Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/00255/2013

THE IMMIGRATION ACTS

Heard at Field House	**Judgement given orally on 14 February 2014**
On 14 February 2014	**Determination Promulgated**
	On 4 March 2014

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

JEYAVINOTHAN PADMANATHAN

Respondent

Representation:

For the Appellant: Mr T Melvin, Home Office Presenting Officer
For the Respondent: Mr M Blundell, Counsel instructed by Theva Solicitors

DECISION AND DIRECTIONS

1. The appellant in these proceedings is the Secretary of State. However, for convenience I refer to the parties as they were before the First-tier Tribunal.

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2. Thus, the appellant is a citizen of Sri Lanka born on 22 June 1989. He originally arrived in the UK on 24 September 2009 and then returned to Sri Lanka on 5 December 2011. He came back to the UK on 26 October 2012. Following an unsuccessful claim for asylum, a decision was made on 18 December 2012 to remove him. His appeal against that decision came before First-tier Tribunal Judge Clayton on 25 July 2013, whereby she allowed the appeal on asylum and human rights grounds. She heard evidence from the appellant and from a witness called on the appellant's behalf. That evidence and the submissions of both parties are set out in the determination.

3. The basis of the appellant's claim, in brief summary, is that he had a fiancée and on an occasion when there was a sports day at the college that his fiancée taught at, the President's son, Namal Rajapaksa, attended. He apparently took a liking to the appellant's fiancée and invited her to his hotel which invitation she declined. This led to her being abducted or kidnapped and in due course this led to the appellant himself being abducted, detained and ill-treated, after he had made a report to the police and gone to court in relation to his missing fiancée.

4. In considering the appellant's account the First-tier Judge made a number of findings. They appear from [56] of the determination. She started by saying that:

> "Having considered all the evidence before me with the most anxious scrutiny, I accept the Presenting Officer's submission that much of his story is not credible and there are many discrepancies. In particular, the whole account of his fiancée's alleged kidnap does not have the ring of truth."

5. From then on she made a number of other assessments of the evidence concluding that in most material respects his account for one reason or another was not plausible. Those findings appear from [57].

6. In the last sentence of [57] Judge Clayton said that although she found that it would physically be possible for the President's son to travel from where he was, in order to be at the sports day, she found that to be most unlikely. This related to evidence which is referred to in the refusal letter whereby it was established that the President's son was in fact at a place other than the sports day on the day in question, although it was contended on behalf of the appellant that he would have been able to travel from the other event to the sports day in time. There was background evidence in relation to his regular use of a helicopter. In any event, as I say, the First-tier Judge found that scenario was most unlikely.

7. Having gone on to consider various different aspects of the appellant's account which she found inherently incredible, crucially, it seems to me, at [63] in relation to the appellant's immigration history she referred to his having come to the UK on 24 September 2009 as a Tier 4 Student, his application to extend his leave and then his having left the UK for Sri Lanka during which time the alleged events occurred. The crucial part of that paragraph is this:

> "I find a more reasonable explanation is that he came to the UK, failed to renew his visa but having been here for some time found life in the UK to be more congenial than that in Sri Lanka. I find the likely explanation is that he simply decided to return and claimed asylum so that he might stay here."

8. That it seems to me is an almost unequivocal finding that his claim for asylum is not based on a true account of events. I am reinforced in that view by what the judge said at [56] and [57], to which I have already referred.

9. At [64] the judge considered, albeit briefly, the medical evidence. I have considered for myself the medical report from Mr Andres Martin which refers to scars on the appellant's back and limbs. In relation to the medical evidence, the judge said that the medical report does not rule out that the scars were self-inflicted or inflicted at the behest of the appellant. She said that although the appellant claimed to have attended the A & E department very shortly after returning to the UK there is no evidence of this. She went on to state that somehow "his medical records appear to have gone missing. Dr Martin was unable to state in the medical report how long prior to his examination the scars had been inflicted".

10. At [65], giving further consideration to the medical evidence, she concluded that they are very significant and that they would undoubtedly arouse suspicion if detected upon return. Pausing there, the submission on behalf of the respondent is that there is no reason to suppose that the appellant would attract suspicion on return in the light of the judge's hitherto adverse credibility findings. Again at [65] it was concluded that the appellant has such extensive scarring that following GJ & Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), if the appellant came to the attention of the authorities on return there would be a reasonable likelihood of detention and torture. The judge went on to reiterate that she found several aspects of his claim to be implausible but to the lower standard accepted that he was "detained and tortured as claimed with the resulting extensive scarring to his body". Following that conclusion, the appeal was allowed on asylum and Article 3 grounds.

11. Mr Melvin submitted that the credibility findings are at best inconsistent and, at worst, either perverse or irrational.

12. Mr Blundell suggested that the credibility findings were merely signposts to the ultimate assessment of credibility which the judge was entitled to make, namely to the effect that his account was credible, in particular having regard to the medical evidence.

13. I am satisfied however, that the findings made by the First-tier Judge are irreconcilable. I have already referred to the aspects of the determination in its earlier stages of findings, which indicate that she did not accept the credibility of the appellant's account. Those findings are many and varied and I am not satisfied that the conclusion at [65] to the effect that the appellant had established that he was detained and tortured as claimed is at all consistent with those earlier findings.

14. I am not satisfied that satisfactory reasons were given for concluding that the appellant would arouse suspicion if detected upon return, and I agree with the submissions made on behalf of the respondent to the effect that the conclusion at [65] that he was detained and tortured "as claimed" is not a conclusion that follows from the previous findings. In those circumstances, I am satisfied that the First-tier judge erred in law.

15. I do not need to go on to consider the separate argument in relation to GJ. There was a concession by the Secretary of State that if the appellant's account was to be believed then he would have established a risk of persecution or Article 3 ill-treatment on return. It does however, seem to me that the judge ought to have engaged more fully with the current country guidance decision in GJ. Nevertheless, there is a sufficient basis for the reasons I have already given, to find that there is an error of law such as to require the decision to be set aside.

16. I heard submissions from both parties as to the appropriate course of action in the event that I came to that view. Both parties agreed that if I was to find an error of law in the credibility findings which required the decision to be set aside, it would be appropriate for the appeal to be remitted to the First-tier Tribunal. I do consider that that is the appropriate course. Accordingly, having regard to the Practice Statement at paragraph 7.2, given the nature and extent of the credibility findings that will need to be re-made, it is appropriate for this matter to be remitted to the First-tier Tribunal for re-hearing *de novo*.

DIRECTIONS

1. The appeal is remitted to the First-tier Tribunal for a hearing *de novo* before a judge other than First-tier judge Clayton.

2. No credibility findings are preserved.

3. A Tamil interpreter is required.

4. Further directions as to listing of the appeal may be left to the discretion of the First-tier Tribunal.

Upper Tribunal Judge Kopieczek 21 February 2014