



UPPER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

APPEAL NUMBER: AA120852015

THE IMMIGRATION ACTS

Heard at: Field House
on 3 May 2016

Decision and Reasons Promulgated
On 23 May 2016

Before

Deputy Upper Tribunal Judge Mailer

Between

S J
ANONYMITY DIRECTION MADE

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellant: Mr S Muquit, counsel (instructed by Kanaga Solicitors)
For the Respondent: Mr S Walker, Senior Home Office Presenting Officer

DECISION AND REASONS

1. I continue the anonymity direction made by the First-tier Tribunal. It is to remain in place unless and until this Tribunal or any other appropriate court, directs otherwise. As such, no report of these proceedings shall directly or indirectly identify the appellants or any member of their family. Failure to comply with this direction could amount to a contempt of Court.
2. The appellant is a national of Sri Lanka, born on 28 May 1998. He appeals with permission against the decision of the First-tier Tribunal Judge promulgated on 15

February 2016, dismissing his appeal on asylum, humanitarian protection and human rights grounds.

3. The appellant is still a minor and is 17 years old. Mr Muquit, who did not represent him before the First-tier Tribunal, contended that the Judge's approach to the report of Mr Martin, who prepared a "scarring report," was flawed. The Judge misconstrued the significance of its terms and conclusions. Accordingly, the Judge ignored significant evidence relevant to the appellant's own credibility.
4. Dr Martin's report was compiled with the guidance given in SA (Somalia) in mind. The assertion by the First-tier Tribunal Judge that Dr Martin had adopted a wholly uncritical approach was incorrect.
5. Contrary to the Judge's view, the issue of the symmetry of some of the scars was considered by Dr Martin which justified his view that the injuries were non-accidental. The Judge also wrongly considered that Dr Martin had given no reasons for the view that the scars were caused in the manner described by the appellant, rather than in any other way. Dr Martin clearly adopted the correct approach by having regard to the "principles" set out in KV (Scarring – Medical Evidence) Sri Lanka [2014] UKUT 00230 (IAC).
6. The Tribunal in KV noted that doctors examining scars should not automatically and pre-emptively discount SIBP as a cause of scars in the sense that nothing is impossible or improbable; but if in considering whether SIBP was "more than a remote possibility" doctors should identify "presenting facts" which are in fact referred to in KV and which Dr Martin stated he had considered.
7. The Judge noted that Dr Martin discounted the possibility of SIBP as a realistic possibility. However, he had not indicated what such presenting facts might be [38].
8. In particular, Mr Muquit referred to the findings by the Judge that there was a significant degree of regularity in the scarring caused by hot metal bars and it is correct to say that Dr Martin regarded this near symmetrical pattern as being typical of "unwillingly and deliberately" caused injuries, however, he failed to explain why this is so. There was no deviation at all in the scars which are in perfectly straight lines, having the appearance of the victim having been lying or standing still whilst these were being inflicted. It was difficult to understand how this torture was inflicted on an unwilling victim and how in the circumstances such regularity and symmetry would have been achieved. That is particularly so bearing in mind that it is the appellant's case that these injuries were inflicted over the course of several weeks [38].
9. However, Mr Muquit submitted that the appellant had in fact claimed to have been tied up at the time that these particular wounds were inflicted. In his witness

statement that he made prior to his asylum interview at C1 he stated at paragraph 10 that during his torture he was beaten with different devices. He was burned with hot iron bars and cigarette butts. They covered his face with plastic bags soaked in petrol. They tied his legs “and hang me upside down and beaten, my head was “immunised” into water and made it difficult to breathe, they put chilli powder into my eyes.”

10. Mr Muquit submitted that the Judge paid no regard to that evidence which was capable of explaining the pattern of those scars. That evidence had in fact been referred to by the Judge at [14]. It had also been referred to and set out in the refusal letter at paragraph 46. It is noted there that the appellant stated at interview that he was hung upside down. He said he was immersed in water. He did not however give an account of having chilli powder put into his eyes when interviewed. Apart from that, however, the appellant had been consistent in respect of having been hung upside down.
11. Mr Muquit referred to paragraph 1.2 of Dr Martin's report where he stated that determining the age of the scars by just visual inspection is not a precise science. In some instances it is just possible to say that the injuries are mature or immature, enough to give an approximate range of times when they were caused. He stated that the appellant's scars are fully mature and this is consistent with the injuries that are more than six-12 months old. The events that the appellant referred to occurred in 2014, and the date of the report is January 2016.
12. Accordingly, Mr Muquit submitted that Dr Martin had set out reasons and has discounted SIBP.
13. Dr Martin was not tested by way of cross-examination on his visual assessment of the scars. There was no inquiry made as to the linearity of the scars. Having regard to the appellant's claim that he was tied up at the time, it needed to be established more clearly whether there was a proper foundation for suggesting that there was a “presenting fact” present.
14. Moreover, the deviation of the scarring in the back is criss crossed. The scars are not symmetrical.
15. The finding by the Judge at [40] that Dr Martin and Dr Dhumad (the psychiatrist who also presented a report), had adopted a wholly uncritical approach and had not properly considered any alternatives to the appellant's account, was incorrect. Dr Martin had briefly stated that he read and followed the recommendations outlined in the decision of KV, supra. He also prepared the report in accordance with the Istanbul Protocols.
16. Mr Muquit also submitted that the Judge erred in his approach to the appellant's testimony. He properly directed himself with regard to the evaluation of credibility

in the case of a vulnerable child, but in fact elevated inconsistencies in his evidence when evaluating the credibility of his claim.

17. The Judge accepted Dr Dhumad's assessment. The reference by him to the appellant's "unstable mental state" and the elevation of the inconsistencies in the appellant's evidence to "highly significant" was accordingly irrational as set against the self direction at [23]. Moreover, Dr Dhumad painted a "sorry picture" of the appellant, whose overall presentation was consistent with a diagnosis of severe depressive episode with psychotic symptoms. These were also consistent with a diagnosis of post traumatic stress disorder.
18. On behalf of the respondent Mr Walker referred to a note prepared by the presenting officer at the hearing. The report from Dr Dhumad stated that the appellant was in effect not fit to give evidence. The presenting officer stated that he would be cross-examined.
19. Mr Walker stated that it appears that the appellant's evidence was at the heart of the Judge's negative credibility findings.
20. The Judge in fact found that the appellant had established that his father had been serving as a Sea Tiger. He was prepared to give the appellant the benefit of the doubt in that respect. He nevertheless held against the appellant some inconsistencies despite the evidence that he was suffering from various psychological vulnerabilities.
21. Mr Walker accordingly very fairly accepted that the Judge had adopted an incorrect approach to the evidence.
22. In addition Mr Walker noted that the appellant's "guardian", who gave evidence at the hearing, stated at paragraph 4 of her witness statement that the appellant's mother contacted her and told her that her husband was arrested by the Sri Lankan government authorities as well as her son. She managed to get the son out of detention with great effort. She told her that it was dangerous for her son, the appellant, to stay in Sri Lanka and asked whether she would help him if he came to the UK. This she agreed.
23. Mr Walker submitted that the matter came down to paragraph [40] of the decision where the Judge found that both doctors had adopted a wholly uncritical approach and had not properly considered any alternatives to the account that has been given.
24. However, Mr Walker referred to the fact that the appellant had explained in his evidence how the wounds were inflicted on him. It was never put to the appellant that his evidence that he was tied and hanging upside down when the metal rods were placed on his back, was false.

25. Accordingly, Mr Walker accepted that there had been material errors and that the decision should accordingly be set aside and re-made.
26. Both parties submitted that in the circumstances, this was an appropriate case to be remitted to the First-tier Tribunal.

Assessment

27. The First-tier Tribunal Judge has given a lengthy and detailed decision in this case. He has also made significant findings in relation to the appellant's father.
28. I accept that his finding with regard to the doctors, namely that they have adopted a wholly uncritical approach and have not considered any alternatives to the account that has been given, was incorrect. Dr Martin had in fact addressed the possibility of SIBP and discounted this as a remote possibility.
29. Moreover, Dr Martin had considered the state of the wounds from which he came to the clinical conclusion that the injuries were non accidental. The appellant had stated at the outset that they had tied his legs and hanged him upside down and he was beaten.
30. Dr Martin had been aware of the appellant's description of his torture and has expressly stated that the appellant informed him that he was suspended upside down by his ankles. It was in that position that he was burned with hot metal rods and cigarette butts.
31. Further, the Judge had not considered the evidence of the appellant's "guardian" in the UK. Accordingly, his findings at [41] that the appellant failed to prove that his father had been detained or that he himself was detained and tortured, were flawed.
32. In the circumstances, I accept the parties' submissions that this is an appropriate case to be remitted to the First-tier Tribunal.

Notice of Decisions

The making of the decision of the First-tier Tribunal involved the making of an error of law and is set aside.

The case is remitted to the First-tier Tribunal (Hatton Cross) to be re-heard by another Judge. The agreed hearing date is 16 September 2016 with a time estimate of three hours. Two witnesses are to be called. A Tamil interpreter is also required.

Anonymity direction continued.

Signed

Date **16** May 2016

Deputy Upper Tribunal Judge C R Mailer