



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02111/2018

### **THE IMMIGRATION ACTS**

Heard at Field House  
On 15th May 2019

Decision and Reasons Promulgated  
On 26<sup>th</sup> June 2019

#### **Before**

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

#### **Between**

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

M A G S A  
(ANONYMITY DIRECTION MADE)

Respondent

#### **Representation:**

For the appellant: Mr N Paramjorthy, Counsel, instructed by ABN Solicitors.

For the respondent: Ms S Jones, Senior Presenting Officer.

### **DECISION AND REASONS**

#### **Introduction**

1. The appellant claimed protection on 2 December 2016. He entered the United Kingdom on a valid visit Visa, valid from 2 March 2007 until 2 September 2007. Thereafter he overstayed.

2. His claim is that he is a Sri Lankan national of Sinhalese ethnicity. He lived in the coastal city of Negomba with his parents and made a living as a tour guide. His mother died on 3 April 2006. Shortly after this he allowed a Tamil called Karuna, whom he had recently met, to stay at his home.
3. In December 2006 Karuna left, saying he would be away for a few days. Whilst away the police called to the appellant's home. The appellant was not present but his father was. They asked about Karuna and then left. They returned on 5 January 2007 and arrested the appellant. They took a statement and then released him.
4. The police returned on 22 February 2007 and searched the property and found a satellite phone and bullets amongst Karuna's belongings. They took the appellant away and he was shown a picture of Karuna dressed in LTTE uniform. The appellant was tortured by the police before being released on 6 March 2007 following a bribe paid by his father.
5. The appellant's father was fearful for him and made arrangements to obtain a visa for him to the United Kingdom. The appellant stayed at his aunt's house in Colombo until 14 March 2007 when he left for the United Kingdom. He used his own passport and travelled through airport control without difficulty.
6. He claimed he would be at risk if returned from the Sri Lankan authorities as they believed he supported the LTTE.
7. His claim was refused by the respondent on 29 January 2018. It was accepted he was Sri Lankan. The respondent did not find the appellant to be credible. His claim was considered inconsistent and implausible. There was a significant delay before he made his claim. He said the claim was prompted by the police visiting his home in December 2016. However, the claim related to events in early 2007. Furthermore, he said he was detained until 6 March 2007 whereas the Visa application form confirmed 4 days earlier he had been in Colombo to be fingerprinted. This was an obvious contradiction to his claim. The respondent then referred to details about airport control and highlighted the appellant's ability to leave unhindered. There is a database upon which passports are checked on exit.

#### The First tier Tribunal

8. His appeal was heard by First-tier Tribunal Judge Lucas at Taylor house on 18 February 2019. In a decision promulgated on 7 March 2019 it was dismissed. The parties were represented. On behalf of the appellant there was an appeal bundle of 45 pages. There was also a psychiatric report dated 3<sup>rd</sup> August 2018 and an addendum dated the 17<sup>th</sup> of February 2019. There was also a medical report on

scarring dated 16 February 2019. This and the addendum report were submitted on the day of hearing.

9. At hearing, the appellant adopted his statement. He sought to explain the timeframe discrepancy, saying he had been released by the police on 28 February 2007 and told to report back on 6 March 2007. He claimed that a warrant had been issued shortly before he made his claim for protection. He was unable to produce this but did provide a letter said to be from a lawyer in Sri Lanka inferring this.
10. The medical report of 16 February 2019 commented upon scarring to the appellant's head, face and right leg and left forearm. In submissions the appellant's Counsel relied upon this medical report as supporting the truth of the claim made. It was also argued that the appellant would be at risk of self-harm on return and reference was made to the psychiatric report which said that he suffered from major mental health issues.
11. Beyond adopting his statement the appellant did not give evidence at the appeal hearing. This was on the basis he was a vulnerable witness. The judge referred to his not giving evidence as curious. Beyond the addendum report served on the morning of the hearing the judge said there was no other medical evidence indicating he would be unable to give evidence.
12. The judge referred to the plausibility of the appellant's account bearing in mind this was a time the Civil War was taking place in Sri Lanka. Judge did not find it credible they would accommodate an unknown unrelated Tamil as described. The judge also questioned why the attention appeared to be upon the appellant and not his father. The judge referred to the inconsistency in the timeframe and his explanation was considered implausible. The judge commented on his ability to leave on his own passport. The judge referred to the significant delay before the appellant claimed protection and found no adequate explanation was given. The judge rejected the claim that the police in Sri Lanka had become interested in him of late.
13. Regarding the psychiatric reports submitted, the Judge commented that no other independent evidence of any mental health issue had been provided. He placed little weight upon the reports. The judge stated it was largely based upon what the appellant said. Regarding the scarring report, the report described the scarring as typical of the abuse claimed. However, the judge commented that the author did not provide any meaningful analysis of how the scarring may have occurred and the report lacked detail.

#### The Upper Tribunal

14. Permission to appeal was granted on the basis it was arguable the judge did not adequately deal with the scarring medical report.

The judge had referred to the absence of independent medical evidence without indicating what was required. The judge had also referred to the report lacking detail whereas it was submitted the report was detailed and no explanation to the contrary was given.

15. The grounds also contended the judge failed to engage with the psychiatric report or consider if there were adequate facilities for treatment in Sri Lanka, irrespective of the underlying cause of his condition.
16. Mr Paramjorthy referred to these points at hearing and said that the medical evidence was probative and material, particularly the scarring report in supporting the truth of the underlying claim.
17. The presenting officer maintained there was no material error in the decision. She submitted the judge was entitled to make the findings arrived at. She pointed out the appellant travelled here in 2007 on his own passport yet did not claim protection until December 2015. The makers of the medical reports had not been provided with supportive GP records and the reports were made at a late stage and only produced on the morning of the hearing.

### Conclusions

18. The judge's comments on the report being lodged late. However, despite Directions not being complied with, there has been no argument that the respondent was prejudiced by this. Consequently, I do not see this is a factor which should detract from the reports.
19. The report recounted the history from the appellant of being beaten with wooden batons and metal bars about his head, arms, back and leg. He said a broom handle had been inserted into his anus and his hands were cut with a blade.
20. The A &E Consultant found some small areas of scarring typical of trauma. Some, such as the scarring on the head and right leg represented injury was a blunt object and others, such as the scarring to the left forearm and thumb were consistent with being inflicted by a sharp object. Based upon the positioning of the injuries and their apparent severity the doctor concluded these were inflicted by someone other than the appellant.
21. The doctor referred to the Istanbul Protocol and hierarchical categories of findings:(a) not consistent-could not have been caused by the trauma described; (b)consistent with-could have been caused as described but there are many other possible causes; and (c)highly consistent with the trauma described with few other possible causes(d),typical of the trauma claimed but there are other possible causes and finally,(e) diagnostic of- they could not because

in any other way than that described. The doctor found (d) appropriate.

22. The judge referred to the report lacking detail and it did not provide a meaningful analysis about how the scarring could have occurred. The doctor saw the appellant on 14 February 2019 and is commenting upon an incident said to have happened on 22 February 2007. The doctor refers to the shape of the scars stating some are typical of trauma from a blunt object and some from a sharp object. The doctor discounts the scarring being consequent upon skin infection, such as a boil or an insect bite. The doctor gives the opinion that the positioning of the scars make it unlikely to have been done by the claimant himself but more likely cause by 3<sup>rd</sup> parties. The doctor cannot comment on the age of the scars beyond stating they are mature.
23. The doctor's conclusion is that applying the Istanbul protocol the scarring is typical of what could be expected with the trauma described but there are other possible causes. Mr Paramjorthy makes the point that on the Istanbul protocol this is the 2<sup>nd</sup> highest category short of the pinnacle where scarring is diagnostic of the claim. The Supreme Court in KV (Sri Lanka) (Appellant) v Secretary of State for the Home Department (Respondent) [2019] UKSC 10 said the references in the Istanbul Protocol to the "trauma described" by the reporting doctor do not relate only to the mechanism by which the injury is said to have been caused, but to the degree to which medical findings correlate with the patient's allegations of abuse. The conclusion about credibility always rests with the decision-maker following a critical survey of all the evidence.
24. I am unclear as to what the judge meant in referring to the absence of other independent medical evidence. Possibly the judge meant early references to being assaulted in GP records and so forth. However, given the appellant's circumstances I do not see this as a significant omission.
25. The judge also refers to the absence of any meaningful analysis about how the scarring may have occurred. I have some difficulty in seeing what more the doctor could have said. The doctor discounted skin infections or insect bites. The doctor distinguished the scars into those consistent with blunt trauma and those with cutting.
26. I have considered the medical report and the comments by the judge. The doctor is commenting on relatively small scars. The scarring could not be considered as extensive. Whilst I appreciate on the Istanbul hierarchy the doctor has placed the scarring in the 'typical' category this still carries the caveat of other possible causes. In the circumstance there was a limit to what the judge could have said about the report beyond what was said.

27. There were other significant issues going to credibility. In the circumstance the medical evidence only provided one part to the overall credibility assessment. Looking at the decision as a whole and the points taken against the appellant I do not find any material error of law established in how this report was dealt with.
28. Mr Paramjorthy has placed less reliance upon the psychiatric report. An obvious reason for doing so is that is much more difficult to establish a nexus between the diagnoses and the claimed incident. JL (medical reports-credibility) China [2013] UKUT 00145 (IAC) advised that representative should consider what it was about a report that supports what the appellant has said and which is not dependent on what they have told the doctor. In this instance the judge made the valid comment that it was difficult to attribute the appellant's presentation in August 2018 to a claimed occurrence in 2007. For this reason the reference to other evidence, such as medical records covering a wider timescale, was highly relevant. Consequently, I find no fault with the judge finding the absence of a nexus.
29. It was also argued the judge should have considered the risk of self-harm on return. A stand-alone article 3 claim was raised in the skeleton argument. There is a high threshold to establish this. This is set out in paragraphs 76 onwards of the refusal letter. The consultant psychiatrist engaged on behalf of the appellant did provide some very helpful extracts in relation to studies on self-harm in Sri Lanka as well as more general items on post-traumatic stress. The information records that in recent decades Sri Lanka has one of the highest rates of suicide in the world. The assessment of the risk is dependent upon the medical evidence. The consultant concluded the appellant was of the view the risk of suicide on return was moderate to high and that he resented is suffering from a serious psychiatric disorder. The doctor referred to finding it very difficult to take a clear history from him and concluded he would be on fit to give evidence before the court.
30. The judge did question the reliability of the report and refers to the absence of other independent evidence to support the appellant's state of health. The judge pointed out the report was heavily reliant upon what the appellant said to the doctor. The psychiatric report would suggest it was only recently that he had been referred to the National Health mental health team. These were legitimate comments and whilst the judge did not refer to the medical facilities available in Sri Lanka in the circumstance this was not necessary because the judge had not accepted he was at risk.
31. In conclusion I do not find any material error of law established

Decision.

No material error of law has been demonstrated in the decision of First-tier Tribunal Judge Lucas. Consequently, that decision dismissing the appeal shall stand

Deputy Upper Tribunal Judge Farrelly.

Dated 24 June 2019