secured her release by paying a bribe.

3. It is relevant to note from her interview notes that her husband was a member of the LTTE and their home was used as a hospital for the LTTE. Her husband was killed by a shell, and his mother died at the same time. He had gone to see the appellant at the hospital as she was because she was pregnant and it was when he was leaving after visiting her that he and his mother died due to the shelling. She said that she had escaped and was in a bunker. She said that the LTTE had identified her as her husband's wife and hence their interest in her. When they detained her they did not believe her when she said that her husband was dead and he had died on 6 February 2009. Evidence was given on the appellant's behalf (she did not give evidence due to her mental state) by her brother who has been granted refugee status in the United Kingdom. He had been an LTTE conscript. He gave evidence among other things that he saw the appellant in the hospital with a back injury caused by shrapnel.
4. However the appellant's evidence with regard to the scar on her back was that she did not see what caused it but she attributed it to a beating she had received. Dr Goldwyn, who examined her, found a number of alternative causes for this wound. Dr Goldwyn noted that there were alternative explanations for this scar: it could be an injury by shrapnel: the appellant told her that she was not with her husband when he was struck by a shell and killed, not having gone with him to visit his injured brother-in-law because she was in later pregnancy.
5. The judge noted the discrepancy in the evidence and concluded the appellant had not been truthful concerning the injuries she sustained to her back in the shelling on 6 February 2006 stating that she had either not mentioned it or had been untruthful to Dr Goldwyn. This appears to be on the basis that the judge without setting his reasoning out in any detail, preferred the reasoning of the appellant's brother, whom he found to be a credible witness.
6. The judge went on to say that the rest of the appellant's story was highly detailed. It was clear that she was suffering to a high degree from post-traumatic stress disorder. He noted what Dr Goldwyn had to say about this and also the report of Dr Persaud, who provided a psychiatric report. The judge stated the back injury did not affect the conclusions about the origin of other scars. In that regard Dr Goldwyn had said that round scars on the appellant were typical of cigarette burns. She had also found that the scar on the appellant's back was highly consistent with her account of maltreatment. Having said that the back injury did not affect the

conclusions about the origin of other scars the judge noted that though part of the PTSD might be down to being injured by shelling while eight months pregnant, that did not remove the PTSD arising from the torture the appellant had endured. He accepted the credibility of her account of ill-treatment noting among other things that she had not claimed to have been raped save on the third detention unless she was inventing the whole story it would be unlikely that she would not claim to have been raped on all occasions. He did not think it likely that the medical evidence from either doctor would be any different if they were told that the back injury was caused by shelling not torture, and that she had been untruthful about it. Dr Persaud had anticipated that possibility and took it into account in stating that it was highly unlikely that the core parts of the account were fabricated or exaggerated. It seemed highly unlikely, the judge thought, that any of the other scars were caused by the shelling, not least as the one scar that was so caused was on the appellant's back whereas all the others were on her front.

7. The judge also went on to say, at paragraph 54, that given the findings of fact in his conclusions he did not set out the case law. Earlier on he had referred to the fact that reliance was placed on the country guidance decision in GJ [2013] UKUT 00319 (IAC).
8. In her submissions Ms Holmes relied on the grounds in their entirety and developed them as follows. With regard to the issue of the scar on the appellant's back, she argued that the problem was that the judge treated the dishonesty in respect of the back injury as not really being important, but it did affect the conclusions concerning the origins of the other scars. It was not a minor untruth but was important. The doctors made their findings not realising that what the appellant said was not true and that must have made a difference. It had to be factored in. Dr Persaud had no reason to believe that the appellant had lied and therefore it was unsurprising that he said it was highly unlikely that the core parts of the appellant's account were fabricated or exaggerated. This cast doubt on the usefulness of the psychiatric report. The judge should have looked at the matter in the round.
9. Also, as was contended in the grounds, he had failed to consider self-infliction by proxy. Reference was made to the decision of the Upper Tribunal in KV [2014] UKUT 00230 (IAC) in particular to the headnote at paragraphs 3 and 4 and paragraph 287 and paragraph 291.
10. As regards the second ground, it was argued that it could be seen from headnote 7 in GJ that the appellant did not fall within sub-category (a) being a threat to Sri Lanka and (8) was also relevant. The appellant had not done anything. She was ill and the judge should have considered risk on return and factored that into his consideration. Paragraph 54 in GJ referred to evidence given to TAG but it was not referred to other relevant factors and TAG had been discreet about whom they interviewed and it did not seem from the country guidance that giving evidence to TAG was a

risk factor in any event, though the judge regarded this as being a significant extra factor.

11. In her submissions Ms Allen argued that the judge had looked at all the evidence in the round. With regard to the first ground, it was the case that the appellant was not with her husband when he was struck by the shell and killed. There might have been a misunderstanding as on that date it was the appellant's family home and the hospital that were shelled so she did not necessarily go to the hospital with her husband when he was struck by the shell, but she was in her home which had also been attacked. It was also clear from her evidence that as well as the family home being shelled she had been beaten including being beaten on the back. Ms Allen accepted that there had been no cross-appeal nor Rule 24 response, but said that they were there today to rebut the grounds of the respondent.
12. The judge had gone on at paragraph 50 to consider that the rest of the appellant's story was highly detailed, and it could be seen for example from M7 and M9 of the refusal letter that parts of her evidence had been accepted. The judge had considered the appellant's account in terms of Dr Goldwyn's report and considered that setting aside the back injury due to shelling that would not necessarily impact on Dr Goldwyn's other findings. Reference was made to Dr Goldwyn's report at page 6 of the bundle concerning the scarring and paragraph (c) concerning the foreleg. Also what she had to say at paragraph page 7 at paragraph 59e about the mode of infliction was relevant. She clearly had this in mind when considering the scars. Again she had considered the issue of self-harming at page 8 paragraph 61e and any possible alternative explanation. At paragraph 65 she referred to the point in the grounds concerning the possibility that the back injury was caused by shrapnel. This had been discounted as the appellant said she was not with her husband when he was struck and Dr Goldwyn had not realised about the home. Page 9 paragraph 75 was relevant in this regard. The report had been carried out having considered the Istanbul Protocol and the overall clinical picture was very much in line with what was said in KV.
13. Ms Holmes had referred to paragraph 287 in KV but that was concerned more with the doctor's approach while the approach of the decision maker was set out at paragraph 295. It was a holistic approach and this had been done at paragraph 50 where the judge had recognised the inconsistency but looked at all the other evidence. Ms Holmes said that Dr Persaud had not been told the truth but he had not been looking at the scarring. At page 20 of his report in the third paragraph he showed he was aware of the shelling so when he looked at the evidence he considered the shelling of the appellant's home and the death of her husband and her experiences during detention. Also Dr Goldwyn had considered the appellant's mental health at page 6 paragraph 50 where she noted that she scored maximum points on the PTSD scale. This had been addressed by the judge.

14. With regard to the country guidance, it was relevant to note that the judge had had a very detailed 19 page skeleton argument before him in which the case law had been gone through. It was necessary to proceed on the basis of the accepted facts of the appellant being beaten and detained post-war and if returned depending on her release on payment of a bribe having been recorded it could be that she would be on a stop list and detained at the airport or on a watch list as the sister of a person of adverse interest to the authorities whose family home had been used by the LTTE and whose husband was a former LTTE member and she had been detained twice. So clearly she was someone of adverse interest and it was a question of their perception of her. So from the accepted facts there was a risk of further detention on return and even if it had not been set out by the judge clearly he had been referred to GJ and had the full written submissions and he had accepted her on the facts as being within the GJ risk categories. There was no material error in the decision.
15. By way of reply Ms Holmes argued that it was not just a matter of a misunderstanding. The judge had found the appellant to be dishonest on the point and what was recorded at paragraph 32 of the determination reflected an active lie. The grounds did not criticise Dr Goldwyn's careful findings. It did not matter what Dr Goldwyn had found about the other scars: he had not factored in the back scar. The judge had not given the matter the importance it deserved and failed to give consideration to whether it was self-inflicted. This cast doubt on the appellant's claim to have been detained. It did not mean she was ill for the reasons she claimed. Although there may well have been detailed written arguments, it was necessary to show that they had been considered.
16. I reserved my determination.
17. At issue, at this stage of the decision, is whether there is a material error of law or are material errors of law in the judge's decision. The first ground comes down largely to the question of whether the judge erred in the way in which he dealt with the consequences of his conclusion that the appellant had lied about her back injury, on the evidence as a whole. The appellant attributed the injury to a beating whereas the judge's conclusion was that she had incurred it as a consequence of being hit by shrapnel. This is of clear relevance to the appellant's claim to have been ill-treated. The judge considered the back injury did not affect the conclusions about the origin of other scars. As noted above, Dr Goldwyn considered the possibility of the back injury being caused by shrapnel but discounted that because of the appellant's evidence that she was not with her husband when he was struck by a shell and killed. She considered that the scar was highly consistent with the appellant's account of her maltreatment and noted that it would not have been possible for her to self-harm on her back in this way. It is relevant to note that Dr Goldwyn was of the view that the cigarette burns scars were most unlikely to be due to self-harm.
18. It is right to argue as Ms Holmes does that the judge engaged in speculation when stating that he did not think it likely that the medical

evidence from either doctor would be any different if they were told that the back injury was caused by shelling not torture and that the appellant had been untruthful about it. It is also right to say that this particular possibility had not been taken into account by Dr Persaud who in stating that it was highly unlikely that the core parts of the account were fabricated or exaggerated was simply, as Ms Holmes argued, expressing a view based on the fact that there was nothing to say that the appellant was doing other than telling the truth. We do not know what view either doctor would have taken had they been told that the back injury did not occur as it was described. Logically that must place the judge's finding in some difficulty. I do not think that it was right to segregate that matter from the rest of the evidence as the judge did. Certainly the judge looked at matters in the round, as Ms Allen has argued, but the significant failure in this aspect of the determination is the failure to engage properly with the consequences of Dr Goldwyn in particular having been told an untruth, on the judge's findings, about the origins of the back injury.

19. I am also concerned that the findings about risk on return in light of the judge's conclusions were not properly open to him on the basis that he did not set out how the facts as he found them fell within the guidance in GJ. He was provided with detailed submissions, as Ms Allen has argued, but equally, as Ms Holmes has argued, he needed to say what he made of those submissions rather than coming to the very terse conclusion to which he came, in effect at paragraphs 54 and 55 of the determination. These matters needed proper reasoning and tying into the risk factors identified in GJ.
20. Accordingly I considered the judge erred materially and given the nature of the errors I consider that the matter is most appropriately dealt with by being remitted to the First-tier Tribunal for a hearing *de novo*.

**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

Date

Upper Tribunal Judge Allen