



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

Appeal Number: PA/10984/2016

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3 November 2017**

**Decision & Reasons  
Promulgated  
On 13 November 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**WC  
(ANONYMITY DIRECTION MADE)**

**and**

Appellant

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

Respondent

**Representation**

For the Appellant: Mr S Muquit, Counsel instructed by Matini Montecristo Solicitors

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

## **Anonymity**

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.

## **DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka born on [ ] 1986. On 1 April 2016 he applied for asylum claiming to fear the Sri Lankan Government's authorities because of his stepfather's high level involvement with the LTTE.
2. The application was refused by the respondent and the appellant appealed to the First-tier Tribunal where his appeal came before Judge Sweet.
3. In a decision promulgated on 2 May 2017 the judge dismissed the appeal. The appellant is now appealing against that decision.
4. The First-tier Tribunal did not find the appellant credible and rejected both his asylum and human rights claim.
5. One of the issues before the First-tier Tribunal was that the appellant's stepfather had applied for asylum and been granted leave to remain. At paragraph 46 of the decision the judge stated in respect of the stepfather's asylum application as follows:

"His [step] father's claim succeeded only under Article 8 ECHR, because it was accepted by the parties that he had fallen for exclusion from protection under the Refugee Convention under Article 1F."
6. The appellant's stepfather's asylum claim was heard by Judge Hussain on 27 April 2011. Judge Hussain, by a decision promulgated on 24 May 2011, found that the appellant's stepfather was the subject of arrest and detention due to suspicion of involvement with the LTTE and that although he could not succeed in his asylum claim because of the exclusion under paragraph 1F of the Refugee Convention he was able to prevail under Article 3 ECHR. The decision was made under Article 3 ECHR, not Article 8 ECHR.
7. Before me, Mr Jarvis accepted that that judge made an error of law by failing to appreciate that the appellant's step father's claim succeeded under Article 3 ECHR, not Article 8 ECHR. He also agreed that the error was material because it is relevant to the analysis of whether there would be risk on return. Given that the basis of the appellant's asylum claim is that he is at risk because of his step father, it is clearly relevant that the appeal before Judge Hussain was allowed under Article 3 ECHR.

8. Both Mr Jarvis and Mr Muquit were of the view that the matter should be remitted to the First-tier Tribunal. Given that the appellant's credibility will need to be considered afresh and the likely extent of fact finding that will be required, I agree.

**Notice of Decision**

9. The decision of the First-tier Tribunal contains a material error of law and is set aside.
10. The appeal is remitted to the First-tier Tribunal to be heard afresh by a judge other than First-tier Tribunal Judge Sweet.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 10 November 2017