



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

Appeal Number: PA/06786/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 3 December 2019**

**Decision & Reasons Promulgated
On 10 December 2019**

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

**KK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A Benfield, Counsel, instructed by Kanaga Solicitors
For the Respondent: Mr D Clarke, Home Office Presenting Officer

DECISION AND REASONS

**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 his 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.

The Appellant is a citizen of Sri Lanka. His date of birth is 26 March 1987. I was not addressed in respect of anonymity. However, considering the nature of the Appellant's claim and applying Upper Tribunal Immigration and Asylum Chamber Guidance Note 2013 No 1, I make a direction to anonymise him.

The Appellant's appeal against the decision of the Secretary of State on 16 May 2018 to refuse to grant him asylum was dismissed by Judge of the First-tier Tribunal Bart-Stewart in a decision that was promulgated on 28 June 2019, following a hearing at Taylor House on 17 May 2019. The Appellant was granted permission by First-tier Tribunal Judge Ford on 6 August 2019 on all grounds.

There are six grounds of appeal. At the hearing before me, Mr Clarke conceded on behalf of the Secretary of State that the judge erred in respect of the medical evidence of scarring and the psychiatric evidence (ground 1). In his view, the decision of Judge Bart-Stewart cannot stand. It should be set aside. The matter should be remitted to the First-tier Tribunal for rehearing afresh.

I agree with the Secretary of State's concession. There was evidence that the scarring was typical of torture and that the Appellant had been diagnosed with a psychiatric disorder. The analysis of the medical evidence was inadequate. There was no suggestion that the evidence was not Istanbul Protocol compliant and the medical expert had considered self-infliction as a remote possibility. There was no challenge to the evidence of the experts. It was not suggested by the Respondent that the scars were self-inflicted. The judge directed herself relying on KV (scarring - medical evidence) Sri Lanka [2014] UKUT 00230. The judge seemed not to be aware of the Supreme Court in that case KV (Sri Lanka) [2019] UKSC 10. The judge, whilst accepting that the Appellant was a vulnerable witness, did not indicate how this affected the assessment of the Appellant's evidence.

In the light of the Respondent's concession in respect of ground 1, there is no need to consider the remaining grounds of appeal.

Notice of Decision

The decision of Judge Bart-Stewart to dismiss the Appellant's appeal is set aside and the case is remitted to the First-tier Tribunal to be heard *de novo*.

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Signed Joanna McWilliam
Upper Tribunal Judge McWilliam

Date 6 December 2019