



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

Appeal Number: AA/05542/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd November 2015**

**Decision & Reasons Promulgated
On 9th November 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

**R S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel instructed by Nag Law Solicitors
For the Respondent: Ms S Sreeraman, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Sri Lanka born on 3rd December 1981 and he appealed against the decision of the Secretary of State dated 13th March 2015 to remove him from the UK as an illegal entrant following a refusal to grant him asylum, humanitarian protection and protection under the European Convention.
2. The appellant was said to be a Tamil and a national of Sri Lanka. He claimed that he was trained by the LTTE in 2003 and recruited to the intelligence service but this was rejected by the respondent. He was

supposed to spy on ministers after he moved to Colombo. The appellant claimed one of his sisters was a combatant in the LTTE. The appellant came to the UK in September 2009 on a student visa and his leave was extended. He returned for a wedding on 28th March 2012 and claims he was abducted and interrogated by the CID (government services). He was released following a payment of a bribe and returned to the UK on his own passport as his student visa was still valid. His father and wife were subsequently detained on 4th July 2012 but then released. The appellant feared the Sri Lankan authorities on his return.

3. The appellant's case was heard before First-tier Tribunal Judge Ghani. At that appeal oral evidence was given by the appellant's sister and a witness statement was submitted by the appellant's brother. Judge Ghani dismissed the appeal on 22nd July 2015 on all grounds. An application for permission to appeal was made and granted by Designated Judge Macdonald.
4. It was asserted in the application for permission to appeal that the judge made no findings on the appellant's express evidence on the appellant's arrest and detention on 6th April 2012, did not give proper reasons for rejecting the sister's evidence of not leaving Sri Lanka with her brother, made no findings on the evidence of the appellant's family (father and wife) being arrested, failed to give reasoned findings as to the appellant's activities with the LTTE and did not make reasoned findings on the appellant's medical evidence. In addition the judge's finding that the appellant's release on payment of a bribe was indicative of a lack of interest was flawed as not being consistent with **GJ** and others, (paragraph 276). In addition the judge failed to consider the appellant's brother's and the sister's evidence.
5. At the hearing before me Ms Anzani relied on the written reasons for refusal. She emphasised that the claimed sister's involvement with the LTTE had not been assessed and there were no clear findings as to the appellant's arrest. There were 3 witnesses who had given evidence (either by statement or orally) as to the involvement of the sister with the LTTE and this had not been addressed by the judge. This was material as to the interest of the government authorities in the appellant. There was no clear finding on the appellant's own arrest. In addition the appellant had relied on out of date country guidance. **GJ** made clear that the payment of a bribe for release was not inimical to further interest and did not undermine the significance of the charge.
6. Ms Sreeraman submitted that the judge had found that there was no prior interest in the family of the appellant. The judge had dealt with the evidence of the sister and it could be concluded from the finding in paragraph 21 that her evidence was not accepted. Mr Sreeraman accepted that the findings on the evidence had not been set out clearly. The judge set out the inconsistencies in the evidence and noted that there was no medical evidence to support his claim that he had been beaten and injured in detention. That he had used out of date country guidance

was not a material error. A holistic approach had been taken to the evidence.

7. The key issue in this is the assessment of the appellant's overall credibility and the risk to him on his return particularly with reference to his claimed detention. To that end the judge rejects the sister's evidence at paragraph 21 in relation to the return to the UK but does not clearly address her evidence in relation to the appellant's arrest [25]. Nor does the judge address the brother's witness statement in that regard. The judge additionally makes no clear finding as to whether the appellant was indeed detained and interrogated even if she rejects the evidence that he was beaten because there was no medical evidence to support that contention. Even if there was no prior interest in him prior to his event, this occurrence needs to be clearly determined on all the evidence.
8. Nor does the judge make any findings in relation to the claimed arrest of the family which was another matter in issue and relevant to the assessment of risk on return.
9. **GJ (Sri Lanka) [2013] UKUT 00319** replaced all previous country guidance but the judge applied country guidance which was out of date (**PT (Risk - Bribery - Release) Sri Lanka** CG [2002] UKIAT 03444). The judge stated at [23] and [26] that the fact he was released on payment of a bribe indicated that he was of no interest but this is not consistent with evidence accepted in **GJ** (paragraphs 146 and 275).
10. I find an error of law for inadequate findings and reasoning in relation to whether the appellant is at risk on return. As stated in **MP (Sri Lanka) [2011] EWCA Civ 362** there must be an assessment based on the material risk factors and I am not persuaded that here there were clear findings as to what factors were accepted or rejected. **MK (duty to give reasons) Pakistan [2013] UKUT 00641 (IAC)** confirms that if a tribunal finds oral evidence or a document to be incredible or unreliable a bare statement as such is not sufficient to satisfy the requirement to give reasons.
11. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Direction regarding anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to

comply with this direction could lead to contempt of court proceedings.

Signed

Date 3rd November 2015

Deputy Upper Tribunal Judge Rimington