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Case Summary

Country of Decision/Jurisdiction	United Kingdom
Case Name/Title	RT (medical reports, causation of scarring) Sri Lanka
Court Name <i>(Both in English and in the original language)</i>	Asylum and Immigration Tribunal
Neutral Citation Number	[2008] UKAIT 00009
Other Citation Number	
Date Decision Delivered	07 February 2008
Country of Applicant/Claimant	Sri Lanka
Keywords	Credibility, Medical Reports/Medico-legal Reports
Head Note (Summary of Summary)	Where a medical report is tendered in support of a claim that injuries or scarring were caused by actors of persecution or serious harm, close attention should be paid to the guidance set out by the Court of Appeal in <u>SA (Somalia) [2006] EWCA Civ 1302</u> . Where the doctor makes findings that there is a degree of consistency between the injuries/scarring and the appellant's claimed causes which admit of there being other possible causes (whether many, few or unusually few), it is of particular importance that the report specifically examines those to gauge how likely they are, bearing in mind what is known about the individual's life history and experiences.
Case Summary (150-500)	<p>The appellant is a national of Sri Lanka and is a Tamil. This is a reconsideration of a determination an Immigration Judge following a hearing on 24 July 2007 dismissing the appellant's appeal against a decision dated 21 May 2007.</p> <p>The basis of the appellant's account was that his brother had joined the LTTE after his father had been killed in 1991 and he himself had joined the LTTE in 1995 and had military training. The LTTE sent him to Mullaithivu to gather information on the army, to Vanni to recruit for them and to Jaffna to gather intelligence. In August 2000, he was arrested by the army, detained and tortured. He escaped from the hospital (where he had been transferred) and went back to Vanni. He subsequently left the LTTE and went to Colombo from where he arranged his departure from Sri Lanka with the help of an agent.</p> <p>The appellant relied on a medical report which documented his scars as corroboration of his account. The doctor preparing the medical report had given an opinion that the scars were consistent, and in one case 'highly consistent' with the account he had given of his ill-treatment whilst detained by the army.</p> <p>The Immigration Judge made mixed credibility findings. She found that the appellant was a Tamil who had (shop) employment in Jaffna, that his father was killed in 1991 during a bombing incident and that his brother had joined</p>



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	<p>the LTTE and had been in the UK since before the appellant's arrival. She also accepted that:</p> <p><i>"... the appellant had become involved with the LTTE and assisted them at a low level by providing some information to them and putting up posters whilst working in a shop in Jaffna. Prior to that he helped the movement and was involved in publicity and publicising the movement for school children."</i></p> <p>She found that his claim to have been arrested by the Sri Lankan army, tortured and to have escaped from hospital was a fabrication. On the basis of her findings, she refused the appeal as the Sri Lankan authorities would have no records on him and therefore no interest in him on return to Sri Lanka.</p>
<p><i>Facts</i></p>	<p>In dismissing the medical evidence, the Immigration Judge stated that the report did not preclude the possibility that the injuries were caused by other means.</p> <p>In the application to the Immigration Appeal Tribunal, on a point of law, it was contended that the Immigration Judge had, in making adverse credibility findings, given inadequate weight to the doctor's opinion in the medical report that one of his scars was "highly consistent with" the account he gave of ill treatment at the hands of the Sri Lankan army.</p>
<p><i>Decision & Reasoning</i></p>	<p>The IAT considered the medical report and assessed it in line with the current leading authority on medical evidence in the context of an asylum appeal, <u>SA</u>,</p> <p>20. <i>We turn first to analyse the doctor's report. Several features are noteworthy.</i></p> <p>21. <i>First, faced as he was with having to assess scars stated by the appellant in his history as arising from injuries inflicted as long ago as 2000, he properly took their age into account, stating "[t]he appearance of the scars is consistent with the time span described by the client."</i></p> <p>22. <i>Secondly, of the scars he assessed the doctor found five of them (those on his scalp, his right eyebrow, nose and upper lip and thigh) "consistent with" the appellant's attribution and one (the scar on the appellant's right forearm) "highly consistent" with the appellant's attribution. Given this distribution of findings, we find it extremely odd that in his "Conclusion" the doctor should state that "[t]he scars [plural] present on Mr R's body...are highly consistent with the events described by the client." On his own specific findings only one out of five was "highly consistent".</i></p> <p>23. <i>Thirdly, although finding the scar on the right forearm "highly consistent" with being beaten with batons or sticks, the doctor did not venture any clear opinion about other possible causes, let alone about whether any other possible causes were likely or more or less likely. To the extent that any opinion of his on this question can be gleaned from</i></p>



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his report it would appear that he simply considered that it was "not possible to be precise as to whether the injuries were caused accidentally or not".

24. Fourthly, there is nothing in the "History" section of the report to indicate that the appellant had given any details about his life history prior to his arrest and detention and ill treatment beyond outlining his time with the LTTE, first doing training then being assigned to the Intelligence Division to gather information from army places. There was no record of the appellant telling him about his work in a shop in Jaffna.

25. Bearing in mind these features of the doctor's report, it is instructive to see how it measures up to the guidance given in *SA (Somalia)* which was one of the cases cited in the appellant's grounds for review. At paras 28-32 *Sir Mark Potter P* stated:

28. "In any case where the medical report relied on by an asylum seeker is not contemporaneous, or nearly contemporaneous, with the injuries said to have been suffered, and thus potentially corroborative for that very reason, but is a report made long after the events relied on as evidence of persecution, then, if such report is to have any corroborative weight at all, it should contain a clear statement of the doctor's opinion as to consistency, directed to the particular injuries said to have occurred as a result of the torture or other ill treatment relied on as evidence of persecution. It is also desirable that, in the case of marks of injury which are inherently susceptible of a number of alternative or "everyday" explanations, reference should be made to such fact, together with any physical features or "pointers" found which may make the particular explanation for the injury advanced by the complainant more or less likely."

29. In cases where the account of torture is, or is likely to be, the subject of challenge, Chapter Five of the United Nations Document, known as the Istanbul Protocol, submitted to the United Nations High Commissioner for Human Rights on 9 August 1999 (*Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*) is particularly instructive. At paras 186-7, under the heading "D. Examination and Evaluation following specific forms of Torture" it states:

"186... For each lesion and for the overall pattern of lesions, the physician should indicate the degree of consistency between it and the attribution

(a) Not consistent: the lesion could not have been caused by the trauma described;

(b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many



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other possible causes;

- (c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;*
- (d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;*
- (e) Diagnostic of: this appearance could not have been caused in anyway other than that described.*

187. Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story (see Chapter IV.G for a list of torture methods)."

30. Those requested to supply medical reports supporting allegations of torture by asylum claimants would be well advised to bear those passages in mind, as well as to pay close attention to the guidance concerning objectivity and impartiality set out at paragraph 161 of the Istanbul Protocol.

31. Briefly continuing comparison of the instant case with the case of Mibanga, in that case the factors relevant to credibility plainly included Dr Norman's express medical opinion as to the causation of the injuries and it was thus impermissible to determine the central question of credibility without having regard to that opinion expressed. In the present case there is no comparable opinion. The adjudicator and the Tribunal both considered, rightly in my view, that the explanations for the injuries, which I have highlighted in paragraph 22 above, came from the appellant and not from Dr Madan. He, like the adjudicator, was dependent entirely upon the explanations given by the appellant and there is nothing in his report to indicate that he stood back and considered them objectively for the purpose of his report. Because the explanations came directly from the appellant and were not the subject of separate, critical consideration by the doctor, the adjudicator was entitled not to regard them as medical opinion of the kind being dealt with in Mibanga.

32. Having said that, it does not detract in any way from the force of the decision in Mibanga to the effect that, where there is medical evidence corroborative of an appellant's account of torture or mistreatment, it should be considered as part of the whole package of evidence going to the question of credibility and not simply treated as an "add-on" or separate exercise for subsequent assessment only after a decision on credibility has been reached on the basis of the content of the appellant's evidence or his performance as a witness."

26. We do not know if the doctor (Mr A Martin) was familiar with the Istanbul Protocol guidelines, but his report does show an appreciation of



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the difference between two degrees of consistency: "consistent with" and "highly consistent with"; in that respect his report might be said at first sight to reflect a good working knowledge of the Protocol guidelines or at least the thinking (widely-shared internationally) behind them. As already noted, however, his "Conclusion" that the appellant's scars were "highly consistent" with the appellant's account of causation went significantly beyond his own specific findings on the individual scars.

- 27. Be that as it may, his findings did still identify one scar as "highly consistent with" the appellant's account of being beaten with batons and sticks. The appellant's submission is that the immigration judge erred in failing to attach due weight to that particular finding; she should, it is submitted, have found them presumptively probative.*
- 28. In this regard, however, it is important to recall what SA (Somalia) has to say about the issue of causation. At the end of para 28 it is stated that:
"It is also desirable that, in the case of marks or injury which are inherently susceptible of a number of alternative or "everyday" explanations, reference should be made to such fact, together with any physical features or "pointers" found which may make the particular explanation for the injury advanced by the complainant more or less likely."*
- 29. The medical report in this case failed to attempt any such reference. Given that the doctor did at least recognise the possibility of "accidental" causes, this failure was all the more marked.*
- 30. Having analysed the medical report we must next turn back to look more closely at what the immigration judge made of it.*
- 31. We agree with Counsel that the immigration judge's approach to the report is open to criticism. To say merely that "there could have been other causes of the scars identified" and that the report "does not preclude the possibility that his scars were accidental or prove that they were not caused by other means" did not show that she fully appreciated the potential significance of the one finding of "highly consistent with". Applying Istanbul Protocol criteria, the latter finding was not one which left open there being "many" other possible causes; it confined it to "few" other possible causes. However, we do not consider that this failing on the part of the immigration judge amounted to an error of law because, the particular medical report in question failed to say anything about other possible causes, whether understood as many or few. It did not even begin to engage with the issue of the relative likelihood of (the few) other possible causes. Put simply, as to causes it was simply agnostic.*
- 32. It will be apparent from what we have just said that we reject the Counsel's contention that given the lower standard of proof a finding that scars which are found "highly consistent" with the claimed cause should be regarded as probative "unless there is good reason to reject them". If the result of a finding of "highly consistent with" is that there*



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are few other possible causes, that in itself says nothing about which of these few is more or the most likely. There is no basis, without more, for saying one is to be preferred. There is no basis, without more, for saying that the one cause found "highly consistent with" is to be accepted, "unless there is a good reason to reject..." it. It would have been different if Mr A Martin's report had gone on to evaluate the relative likelihood of (the few) other possible causes and had concluded the appellant's attribution was the most likely. But, as already noted, it failed to do this.

33. This shortcoming of the report was accentuated by the fact that the scarring concerned was to the appellant's right forearm, which was a part of the body which a person would use in an active way in many everyday work and home situations; and, on the account given by the appellant, there were at least two alternative explanations for the scarring which merited consideration: one was his claim that he had trained with the LTTE for two months, using weapons (an AK 47) and the other was that he had worked in a shop. The doctor had been made aware of the former, but not, it seems, the latter. Whilst the appellant did not assist the doctor by failing to volunteer as part of his "history" his work experience in a shop, in our view a medical report seeking to assess the causation of scarring should always seek to establish, as part of an appellant's history, whether there are any home, social or work-related activities which may cast light on other possible causes of the injury/scarring.
34. We note that the grounds for review sought to argue that the appellant's shop work was "work where he was not likely to sustain such injuries". But the issue here is not how we should assess the shop work in terms of it being or not being a likely cause; it is simply about the immigration judge's assessment of a medical report that contained no examination or evaluation of such matters.
35. In the absence of any evaluation by the doctor of whether such causes were more or less likely, the assessment that such scarring was "highly consistent" did not, as the immigration judge rightly concluded, prove the appellant's claim as to how it was caused.
36. Hence it can be seen that SA (Somalia) does not advance the appellant's case in the way argued for in the grounds for review.
37. We would emphasise, however, that in cases that feature medical reports as evidence of injuries having been caused by actors of persecution or serious harm, SA (Somalia) should be treated as a landmark case, giving guidance on a number of matters.
38. First, it reconfirms the validity of the IAT's proposition in HE (DRC-Credibility and psychiatric reports) [2004] UKIAT 00321 as reformulated in Mibanga and in MO (Algeria) [2007] EWCA Civ 1276 that a decision-maker or immigration judge must deal with a medical report as an integral part of the findings on credibility and must not artificially separate that evidence from the rest of the evidence and reach



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conclusions as to credibility without reference to that medical evidence (para 32).

39. Secondly, it clarifies that the principal purpose of a medical report in asylum-related cases is "to corroborate and/or lend weight to the account of an asylum seeker by a clear statement as to the consistency of old scars found with the history given" (para 27).

40. Thirdly, it establishes (at paras 29-30) that chapter five of the Istanbul Protocol is to be seen as a particularly instructive source of guidance, in particular what it said in the Protocol at paras 186-7 under the heading "D. Examination and Evaluation following specific forms of Torture" as follows:

"186.. For each lesion and for the overall pattern of lesions, the physician should indicate the degree of consistency between it and the attribution

(a) Not consistent: the lesion could not have been caused by the trauma described;

(b) Consistent with: the lesion could have been caused by the trauma described, but it is non-specific and there are many other possible causes;

(c) Highly consistent: the lesion could have been caused by the trauma described, and there are few other possible causes;

(d) Typical of: this is an appearance that is usually found with this type of trauma, but there are other possible causes;

(e) Diagnostic of: this appearance could not have been caused in any way other than that described.

187. Ultimately, it is the overall evaluation of all lesions and not the consistency of each lesion with a particular form of torture that is important in assessing the torture story (see Chapter IV.G for a list of torture methods)."

41. Commenting on this the Court stated at para 30:

"Those requested to supply medical reports supporting allegations of torture by asylum claimants would be well advised to bear those passages in mind, as well as to pay close attention to the guidance concerning objectivity and impartiality set out at paragraph 161 of the Istanbul Protocol."

42. Fourthly, SA (Somalia) emphasises the importance of a medical report whose findings on consistency express the fact that there are other possible causes (whether many, few or unusually few), specifically examining those to gauge how likely they are, bearing in mind what is known about the individual's life history and experiences.



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	<p>43. <i>The last-mentioned point is of particular importance in this case. From para 186 of the Istanbul Protocol it can be seen that in the five-fold hierarchy of degrees of consistency between the injury and "the attribution", that of "highly consistent with" ranks third and is specified as meaning that "the lesion [injury] could have been caused by the trauma described, and there are few other possible causes". The reference to "few other possible causes" is clearly to be contrasted with the specification given of a simple finding of "consistent with" (the second degree of consistency listed) where it is specified that "there are many other possible causes". However, precisely because in the case of a finding of "highly consistent with" the range of possible causes is described as being much more limited ("there are few other possible causes"), it is all the more important that a doctor who makes such a finding goes on to assess whether those few other possible causes could adequately explain the scarring and gives an assessment of whether they are more or less likely. A failure to do so will considerably weaken the report as corroborative or supportive of an appellant's case.</i></p> <p>44. <i>From the Counsel's submissions we glean that he would object to the above summary of the guidance approved by SA (Somalia) on the basis that the Court only characterised this last point as "desirable" rather than as essential. However, we do not think by the use of the adjective "desirable" the Court meant in any way to suggest that it was not an extremely important consideration - when assessing the relevance of a medical report to the question of causation of injuries or scarring - to address matters in the way set out in paragraph 28. If all that a doctor does is say that the scarring/injury is "highly consistent" with the claimed history, without also addressing the relative likelihood of the few other possible causes, the report will clearly be of less potential value than if it does. As illustrated by the evidence in this case, it may properly lead an immigration judge to find that a finding of "highly consistent" has very limited value.</i></p>
<p><i>Outcome</i></p>	<p>The IAT found, for the above reasons, that the immigration judge did not materially err in law. The appeal was refused.</p>