



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

Appeal Number: PA/14177/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 13 March 2018**

**Decision & Reasons Promulgated  
On 10 April 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD**

**Between**

**MR P B W D M  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms N Ahmad, Counsel.

For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. The Appellant is a Sinhalese citizen of Sri Lanka who appealed against the decision of the Respondent refusing him international protection. His appeal was heard by Judge of the First-tier Tribunal Hodgkinson who, in a decision promulgated on 12 October 2017, dismissed it.
2. The Appellant sought permission to appeal which was granted by Judge of the First-tier Tribunal Hollingworth in a decision dated 15 December 2017. The reasons for that decision were: -

“At paragraph 50 of the decision the Judge states that the Judge was satisfied that Dr Halari’s report constituted strong evidence in support of the Appellant’s credibility. The Judge went on to state that the Judge had taken it fully into account alongside other relevant evidence when assessing that credibility. It was clear that Dr Halari had based her opinion not only upon an acceptance to the Appellant’s account but also her observation of him and her applying certain clinical criteria. At paragraph 47 of the decision the Judge referred to the relevant medical evidence of Dr Halari whose expertise was not the subject of challenge. The Judge accepted that Dr Halari’s report constituted independent expert medical evidence in relation to the Appellant’s condition but the scope of her report did not include any examination of any physical scarring if indeed the Appellant had any. At paragraph 56 of the decision the Judge concluded that the Appellant was an individual whose core or material account lacked all credibility, even taking into account the strong medical evidence in support thereof. Given the approach described by the Judge to the independent medical evidence of Dr Halari the conclusion reached at paragraph 56 of the decision in relation to the total absence of credibility creates doubt as to the weight attached by the Judge to the independent medical evidence as part of an overall assessment of the credibility of the Appellant. It is arguable that the Judge should have set out a fuller analysis of the effects of that which is described in the independent medical report in assessing the credibility of the Appellant given the description of the nature of that report provided by the Judge.”

3. Thus, the appeal came before me today.
4. Ms Ahmad expanded on the grounds upon which permission was sought. In short that the Judge has disregarded the probative value of the “objective medical evidence” relied upon by the Appellant, their contents and how they lend credibility to the central contention of the Appellant’s case that he still suffers as a result of enduring indescribable torture at the hands of his Sri Lankan persecutors. The Judge has attached insufficient “importance” to one of the most important aspects of the Appellant’s case. The report prepared by Dr Rozmin Halari, Chartered Consultant Clinical (Neuro) Psychologist, has been largely dismissed by the Judge which reflects the insufficient attention that has been paid to it. That report indicated that in the view of its writer the Appellant suffers from Post Traumatic Stress Syndrome and also corroborated the Appellant’s account of being tortured whilst in detention. It was not open to the Judge to reject the Appellant’s claim given the weight that ought to have been attached to this medical evidence. My attention was drawn to the authority of **SA Somalia v SSHD [2006] EWCA Civ 1302** and **JL (Medical reports - credibility) China [2013] UKUT 00145 (IAC)**. In particular I was referred to paragraphs 32 and 33 of **SA** which state: -

“32. It will be apparent from what we have just said that we reject Counsel’s contention that given the lower standard of proof a finding

that scars which are found “highly consistent” with the claimed cause should be regarded as probative “unless there is good reason to reject them”. If the result of a finding of “highly consistent with” is that there are few other possible causes, that in itself says nothing about which of these few is more or the most likely. There is no basis, without more, for saying one is to be preferred. There is no basis, without more, for saying that the one cause found “highly consistent with” is to be accepted, “unless there is a good reason to reject...” it. It would have been different if Mr A Martin’s report had gone on to evaluate the relative likelihood of (the few) other possible causes and had concluded the appellant’s attribution was the most likely. But, as already noted, it failed to do this.

33. This shortcoming of the report was accentuated by the fact that the scarring concerned was to the appellant’s right forearm, which was a part of the body which a person would use in an active way in many everyday work and home situations; and, on the account given by the appellant, there were at least two alternative explanations for the scarring which merited consideration: one was his claim that he had trained with the LTTE for two months, using weapons (an AK 47) and the other was that he had worked in a shop. The doctor had been made aware of the former, but not, it seems, the latter. Whilst the appellant did not assist the doctor by failing to volunteer as part of his “history” his work experience in a shop, in our view a medical report seeking to assess the causation of scarring should always seek to establish, as part of an appellant’s history, whether there are any home, social or work-related activities which may cast light on other possible causes of the injury/scarring.”

Ms Ahmad further asserted that the overwhelming positive credibility findings within the decision outweighed significantly the negative findings. The Judge has failed to state what weight he did put on this medical report. Any discrepant evidence therein arises out of the more relaxed and professional environment that the Appellant found himself in when being examined by the report writer in contrast to when he was being interviewed and or providing a witness statement. The Judge has not adequately reasoned the rejection of this evidence which is Istanbul Protocol compliant.

5. Further at paragraph 57 of his decision there is an erroneous reference to a “Dr Watson” which is a further material error absent any evidence from such a person being brought in this appeal.
6. As to ground 2, which Ms Ahmad pursued far less vigorously, she asserted that the Judge had failed to set the Appellant’s claim into the risk factors identified in the Country Guidance case of **GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
7. Mr Wilding emphasised that the Appellant’s difficulty lay in the fact that what he told Dr Halari was quite different to the information given to the Secretary of State and that it is simply wrong for the Appellant’s Counsel to say that not enough weight was given to the medical evidence. The Judge has fully analysed the totality of the evidence before concluding that

was open to be made. He also asserted that the Judge had not dealt with this appeal in the fashion of a “one-way street” and throughout the carefully crafted decision had not accepted the totality of the Respondent’s case. The decision is **Mibanga** compliant and the reference to a “Dr Watson” is clearly not a material error as it is obvious that the Judge was referring to the medical report writer. As to the second ground given the Judge’s adverse credibility findings it was inevitable that the Appellant could not fall into the risk factors identified in **GJ**.

8. I note that at paragraph 50 of his decision the Judge stated that he was “satisfied that Dr Halari’s report constitutes strong evidence in support of the Appellant’s credibility and I have taken it fully into account, alongside other evidence, when assessing that credibility. On reading that report it is plain that Dr Halari based her opinion not just upon the Appellant’s account as given to her but also on her clinical observation of him and her applying clinical criteria”. Her expertise (it is noted at paragraph 47 of the decision) was not the subject of challenge and the Judge found that the report constituted independent expert medical evidence in relation to the Appellant’s condition. He then noted that the report was deficient of any examination of any physical scarring. However, I was referred to the report during today’s hearing, and I accept, that at paragraph 6 such an examination was not within the ambit of the instructions given to Dr Halari. She was asked to give opinion on whether the Appellant suffered from symptoms of Post Traumatic Stress Disorder and the impact, if any, on his removal to Sri Lanka. At paragraph 56 of the Judge’s decision it is recorded that the Appellant “is an individual whose core or material account lacks all credibility, even taking into account the strong medical evidence in support thereof”. This constitutes the nub of the Appellant’s application before me. I find that the reference to a total absence of credibility creates doubt as to precisely what weight the Judge attached to the report of Dr Halari in the context of the overall assessment of the credibility of the Appellant. The decision is in consequence devoid of adequate reasoning as to how the Judge could come to the conclusions that he did considering this medical evidence.
9. For all these reasons I find that the Judge has materially erred for the reasons put forward in ground one of the application. Ground two, considering this finding, becomes redundant. However, I do find that had the Appellant been found lacking credibility, as he was, then the ground is not made out.
10. Consequently, I accept the submission of Ms Ahmad that the way forward is for the matter to be remitted to the First-tier Tribunal as the Appellant has not had the benefit of a fair hearing.

## **Decision**

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the

Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Hodgkinson.

**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 4 April 2018.

Deputy Upper Tribunal Judge Appleyard