



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

Appeal Number: AA/09916/2012

THE IMMIGRATION ACTS

**Heard at : Field House
On : 22nd May 2013**

**Determination Promulgated
On: 3 June 2013**
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Before

Upper Tribunal Judge McKee

Between

SATHISH MARTIN SILVESTAR

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: No appearance
For the Respondent: Mr Philip Mangion of the Specialist Appeals Team

DETERMINATION AND REASONS

1. Mr Silvestar claimed asylum immediately upon arrival here in September 2012, but was refused leave to enter the United Kingdom on 16th October 2012, as his asylum claim had been refused. An appeal to the First-tier Tribunal was dismissed after a hearing before Judge Sacks on 29th January 2013, but permission to appeal against

that decision to the Upper Tribunal was granted by Judge Froom, who was concerned that the judge had apparently considered a medical report by Dr Sykes only after making up his mind about the appellant's credibility. Such an approach was held to be erroneous by the Court of Appeal in *Mibanga* [2005] EWCA Civ 367.

2. When the matter came before me today, there was no appearance by or on behalf of the appellant. A telephone call was made to TTS Solicitors of Walthamstow, who represent the appellant, and they said that they had made no plans to attend the hearing. There was no attendance by the appellant either, although notice of the hearing was posted to his home address in Stockton-on-Tees on 25th April 2013. In those circumstances I exercised my discretion under the Upper Tribunal Procedure Rules to proceed in the appellant's absence. I heard submissions from a Presenting Officer, Mr Mangion, after which I decided that there had been no error of law on the part of Judge Sacks. I give my reasons below.
3. Although he only identified 'the *Mibanga* point' as arguable, Judge Froom gave permission on all the grounds submitted by TTS Solicitors. Those other grounds have no merit. They assert that the judge gave no, or no adequate, reasons for his findings, but that is not so. For example, they say that Judge Sacks make no finding on whether the appellant's brothers are members of the LTTE, but in fact Judge Sacks writes "*I can find no evidence to satisfy me that this Appellant has relatives namely his brothers who are members of the LTTE.*"
4. The *Mibanga* point, on the other hand, looks a strong one at first blush. After giving many reasons, at paragraph 18(a) and 18(b) of his determination, for not finding the appellant's account credible, the judge turns at 18(c) to deal with the medical report. Having already found the appellant not to be credible "*in respect of his association with the LTTE in Sri Lanka, his claimed detention and escape from detention, and as to how he eventually leaves Sri Lanka and as to his living in South America*", he cannot rely on Dr Sykes' report as supporting the appellant's account. Such an approach would, in most cases, be erroneous. But in the instant case, it is not.
5. As Judge Sacks correctly records, Dr Sykes describes a pattern of some 14 burn marks on the appellant's back, which must have been deliberately inflicted at or around the same time. They could not have been caused by accident or disease. Dr Sykes acknowledges that it is impossible to age these scars accurately, but thinks they are likely to be more than two years old but less than five years old. The physical examination took place on 11th January 2013. The appellant says that he was burnt with a heated iron implement while he was detained by the Sri Lankan Army between May and December 2009. But the time frame offered by Dr Sykes means that the scars could date back to before the period of the appellant's detention. They could equally date to the period after the appellant says that he escaped from detention and was living in Vavuniya and Colombo. In August or September 2010 the appellant says that he went to South America, so the scars might have been inflicted there (albeit there is absolutely nothing to corroborate the appellant's account that he was ever in South America).
6. At all events, while a pattern of deliberately inflicted burn marks is consistent with the appellant's account of detention by the Army, they would be equally consistent with being inflicted at another place, at another time and for another reason. With all the

other reasons which the judge had for rejecting the entirety of the appellant's account, it cannot be said that the point in his determination at which the judge dealt with the medical report made any material difference to the outcome of the appeal. The judge went on to give cogent reasons why the appellant would not be at risk on return as a failed asylum seeker, and indeed those reasons have not been challenged. Accordingly, the First-tier Tribunal's determination must stand.

DECISION

The appeal is dismissed.

Richard McKee
Judge of the Upper Tribunal

22nd May 2013