Neutral Citation [2013] IEHC 253

THE HIGH COURT

JUDICIAL REVIEW

Record No. 2009 / 364 J.R.

Between:/

P. E. [RWANDA]

APPLICANT

-AND-

THE REFUGEE APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENTS

JUDGMENT OF MS JUSTICE M. CLARK, delivered on the 5th day of June 2013.

1. The applicant in this case seeks to challenge a decision of the Refugee Appeals Tribunal on the basis that the Tribunal erred in law in the manner in which certain medical reports were dealt with. The application for leave was treated as the application for judicial review by way of a telescoped hearing.

Background

2. The applicant is a young Hutu woman from Rwanda whose claim as presented to the asylum authorities is that in 1995 her parents, in common with many other Hutus, were arrested on suspicion of participation in the 1994 genocide. According to her narrative, her father was accused of murdering a young man, but when this man subsequently proved to be alive and unharmed her father's detention was continued as the authorities claimed that another investigation was pending. The applicant was the youngest child in a family of five and was cared for by her older siblings until her mother's eventual release in 2007 after twelve years detention without trial. Her father is still in detention. She and her siblings suffered harassment at the hands of the authorities because of their Hutu ethnicity, especially on their frequent visits to their parents in the detention centre. The family petitioned on many occasions to secure the release of their parents and these petitions brought them to the attention of the authorities. In 1998, her brother was shot dead by a government soldier for reasons associated with his parent's detention but the authorities neglected or refused to investigate his death. In a separate incident her cousin was beaten up and died before he could be treated in hospital. Her sisters were arrested and detained without trial and one is still missing. Family property was confiscated and the family's means were limited, so at age 14 in 2002 she joined the youth wing of the proscribed *Parti Démocratique de Renouveau* (P.D.R.) / Ubuyanja party as they promised to provide financial support for her schooling. Her role was to deliver messages and distribute anti-government leaflets to discourage young Hutus from going to fight in the conflict in neighbouring DRC where Tutsi and Hutu hostilities continue. Government soldiers frequently entered their home to loot and on one occasion in 2007 she was arrested after the authorities found PDR literature in her home which she then shared with her mother. She was accused of propagating *genocidal ideology* and taken to a named illegal detention camp where she was tortured. The extent of that torture and the manner in which she described her experiences is a key issue in this case.

3. Ms P.E. claims that if she is returned to Rwanda, she will face persecution because she is Hutu and furthermore, she will be suspected of genocide ideology and she may be re-arrested or killed.

4. At the time of her interview with an officer on behalf of the Refugee Applications Commissioner she had no medical evidence to support her claim of having been tortured. However, she submitted a number of documents which she claimed established her identity and the death of her brother and she also furnished copies of petitions written by her and her siblings in an attempt to secure her parents' release. She additionally provided country of origin information (COI) reports from a number of Hutu Rwandan organisations confirming the existence of and reliance by the Government on *genocidal ideology* legislation to control opposition to Government policies.

5. The credibility of the applicant's claim was rejected by the Commissioner whose s. 13 report observed that in the absence of medical evidence, it could not be proven or refuted that the applicant was a victim of physical or mental abuse. Her representatives, the Refugee Legal Service, sought to repair this deficiency by presenting two medical reports at her appeal hearing. These were from a clinical psychologist dated April 2008 and a report from November of the same year from Dr Bastible, a physician attached to SPIRASI.

6. The psychologist describes a young woman who was distressed, distrustful and withdrawn and unable to control feelings of despair in relation to traumatic loss. Her opinion was that the applicant's response to therapy and her hesitant disclosure of her traumatic past indicated that she had lived through extremely traumatising events.

7. Dr Bastible of the SPIRASI organisation is a specialist physician experienced in examining persons who claim torture injuries. She records in her report that the applicant was tearful at various points when providing her history. On physical examination she found scars on the applicant's forehead and nose which were "*highly consistent*" with cigarette burns; scars on her ankles, knees, thigh and shin which "*could be consistent*" with the trauma she alleged she received from her captors; a scar on her lower back which was "*consistent*" with a blunt injury such as a baton mark as she alleged; scars on her arms, elbow and wrist which were "*unusual in their distribution and suggest multiple trauma from a person or persons unknown*"; scars on her shoulder which were "*again consistent with baton marks*" and scars on her abdomen and feet which were "*highly consistent with baton marks from the soldiers*". The other findings related to her opinion of the applicant's mental health, which to a considerable extent derived from what she reported to the doctor. Dr Bastible concluded:

> "***Summary:***
>
> *Ms [E] gave a clear and consistent history of the severe physical and sexual assaults which she alleges she experienced*

while she was detained illegally in Rwanda, seemingly as a result of her political activity there. She is currently experiencing quite severe anxiety, depression, insomnia and suicidal ideations, seemingly as a result of this ill-treatment.

Opinion:

The client will need on-going psychological therapy to help her deal with her symptoms. She will also need on-going medical intervention in relation to the treatment of her depressive illness. In my professional opinion, her current symptoms and the findings of physical and medical examination today are consistent with the history she gives of her experiences while in detention in Rwanda".

8. Objectively, the report is fairly compelling and describes injuries to the applicant's face, stomach, back and upper and lower limbs which appear to support her assertions of mistreatment and torture during the period of her detention. However, as will be seen later, the Tribunal Member made findings relating to the applicant's credibility which he found outweighed those medical findings.

The Tribunal's Decision

9. The Tribunal Member described the applicant as articulate, competent, educated and well able to communicate through the interpreter. He seemed to accept that she was Hutu and from Rwanda and also the credibility of her account of her father's continuing detention, as he expressly stated that "*[h]er father's continued custody for an alleged offence may have had a traumatic effect on the Applicant's family*". Thereafter much of her story was rejected because of perceived inconsistencies in her account. Those inconsistencies which were found to undermine her credibility and question the legitimacy of her claim may be summarised as follows:-

a. Given her excellent education it was not evident that she was harassed or targeted as a Hutu;

b. Given the state of the Rwandan economy, it was not credible that on the death of her brother the applicant joined a political party and was of such importance that she was given an income and had her school fees paid;

c. She gave conflicting evidence in relation to her incarceration – she stated on one part of her questionnaire that she was detained for two weeks and on another part she said this was for three months;

d. In relation to her brother's death she gave different accounts to the Tribunal and to SPIRASI and she could not reconcile those inconsistencies;

e. There was a discrepancy in relation to her mother's release date (she said May 2007 to the Tribunal and July 2007 to SPIRASI);

f. She said she was arrested for delivering tracts for the PDR but COI indicates that there is no objective evidence that PDR members are at risk of mistreatment and that they are unlikely to be able to establish a well-founded fear of persecution;

g. A US Department of State report indicated that there had been a marked decrease in reports of the detention of those who publicly disagreed with the Rwandan government and individuals were released without charge after a day in detention. This did not support her account of being detained for a period of months because of her political activities;

h. She did not mention cigarette burns on her questionnaire, at interview or at the hearing but made this allegation to SPIRASI and when asked about this omission she said "*I said I was tortured*".

10. The Tribunal Member also noted a discrepancy in a document submitted to the Tribunal from a Kigali morgue relating to her brother's death. Nothing further was said of that document and it can be assumed that he adopted the findings made in the s. 13 report which wrongly observed that the morgue document refers to the body of an unidentified male and does not contain the brother's name. An examination of the original document written in French and its English translation shows that both clearly contain the brother's name on the top left hand corner. Similarly, the sister's name is recorded but with a minor misspelling.

11. The findings on the medical reports were as follows:-

"The Tribunal has read the report in conjunction with the Istanbul Protocol and refers to Storey J. in RT –v- SSHD --- "The reference in Highly consistent refers to "few other possible causes" has to be contrasted with "consistent with" where it is specified that there are "many 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. If all 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."[1]

12. The Tribunal Member later concluded thus in relation to the medical reports:

"In relation to the medical reports, a particular difficulty arises in a contention that a report should be seen as corroborating the evidence of an applicant for protection. The authors of such a report do not usually assess the credibility of the applicant – it is not usually appropriate for him to do so in respect of a patient or client. That is in any event the task of the factfinder who will often have more material than a doctor and will have heard the evidence tested. So for very good and understandable reasons the medical report will nearly always accept at face value what the patient or client says about her history. The report may be able to offer a description of physical conditions an opinion as to the degree of consistency of what has been observed with what has been said by the applicant. The Tribunal has read the said reports and is not persuaded that they outweigh the findings on credibility, inconsistencies, omissions and country of origin information."[2]

13. On foot of those findings, the Tribunal Member upheld the Commissioner's recommendation and rejected the appeal.

Submissions

14. The applicant's primary complaint is that the Tribunal Member failed to properly assess her credibility in light of the medical

evidence as none of the credibility findings made were of such force as to outweigh the medical evidence. If the Tribunal Member wished to disregard that medical evidence which was capable of supporting the applicant's claim to have been tortured then he ought to have identified strong reasons for doing so. Further, he acted in breach of fair procedures in omitting to alert the applicant to the perceived deficiencies which he found in the medical evidence, which caused their contents to be accorded little weight, and in failing to afford the applicant an opportunity to address his concerns.

15. Secondary arguments were that the Tribunal Member failed to sufficiently explain why he preferred the view taken in certain COI reports over the contrary view expressed in others. Finally the Tribunal Member erred in law in his reliance on the extract from the UK IAT decision of Storey J., which related to very particular facts and was not of general application.

16. The respondents' position is that the medical evidence was appropriately considered and weighed against the applicant's claim and that it is a matter for the Tribunal Member to attach the weight he considers appropriate to any document. In this case he chose to attach little weight to a report which described cigarette burns which were simply never referred to by the applicant. Ms McGrath BL on behalf of the respondents appeared to distance herself from the passage quoted from the decision of Storey J. (at paragraph 11 above) and submitted that even if that part of the Tribunal Member's assessment was severed from the decision, the decision would remain valid as the applicant has not satisfactorily established any obligation on the Tribunal Member to adopt an alternative way of treating the SPIRASI report. The fact remains that the cigarette stubbing injuries found were never mentioned in circumstances where one would expect some reference to them.

17. Ms McGrath further argued that while the COI reports were written from different perspectives, they were not necessarily inconsistent and there is no blatant conflict which required explanation.

THE COURT'S ANALYSIS

18. The manner in which medical evidence is to be treated by protection decision-makers has been frequently addressed by the High Court. It is beyond dispute that a decision-maker is obliged to have regard to documents which are capable of supporting a claim alleging past persecution manifested by torture. Equally, it is for the decision-maker to assess and determine the weight which he attaches to such evidence. The general principle is that where an applicant furnishes a medical report from a reliable source containing objective findings which tend to support or have the potential to corroborate the applicant's claim, then the decision maker – in this case the Tribunal Member – must weigh that report with all the other information provided, deal specifically with it in the decision and if he chooses to attach little or no weight to it to give a rational explanation for his view.{see e.g. *Khazadi v. The Minister* (ex tempore, Unreported, High Court, Gilligan J., 19th April 2007); *N.M. v. The Minister* [2008] IEHC 130 (McGovern J.); M.E. v. The Refugee Appeals Tribunal [2008] IEHC 192 (Birmingham J.); J.L. and *J.M. v. The Tribunal* [2008] I.E.H.C. 254 (Gilligan J.); *T.M.A.A. v. The Tribunal* [2009] IEHC 23 (Cooke J.); *R.M.K. [DR Congo] v. The Tribunal* [2010] IEHC 367 (Clark J.); and *A.M.N. v. The Tribunal* [2012] IEHC 393 (McDermott J.)}. The relevant principles are very succinctly distilled by Cooke J. in *T.M.A.A.* at paragraph 20:

> *"[…] the exercise which the adjudicating authority is required to carry out and to explain is to evaluate the totality of the information available; to weigh in the balance the different elements that tip in one direction and the other and to come to a conclusion as to the credibility of the evidence as a whole. It seems to this Court that where there is a physical piece of evidence that is capable of being related to the events claimed to have happened by the applicant, the obligation is, first of all, to take that into account and then secondly, to explain in the decision whether any significance was thought to attach to it at all and if not, why it is discounted as against the other factors that are taken into account as elements that embellish a story otherwise based upon public events."*

19. In dealing with other challenges to the decision this Court is very conscious that it is not a protection decision-maker and while it may form views different from the Tribunal Member on certain explanations given for apparent discrepancies in the evidence, it has to be accepted that there were some discrepancies. While some of those individual discrepancies were peripheral to her claim, they were indicators of the truth of the claim and were matters which a Tribunal could weigh in the balance to see where the scales would tip.

20. Mr Leonard BL on behalf of the applicant invited the Court to examine the identified discrepancies in the applicant's evidence. It is clear that the discrepancies are not singularly significant. For instance the applicant's *excellent education* did not go beyond secondary school and further, she claimed that she was unable to find a job since leaving school and was overlooked for university as she was not Tutsi. Crucially, however, whether her *excellent education* was an indication that no anti-Hutu discrimination existed, whether she would not have obtained such an education without assistance from a Hutu anti-government political party or whether her claim that she received financial assistance from the PDR was credible, these matters do not affect her main claim that her parents were held without trial for many years, that her father still remains in custody and that her relationship to them led to her persecution. Similarly, whether the applicant was detained for two weeks or three months or whether as she explained there was a mistranslation of, "*I fled after being held for two weeks in the detention centre*", instead of, "*I fled two weeks after being released from the detention centre*", is not determinative of her claim. In her favour, the applicant noted this error in translation before the s. 11 interview and repeated her explanation to the Tribunal. She also explained that she could read English although she could not speak English and that she had therefore observed the error in the questionnaire when the translated version was furnished to her. As Mr Leonard argued, these were peripheral matters and not so germane to her claim that they could be relied upon to justify the exclusion of the medical findings.

21. The document from the morgue, if genuine, is consistent with the applicant's claim that her brother was killed in 1998. The inconsistencies found relating to how he was killed could be seen in the context of the memories of a ten year old girl. How he was killed or whether the morgue documents were viewed as suspect were not key issues. Similarly, an undoubted discrepancy exists regarding the month of her mother's release from an asserted extended period of detention without trial, but the month of her release is not a key issue although it must be acknowledged that all such minor matters contribute cumulatively to an overall credibility assessment.

22. The Tribunal also relied on COI reports to find that low level PDR members do not face persecution and that opponents of the Government who are detained have been released after one day. This is undisputedly found in the COI but forms one very small optimistic paragraph in an ocean of negative observations on the Rwandan government's well understood suspicion of Hutu dissent. The report describes a divided country, a nervous population and a Government intolerant of any criticism or opposition. In spite of widespread international condemnation, thousands of so called *génocidaires* continue to be held without trial or have fled to neighbouring countries where they fear the accusation. The COI records frequent extra-judicial killings, frequent reports of torture and beatings of detainees and disappearances of opponents of the government and vagrants.

23. Leaving aside that aspect of the assessment of how PDR party members fare, the applicant's stated fear of persecution, which may or may not be well founded, was not based solely on her membership of and activities for the youth wing of the PDR while she

was at school. Her PDR membership was associated with her personal history as a Hutu whose parents either were or continue to be considered *génocidaires*, whose brother was killed by Government forces because of his associations with suspected *génocidaires* and whose cousin was beaten to death. It was this history which caused her to be accused of harbouring and disseminating genocidal ideology. In other words, her claim was that she was detained because of the combination of those elements. The over reliance on anti-genocidal ideology laws to supress any suggestion of revisionism or divisionism is well documented not only in the strongly pro-Hutu articles and interviews furnished by the applicant but also in the more objective COI reports used by the Tribunal. The US State Department report also refers to the legislation and to the obvious tensions between the two communities and the extreme sensitivity of the Tutsi-led government to any opposition from Hutu. Considering Rwanda's history, this cannot be surprising. Again, as Ms McGrath correctly observed, the reports say the same thing from differing perspectives.

24. Having examined the negative findings in isolation and in composite form and having considered the elements of the claim which were highlighted or minimised by the Tribunal Member, the Court finds that he could not be validly criticised for finding himself harbouring doubts as to the applicant's credibility. While some of the findings might appear unduly harsh, they were findings which he was entitled to make and consider when assessing the evidence as a whole. However, he was obliged to consider the medical evidence in that mix.

25. We now turn to what in the context of the treatment of the medical reports took on features of a key finding in the Tribunal decision, that is, the applicant's failure to complain of cigarette burns in her description of torture. It cannot be denied that the applicant was not fulsome in her description of her treatment while detained. Her questionnaire recites that she was "*still shocked because of all that happened to [her] in Rwanda; being arrested, beaten and looking at [her] people being killed for no reason*". At interview she described her treatment in detention as, "*[w]e were beaten up and almost starved because we received only 1 cup of corn each day… We were beaten up, but we were also intimidated, harassed and insulted*". She was not questioned further and provided no further details and when asked if she had any medical documents to confirm this maltreatment she said, "*[n]o, I was not severely beaten so that I would be taken to the hospital*". She said she had been seeing a psychiatrist since coming to Ireland but she did not elaborate on this. The written appeal submissions of December 2008 which supplemented her Notice of Appeal assert that, "*[s]he instructs that she was subjected to abuse and torture during a three month period before she was released*" and that, '*she was subjected to physical and psychological abuse during her three month period of detention in Rwanda and the Appellant continues to require psychological support in this State to this day as a result*". The Tribunal Member records that she said at the appeal hearing that during her time in Gikondo prison she was beaten and tortured. She was given dirty water to drink and she was required to take off her clothes. They touched her body but did not rape her. The account given to SPIRASI was that on visits to her parents at the detention facility she was beaten on several occasions with plastic batons on her back and on her legs. She and her siblings were regularly beaten with plastic batons and kicked on their legs and thighs by government soldiers' boots. After her arrest she was kicked by military boots on her legs, thighs and shins and cold water was regularly thrown on her. She was told to take all her clothes off in front of the soldiers on a daily basis over the three months she was detained. Military officials also undressed in front of her and forced her to look at them. They touched her breasts and vaginal area with their hands on a daily basis. They also stubbed their lit cigarette butts on her face on a couple of occasions. She was forced to touch their body parts under threat and she was often slapped and frequently insulted on the basis of her ethnicity. They also verbally insulted her parents.

26. Whatever about her limited description of ill treatment and torture to the asylum authorities, it is clear that the report from SPIRASI contains considerably more detail. The explanation may lie in the fact that the examining physician was a woman of considerable experience in eliciting information on alleged torture. She examined the applicant's body which gave the doctor an advantage over the ORAC officer or the Tribunal Member. That examination found multiple scars and marks which undoubtedly led her to question the applicant about their origin. The scars on the applicant's body and their asserted source were recorded. The applicant's explanations were then evaluated for consistency with the alleged cause of the physical findings. Medical findings of physical injuries are objective; they are not a matter of opinion nor are they affected by the patient's subjective description of their origin. A patient may assert torture by beating, whipping or being struck by blunt objects but if no marks or scars are found, their absence is noted and there is nothing objective to measure for consistency between the assertions and the findings. Subjective narrative of injury inflicted does not produce objective findings. Objective physical findings on the other hand can be caused by accidental injury and it is for the trained observer to measure consistency between findings and descriptions of how the injury occurred. If physical evidence of injury is found, it is then that a doctor trained in the terminology of the Istanbul Protocol seeks explanation for how the injury occurred and measure consistency..

27. Dr Bastible found many marks and scars on the applicant's stomach, back, upper and lower limbs and face. She formed a view that they were consistent with her description of kicks, blunt instrument injuries and cigarette burns and were unusual in their distribution.

28. The Tribunal Member was not swayed by these fairly compelling findings and was not persuaded that the medical reports outweighed the credibility findings. The Court must ask if that was a reasonable and lawful assessment and must assess whether the fact that the applicant made no mention of some of the injuries negates the value of the rest of the SPIRASI report, as found by the Tribunal. The cigarette stubbing scars were, however sustained, present on her face at the date of her appeal. This is not a case of a complaint and demonstration of injuries which post-date a medical examination or a case of complaint of injuries inflicted which are not confirmed at medical examination. Instead this case concerns a failure to mention the infliction of injuries which are actually physically present. In those circumstances, it seems irrational to reject physical findings of multiple and widespread marks and scars which are capable of supporting her allegations of harassment when visiting her parents in prison and of torture while detained, simply because she understated some injuries to the asylum authorities.

29. It appears to the Court that the Tribunal Member disregarded the corroborative potential of the medical evidence too readily simply because he had made credibility findings based mainly on discrepancies in the applicant's evidence rather than putting the medical reports, especially the SPIRASI report, into the totality of the evidence to be assessed. The medical reports had not before the Commissioner and were capable of making a difference to the Tribunal assessment of credibility and of causing a fair minded assessor to pause and ask how else a young Hutu girl from Rwanda with her accepted history could have such a wide distribution of marks and scars, if not from the type of maltreatment described. The inconsistencies in her evidence were minor and some findings were made in error and must surely have been counterbalanced by the medical reports on the applicant's emotional state and multiple scars on her body. For this reason alone the decision cannot stand.

30. Turning finally to the Tribunal reliance on the quoted passage from the judgment of Storey J. which is seen in so many Tribunal decisions when objective medical findings are discounted. The passage quoted reflects paragraphs 43-44 of *RT (medical reports, causation of scarring) Sri Lanka v. Secretary of State for the Home Department* [2008] UKIAT 00009. The full paragraph reads:

> *"42. […] SA (Somalia) [v Secretary of State for the Home Department [2006] EWCA Civ 1302] 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.

43. 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.

44. From 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".

31. Decisions of the UKIAT are very helpful to Irish decision makers but they are neither binding nor determinative. There is sometimes a divergence of views between the decisions of this State and those of the UK, due perhaps to the role of constitutional justice in judicial review. In this jurisdiction, different views are taken of the weight to be attached to findings such as '*highly consistent with'*. What is important about the passage quoted is that the later paragraphs are prefaced by the phrase, "*bearing in mind what is known about the individual's life history and experiences*". This is a vitally important consideration. If an individual claiming torture injuries was known to have been involved in, for example, a motor bike crash or worked as jockey, old fractures might be consistent with such activities and thus undermine a claim that they resulted from torture. If an applicant claiming torture lived in a city and taught history the same old fractures might well be consistent with deliberately inflicted trauma.

32. It is relevant to note that RT was not a country guidance determination. Further, the medical evidence in that case was of a fundamentally different character to the evidence in this case for several reasons. First, in *RT*, the report in question was prepared by a Consultant in Accident and Emergency medicine. At para. 26 of his judgment, Storey J. noted "*[w]e do not know if the doctor (Mr A Martin) was familiar with the Istanbul Protocol guidelines*". That position is in stark contrast with this case where the report was prepared by a SPIRASI physician who is specifically trained and experienced in the care and treatment of survivors of torture.

33. Secondly, the report in RT was prepared in 2008 in relation to injuries purportedly sustained in 2000. Therefore the report was not contemporaneous, or even nearly contemporaneous, with the injuries said to have been suffered and the principles set down in *SA (Somalia)* were applicable. The same cannot be said of the SPIRASI report in this case, which was prepared after a considerably shorter lapse of time. The possible other causes for the applicant's scars were therefore reduced.

34. A further point of distinction between the two cases is that in RT, the marks of injury on the applicant's forearm were considered – as in *SA (Somalia)* – to be inherently susceptible of a number of alternative or "everyday" explanations. In particular, the doctor noted the possibility of "accidental" causes and Storey J. noted that the forearm is a part of the body which a person would use in an active way in many everyday work and home situations. Further, the doctor was not made aware of the applicant's past working in a shop or that he had been in the Tamil Tigers. In contrast, the possibility of accidental causes was not acknowledged in the SPIRASI report and it seems to the Court that in light of her young age and her relatively shorter life experience, the marks on her forehead, nose, ankles, knees, thigh, shin, lower back, arms, elbows, wrist and abdomen are not of the character which could simply be attributed to accidental causes. It therefore seems to the Court that the Tribunal Member erred in law in relying on the selectively-quoted passage from *RT*, which was referenced without context or examination as to relevance. It follows from the foregoing that the Tribunal Member's assessment of the medical evidence and of the applicant's credibility was unreasonable and in error of law.

Conclusion

35. The Court will therefore grant an order of certiorari quashing the decision of the respondent Tribunal and remit the matter for fresh consideration by another Tribunal Member. The Court notes that this young woman has been living in direct provision accommodation for more than five years and it is hoped that her case will be dealt with expeditiously.

[1.] This is an incomplete quote from the judgment of Storey J. in *RT (medical reports, causation of scarring) Sri Lanka v. Secretary of State for the Home Department* [2008] UKIAT 00009 at paragraphs 43-44. The identical extract is seen in many Tribunal decisions.

[2.] This paragraph appears in many Tribunal decisions from different adjudicators who attach little weight to the contents of medical reports.