



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

Appeal Number: AA/01065/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 16 September 2014  
Oral Determination**

**Determination Sent  
On 25 September 2014**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**K T R  
(ANONYMITY ORDER MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms E King, Counsel instructed by Elder Rahimi Solicitors  
For the Respondent: Mr N Bramble, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant appeals with permission against the determination of First-tier Tribunal Judge Del Fabbro who in a determination promulgated on 21 May 2014 dismissed the appellant's claim against the decision of the respondent made on 20 December 2012 to refuse to grant him leave to remain in the United Kingdom consequent upon a refusal of a grant of asylum.

2. The appellant's case is broadly that he is an ethnic Tamil serving in the LTTE as a combatant right up until the latter part of the civil war in Sri Lanka. When that ended he surrendered voluntarily to a camp where he was seriously ill-treated. He was able to obtain a release from the camp by bribery but fears that he will be persecuted and subjected again to further ill-treatment by the authorities on return. He was able to enter the United Kingdom as a student but did not claim asylum immediately.
3. The respondent did not accept his claim for reasons set out in the refusal letter. There is no purpose served in reciting these here but in summary the respondent rejected the appellant's claim as implausible and lacking in credibility.
4. When the matter came before Judge Del Fabbro sitting at Taylor House on 19 March 2014 he heard evidence from the appellant. The judge found parts of the claim to be proved in that he accepted that he was a young Tamil man and that it was more likely than not (sic) that he had served with the LTTE. He accepted that he had been ill-treated in detention but that this had not amounted to torture. He did not, however, accept the appellant's account of what happened after detention.
5. The appellant then appealed to the Upper Tribunal. The grounds are in summary that the findings of Judge Del Fabbro involved the making of an error of law as they are inconsistent with the evidence given, are internally contradictory and lacking in adequate reasoning. There is no purpose in rehearsing the grounds in detail.
6. When the matter came before me Mr Bramble said that he would not be resisting the application on the basis that there are a number of features within the determination which indicate deficiencies in the reasoning of the judge. Ms King did not resist any of those submissions. I agree with the concession made by Mr Bramble and I am satisfied that the grounds of appeal are made out.
7. It is worrying that at paragraph 30 that the judge appears to be using an incorrect standard of proof. It is unclear also why he concluded that somebody who had been beaten seriously in detention by the authorities had not been tortured. It is also unclear why he referred to the appellant not having mentioned being sexually abused when he had in fact done so. All of these cast significant doubt on his assessment of the evidence. As is set out in the grounds, there are other indicators that the judge has not fully taken on board the evidence which was before him and it is not at all clear how having found the appellant's claim to be for the most part made out and thus to be credible that he could rationally not accept the account of subsequent re-arrest and detention.
8. Taking all of these errors together I am satisfied that the decision of Judge Del Fabbro did involve the making of an error of law in that his findings with respect to the appellant's credibility and thus the findings of fact are not sustainable.

9. On that basis the determination must be set aside. Given that the error of law identified in this case relates to the finding on credibility and thus undermines all findings of fact as made I consider that as both representatives accepted this is a matter which should properly be sent back to the First-tier Tribunal for a fresh decision to be made on all issues and I so order.

### **SUMMARY OF CONCLUSIONS**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal to make a fresh decision on the basis that none of the findings of fact are preserved.
3. The anonymity order made by the First-tier Tribunal is maintained.

Signed

Date; 18 September 2014

Upper Tribunal Judge Rintoul