



IAC-FH-NL-V1

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

Appeal Number: AA/06483/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 21 January 2016**

**Decision & Reasons Promulgated
On 5 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

**VN
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. P. Lewis, Counsel instructed by Jein Solicitors
For the Respondent: Ms A. Fijiwala, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Kainth, promulgated on 22 October 2015, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse to grant asylum.
2. I have made an anonymity direction, following that which was made in the First-tier Tribunal.
3. Permission to appeal was granted as it was arguable that the judge's findings, in particular at paragraph [36], were inherently contradictory and

unclear. It was also arguable that the judge had given inadequate reasons for his conclusions on the Appellant's LTTE activities in Sri Lanka, and on his diaspora activity, and had failed to have sufficient regard to the background country evidence filed by the Appellant.

4. At the hearing I announced that I found that the decision involved the making of a material error of law. I set the decision aside in its entirety and remitted it to the First-tier Tribunal to be re-heard. My reasons are set out below.

Error of law

5. At the outset of the hearing Mr Lewis stated that he had spoken to Ms Fijiwala who had acknowledged that there were difficulties with the decision. Ms Fijiwala accepted that paragraph [36] was problematic, and additionally that the judge had not addressed the issue of the perceived threat which the Appellant faced, which should have been answered by reference to the cases of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and MP (Sri Lanka) v SSHD [2011] EWCA Civ 362.

6. The relevant part of paragraph [36] states:

“I do not accept that the Appellant was arrested in the way that he has described or that he was ill-treated. With respect to the final arrest on 8 May 2007 the Appellant claimed that he was detained at the airport and subjected to torture and only released upon the payment of a bribe made by his uncle. It is clear in my judgment that the Appellant's uncle knew influential people within the police force and was able to secure the Appellant's release. It is simply not plausible that the Appellant was arrested on several occasions and released via the assistance of his uncle who held a position in government. If this were the case, why would the Appellant have been detained in the first instance?”

7. I find that this is contradictory insofar as the judge does not accept that the Appellant was arrested in the way described, but also states that it is clear that the Appellant's uncle knew influential people and was able to secure the Appellant's release. If he had found that the Appellant was not arrested or detained as claimed, it is contradictory to find that the Appellant's uncle was able to secure his release from such detention. I find that the issue of his arrest, detention and ill-treatment goes to the heart of the Appellant's claim. The judge has on the one hand stated that he does not accept that the Appellant was arrested, but has also found that the Appellant's uncle was able to secure his release. Given the inherent contradiction, these findings are not sustainable.

5. In relation to the failure to deal with the Appellant's risk and the perceived threat which he faces, the Appellant's *sur place* activities are dealt with in paragraphs [41] and [42]. This is a very short consideration. Paragraph [41] states:

“I note from the evidence upon which the Appellant seeks to rely, that since arriving in the United Kingdom he has participated in pro-Tamil separatist activities. He has attended a total of nine demonstrations. He is a member of the British Tamil's Forum. The latter document does not detail in which

way the Appellant is involved in pro-Tamil activities and accordingly little weight can be attached to it.”

8. Paragraph [42] refers to a photograph of the Appellant which the judge states is of poor quality and from which it was not possible to identify any specific individual.
9. This is the totality of the evidence which is referred to by the judge in relation to the Appellant’s *sur place* activities, and the threat that he faces as a result. In the grounds of appeal, paragraph [7], it was submitted that the judge had failed to have regard to relevant evidence about the Appellant’s involvement in diaspora Tamil activities. It refers to evidence that the British Tamil Forum have been proscribed by the Sri Lankan authorities as a terrorist organisation, which evidence was before the judge. It refers to the Appellant having made a statement to the press as a member of the British Tamil Forum, which was also in the evidence before the judge. It also refers to a letter from the International Centre for the Prevention and Prosecution of Genocide which shows that the Appellant has consented that his evidence should be used in prosecutions against Sri Lankan Government and military officials. There is no mention of any of this evidence in the decision. Neither is there any reference to the witness statement of Mr Williamson which also goes to the Appellant’s Tamil diaspora activities.
10. In the absence of consideration of the evidence of the Appellant’s activities in the United Kingdom with the British Tamil Forum, or any other pro-Tamil separatist activities, it is clear that the decision does not involve a full and reasoned assessment of the threat to the Appellant on return to Sri Lanka due to his activities in the United Kingdom. As accepted by Ms Fijiwala, the issue of the perceived threat faced by the Appellant has not been addressed in accordance with the case of GJ & Others.
11. For these reasons, I find that the decision involved the making of a material error of law.

Notice of Decision

The decision involves the making of a material error of law. I set the decision aside.

The appeal is remitted to the First-tier Tribunal for remaking.

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 2 February 2016

Deputy Upper Tribunal Judge Chamberlain