



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

Appeal Number: PA/12056/2019

THE IMMIGRATION ACTS

**Heard at Field House (via MS Decision & Reasons Promulgated
Teams)**

On: 16 September 2021

On 19 October 2021

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

WF

(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, counsel instructed by ABN Solicitors

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Jarvis, promulgated on 16 April 2021. Permission to appeal was granted by Upper Tribunal Judge Plimmer on 12 July 2021.

Anonymity

2. An anonymity direction was made previously and is reiterated below because this is a protection matter which also involves issues of mental ill-health.

Background

3. The appellant arrived in the United Kingdom during 2008 with leave to enter as a student, which expired in October 2011. The appellant remained in the United Kingdom without leave and applied for asylum on 6 October 2015. That application was refused and his appeal against the decision dismissed, his appeal rights having been exhausted by 6 December 2016. The appellant's further submissions were rejected on 15 November 2018. He made further submissions on 7 May 2019, which were refused in a decision dated 19 November 2019 and which is the subject of this appeal.
4. The decision letter noted that the appellant's previous protection claim, based on his involvement with the Negombo Youth Organisation, was found to be wholly lacking in credibility by the judge considering his first appeal in 2016. The respondent considered and rejected the further submissions which stated that the appellant would be at risk of attracting the adverse attention of the Sri Lankan authorities and that he suffered from PTSD owing to those earlier credibility findings. Furthermore, it was not accepted that his removal to Sri Lanka would breach either Article 3 on medical grounds or Article 8 on private life grounds.

The decision of the First-tier Tribunal

5. At the hearing before the First-tier Tribunal, the appellant did not give oral evidence on medical advice and therefore the appeal proceeded by submissions only. Evidence before the judge included a scarring report from Dr Al-Wakeel as well as psychiatric reports from Dr Raj Persaud. The judge rejected the appellant's claim that he was subjected to persecution at the hands of a politically affiliated serious organised crime gang and did not accept that he would be of any adverse interest to the Sri Lankan authorities on return. The judge was critical of the psychiatric evidence and concluded that the appellant would be able to obtain medical treatment and support from his family in Sri Lanka and as such did not accept that there would be a material deterioration in his mental health as a consequence of his return to his country of origin. Article 8 was not pursued at the hearing.

The grounds of appeal

6. The grounds of appeal were that firstly, the judge erred in finding that the scarring identified in the medical report did not corroborate the appellant's account. Secondly, it was argued that the judge was wrong to find that variations in the appellant's mental state noted in the reports was

an inconsistency while at the same time criticising similarities in the psychiatric reports. Thirdly, it was argued that the judge failed to consider whether there was a sufficiency of treatment in Sri Lanka. Fourthly and lastly the judge erred in finding that the appellant's mental state did not engage *AM (Zimbabwe)*.

7. Permission to appeal was granted on the basis that the judge's "*approach to Dr Al-Wakeel's report contains arguable errors of law. It is arguable that the reasons provided at [52-65] for effectively reducing the weight given to the scarring evidence fails to apply the principles in KV (Sri Lanka) v SSHD [2019] UKSC 10.*" The remaining grounds were considered to have less merit, albeit permission to appeal was granted on all grounds.
8. The appeal was opposed by the respondent in her Rule 24 response.

The hearing

9. Mr Paramjorthy made submissions on only grounds one and three, with virtually all of his effort focused on the first of the grounds. With reference to the scarring report of Dr Al-Wakeel, he made the following points. The scarring report had the capability of impugning the findings of Judge Sweet, who heard the appellant's first appeal. The judgment in *KV* post-dated that determination. At [62-63] of the decision and reasons of Judge Jarvis, the overall presumption was made in the absence of specific evidence relating to self-infliction. It was reasonably likely that the scars were caused in the manner described by the appellant. The Rule 24 response raised a further issue not mentioned in the grounds, in that the judge found that the methods used to inflict the scars on the appellant were not consistent with methods normally used in Sri Lanka. The judge was concerned that Dr Al-Wakeel had not seen the appellant's interview record, however he had the previous decision of the First-tier Tribunal and refusal letter. The scarring report gave a clear description of the injuries, involved a proper application of the Istanbul protocol and concluded that the injuries were typical of the events described by the appellant. While the judge stated that weight had been given to the scarring report, it was clear that this was very limited given the judge's comments at [63-65]. Mr Paramjorthy accepted that the remaining ground was less persuasive, in that he was not raising a stand-alone Article 3 claim. He accepted that it was open to the judge to make the observations he had on the psychiatric evidence. The only issue was that of whether the appellant availed himself of medical treatment in Sri Lanka, as set out in paragraph 7 of the grounds.
10. Mr Avery characterised the challenge as just a disagreement with the findings of the judge, submitting as follows. At [50] the judge directly himself correctly and he considered the evidence in the light of those directions. At [55-57] *KV* was analysed in a great deal of detail. It cannot be right that the medical evidence is conclusive, there could equally be other evidence which goes against the appellant. The medical evidence in

KV indicated that the injuries were highly consistent with the background evidence, whereas in this case they were not so specific. The evidence was not of the same strength as KV. The judge did not dismiss the evidence but gave it weight and considered it in light of the other evidence. Mr Avery had not much to say regarding the other ground, stating that counsel for the appellant recognised that there were issues with the psychiatric evidence and that the appellant previously had treatment in Sri Lanka.

11. In reply, Mr Paramjorthy addressed the materiality of the scarring report, in that he argued it supported the appellant's claim of being arrested and ill-treated as well as the likelihood that he would be ill-treated again and gave further credence to the appellant's mental health issues.
12. I reserved my decision at the end of the proceedings as I received the appellant's voluminous evidence, which was before the First-tier Tribunal, only after this hearing commenced.

Decision on error of law

13. The focus of Mr Paramjorthy's submissions was what the judge had to say about the expert opinion of Dr Al-Wakeel whose opinion was that the six areas of scarring on the appellant's body were typical of either being cut by a sharp object or struck with a blunt object, as the appellant had related to him. The appellant's case is that these injuries were intentionally caused by the Sri Lankan authorities during periods when he was detained between 2005 and 2008.
14. It was argued on the appellant's behalf that the judge erred in finding that the "typical" findings by Dr Al-Wakeel did not corroborate the appellant's account of ill-treatment. That is not a wholly accurate description of the judge's treatment of the scarring report. The First-tier Tribunal judge's consideration of the scarring report was highly detailed and took up nearly four sides of the decision and reasons [50-65]. Contrary to the submissions I heard, the judge stated at [62] that he had given weight to the conclusions in Dr Al-Wakeel's report. There is no indication in the decision that the judge gave limited weight to this report. Furthermore at [64], the judge directs himself appropriately as to his task, stating the following

"It is therefore for me to assess on all the evidence whether the Appellant is a reliable witness at the lower standard as to the circumstances under which he says he received these particular injuries. I have of course kept in mind Dr Al-Wakeel's conclusions that the scars were caused intentionally."

15. Mr Paramjorthy took issue with the judge's comparison of the scarring on the appellant's body with that of the claimant in KV as well as what he said about the scars resulting from accidental injury. Regarding the first point, the judge was merely explaining at [62-63] why he was of the view that

the presence of the scars alone did not lead to the automatic conclusion that the appellant was telling the truth as his injuries were not of the *“unusual and specific kind heavily associated with particular techniques used by the Sri Lankan army.”* The judge was fully entitled to make this comment and to consider that further analysis of all the evidence before him was necessary before making a global finding on the credibility of the appellant’s claim. As for the second point, the judge’s comments on accidental injury did not go beyond noting that Dr Al-Wakeel’s report had not mentioned if an accidental cause of injury was considered. Despite that comment as well as a passing mention that Dr Al-Wakeel had not seen the appellant’s interview, the judge, ultimately, placed weight upon the scarring report.

16. The judge provided a plethora of reasons from [84-132] as to why he did not accept that the appellant had been detained and ill-treated by the Sri Lankan authorities between 2005-2008 or that his father had been of adverse interest from 2015 onwards. There is no challenge to any of these findings. The judge made no error in concluding that, notwithstanding the scarring report, the appellant would not be at risk of persecution of a breach of his Article 3 rights if removed to Sri Lanka.
17. Neither the grounds of appeal nor submissions I heard identified a material error of law in the decision of the First-tier Tribunal.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error of on a point of law.

The decision of the First-tier Tribunal is set upheld.

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 their 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.

Signed:

Date 03 November 2021

Upper Tribunal Judge Kamara

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email