



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04862/2013

THE IMMIGRATION ACTS

Heard at Field House
On 20 December 2013

Determination Promulgated
On 13 February 2014

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MRS BS
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Muquit, Counsel, instructed by K Ravi Solicitors
For the Respondent: Mr G Jack, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka who was born in 1977. She appeals, with leave, against a determination of First-tier Tribunal Judge Easterman, promulgated

on or around 27 August 2013, following a hearing at Hatton Cross on 19 August 2013.

2. Before me, on behalf of the respondent, Mr Jack stated as follows:

“It is the appellant’s application, but looking at the determination, one of the issues is whether there has been adequate reasoning and actual findings made in relation to the appellant’s husband’s LTTE profile, and this has to be extended to the LTTE profile of the other members of family as well.

From within the determination, it can be seen that two witnesses gave evidence on behalf of the appellant; the First-tier Tribunal Judge accepted their evidence in relation to the claimed profile of the appellant, but made no findings with regard to their evidence with regard to the appellant’s husband or family members.

There was neither a negative nor a positive finding; simply no finding.

Within the determination at paragraphs 82 through to 85 there are credibility issues raised with regard to the appellant’s account regarding her husband’s position. This seems to focus on whether or not her husband is in India or not in India, but there is no actual finding as to what his level of LTTE activity was.

When we look at the country guidance case law, starting with *TK*, at paragraph 150, it highlighted that family members in the LTTE would be a relevant risk factor, but there would need to be established and credible evidence. This would indicate that it was important for the judge to make findings as to the evidence of family members’ LTTE activities.

The impact this would then have in light of *GJ* is not clear-cut. The difficulty is that we cannot say what impact *GJ* would have in the absence of proper findings on this point.

The first appellant in *GJ* had very strong family links, but he was also involved in pro-LTTE activities in the UK. His asylum claim was granted. The second appellant, whose claim was dismissed, had some family members in the LTTE, but had not carried out any activity in the UK.

Although there had not been any evidence that this appellant has carried out any activity in the UK, it is open for argument what the impact of her family members’ LTTE activities would be, but these were not considered by the judge.

I cannot say that this error was not material and because credibility findings have to be made in the round, I would accept that there needs to be a *de novo* hearing, even though it is not accepted that the other grounds raise any arguable error of law.”

3. For the reasons set out fairly by Mr Jack, I agree that Judge Easterman's determination contained a material error of law such that his decision must be set aside and re-made.
4. Having had regard to paragraph 7 of the President's Practice Statements, in my judgment the effect of the errors contained within the determination as identified above was such that the appellant was effectively deprived of a fair hearing. I so find because as a result of the judge's failure to make findings of fact on the relevant matters identified above, he did not properly consider the evidence in the round. Because there will now have to be a de novo hearing, the nature and extent of the judicial fact-finding which will now be necessary in order for this decision to be re-made is such that, having regard to the overriding objective, it is appropriate to remit this case to the First-tier Tribunal, and I shall so order. I accordingly make this decision below, and shall also give directions for trial.

Decision

I set aside the determination of First-tier Tribunal Easterman as containing a material error of law, and direct that this appeal be remitted for a re-hearing by the First-tier Tribunal, sitting at Hatton Cross, to be put before any judge other than First-tier Tribunal Judge Easterman.

Signed:

Date: 4 February 2014

Upper Tribunal Judge Craig