



IAC-FH-NL-V1

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

Appeal Number: AA/00596/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> October, 2015**

**Determination & Reasons  
Promulgated  
On 9<sup>th</sup> October 2015**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**ANTON VALENTINE CHRISTOPHER  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Ms A Heller, Counsel*

*For the Respondent: Mr I Jarvis, Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Sri Lanka, who was born on 23<sup>rd</sup> March, 1978. He arrived in the United Kingdom on 6<sup>th</sup> November, 1999, and claimed asylum at the port. On 30<sup>th</sup> July, 2000, the respondent refused to grant him leave to enter and refused to grant his claim to asylum. The Notice of Refusal of leave to enter was dated 24<sup>th</sup> December, 2014.

2. The appellant appealed and his appeal was heard by First-tier Tribunal Oakley at Hatton Cross on 30<sup>th</sup> April, 2015. First-tier Tribunal Judge Oakley dismissed the appellant's asylum and human rights appeals and dismissed his humanitarian protection appeal. In doing so, the judge failed to make clear findings of fact in order that he could properly assess the risk to this appellant were he to be returned to Sri Lanka.
3. It appears that the judge may have accepted the appellant's claimed *sur place* activities, undertaken while he has been living in the United Kingdom, but it is no means clear. At paragraph 54 of the determination the judge said this:-

"I need to consider the Appellant's activities that have taken place whilst he has been living in London. The Appellant claims that he has been a member of the British Tamil forum since 2003. I am aware that the British Tamil Forum was not brought in to existence until 2006 but in particular the Appellant has provided a letter which indicates that he has been a member since 2014. Whilst I accept he may well have had connections with the British Tamil Forum there is not one shred of evidence to suggest that he has any particular role within that forum. For example he does not have any position of responsibility in relation to chairing meetings or calling meetings or acting as one of the officials of the forum."

4. Having noted that the appellant claimed to be a member of the Forum since 2003, the judge then suggests that it was not brought into existence until 2006. He does not resolve that discrepancy. He does not indicate the source of his knowledge; indeed he has not referred anywhere to any of the background country material. The judge goes on to appear to accept a letter indicating that the appellant had been a member of the Forum since 2014, but he does not actually make a finding that he was a member.
5. At paragraph 55 of the determination the judge said this:-

"His only activities, and I accept that he has been involved in this respect, is helping with organising National Heroes Day and attending Heroes Day activities. He is a chef and states that he has provided help to provide food. He has also sold various items on the stalls in connection with the Heroes Day events. I accept that he has also attended demonstrations that have taken place and there is evidence to support that."

However, the judge did not actually say whether he accepts that these activities were undertaken by the appellant as a member of the British Tamil Forum and does not indicate where the demonstrations took place, how big they were, or give any indication as to whether or not they may have come to the attention of Sri Lankan Government officials in the United Kingdom.

6. At paragraph 56 of the determination, the judge refers to enquiries recently having been made about the appellant in Sri Lanka, but gives no details as to who made these enquiries, whether they were the Sri Lankan Government, Sri Lankan Army, the Sri Lankan Police or whether it might, for example, have been the Sri Lankan Red Cross.

7. The judge refers to the medical reports submitted on behalf of the appellant, and at paragraph 50 of the determination he refers to the fact that he has been provided with a volume of background material. Unfortunately, Judge Oakley fails to give any indication that he has considered the background evidence, in order to put the appellant's claim into context.
8. Mr Jarvis who appeared on behalf of the respondent accepted that the findings were unclear, but suggested that the appellant would not be at risk because he does not have a perceived or actual profile identified in *G/ & Others (post war returnees) Sri Lanka CG* [2013] UKUT 00319 (IAC). Unfortunately, without clear findings it is simply not possible to assess the risk to the appellant on his return to Sri Lanka.
9. I believe that none of the findings of fact can stand. At paragraph 50 the judge said:-

"I have concluded in all those circumstances and taking into account the recent medical reports that it is **more likely than not** that the events that occurred to the Appellant did in fact occur." [My emphasis]

Apart from the fact that the sentence makes little sense, ("*that the events that occurred to the Appellant did in fact occur.*") the judge appears to apply the wrong standard of proof.
10. Given the defects in this determination I regret that I have no alternative but to set it aside. In doing so I have concluded that I must remit it for hearing afresh by the First-tier Tribunal. None of the findings of fact are retained.
11. *Devaseelan (second appeals - ECHR - extraterritorial effect) Sri Lanka\** [2002] UKIAT 00702 is relevant, because, although it is not entirely clear from Judge Oakley's determination an Immigration Adjudicator, Mr Warren L Grant, heard the appellant's appeal first on 6<sup>th</sup> May, 2010 and made findings of fact.

### **Notice of Decision**

The appeal is remitted for hearing afresh to the First Tier Tribunal.

*Richard Chalkley*

**Upper Tribunal Judge Chalkley**