



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/06938/2017

**THE IMMIGRATION ACTS**

Heard at UT (IAC) hearing in Field House  
On 7<sup>th</sup> June 2018

Decision & Reasons Promulgated  
On 18<sup>th</sup> June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

SGF  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms A Patyna, Counsel instructed by Gurney Harden Solicitors

For the Respondent: Mr C Howells, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of Sri Lanka. He sought and obtained a Tier 4 Student visa enabling him to come here which was valid from 29<sup>th</sup> September 2009 until 28<sup>th</sup> February 2011. He sought asylum on 10<sup>th</sup> January 2017 and his claim was refused with the subsequent appeal to First-tier Tribunal Judge Cockrill dismissed in a decision dated 8<sup>th</sup> February 2018.

2. The Appellant lodged grounds of application. Ground 1 relates to the alleged failure to take account of relevant evidence and give sustainable reasons for the conclusions. Various points are made. Given that the judge accepted the credibility of the Appellant's account including in relation to adverse interest in him, insufficient reasons were given by the judge as to why the Appellant would not be at risk on return. Reference is made to **GJ & Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**. The grounds contend that given the accepted facts of the case and the relevant country guidance of **GJ** the conclusion that the Appellant was of no further interest to the authorities was not a finding open to the judge. Reference is also made to paragraph 339K of the Rules which establishes that past persecution is a significant indicator of future persecution.
3. Secondly, there was a failure to determine the subsidiary claim on Article 3 ECHR grounds, namely that he was at risk of detention and ill-treatment on the basis that he had left Sri Lanka with the assistance of an agent and therefore would be considered as a person who had left the country illegally.
4. Permission to appeal was initially refused but granted by Upper Tribunal Judge King who considered that there was merit in the grounds and that the witness statement as set out by the attorney had been inadequately considered in terms of risk on return.
5. Thus, the matter came before me on the above date.
6. For the Appellant Ms Patyna relied on her note and her skeleton argument presented before the First-tier Tribunal. There were many matters set out there which had not been dealt with by the judge. Given that the Appellant was found to be a wholly credible witness her primary submission was that the decision of Judge Cockrill should be set aside and re-made allowing the Appellant's appeal. Her secondary submission was that the matter would have to be heard again by being remitted to the First-tier Tribunal having found a material error in law.
7. For the Home Office Mr Howells submitted that the judge had found the Appellant to be credible and had considered the position of the attorney's letter in paragraph 61. The judge had been entitled to conclude that there was no continuing adverse interest in the Appellant and therefore there was no material error in law and the decision should stand.
8. I reserved my decision.

### **Conclusions**

9. The judge did accept (paragraph 64) that the Appellant was a reliable and credible witness and she accepted the core features of the Appellant's account - see paragraphs 64 and 69 of the decision. She concluded, given all the material presented to her that the Appellant could return to Sri Lanka safely.

10. The judge did accept the Appellant's account describing it as "straightforward" (paragraph 57). The difficulty with the decision is that it seems to me it is incomplete on a number of important issues. There are no findings on a number of issues as highlighted in the skeleton argument and Counsel's note. In particular there are no findings that the Appellant was not released officially but was released on payment of a bribe paid by his father. Furthermore, there are no findings that he was required to sign a document in Sinhalese which he did not understand and that he was given reporting conditions to the police station with which he failed to comply which led the authorities to go to his family home and enquire about his whereabouts. Furthermore, it is the Appellant's case that the authorities attended at his home a few times down to the middle of 2012 and then in late 2012 and 2013 and that unidentified men had attended the Appellant's home looking for him. It was also said on the Appellant's behalf that his brother had been targeted and had left the country and moved to Qatar. There is also an issue that the authorities were looking for him in 2014.
11. These are important factual matters which go the issue of whether there is real risk to the appellant on return. It might be thought reasonable to draw the inference from the fact that the judge found the Appellant to be a credible and reliable witness that all these points should go in his favour but that seems to me to be problematical and unsafe given that the judge found other evidence to be less than satisfactory – see paragraph 61.
12. It therefore seems to me that the decision is incomplete which in all the circumstances amounts to a material error in law and it is necessary for clear findings to be made on the points raised above which has not, yet, been done. If those points mentioned above are really to go in the Appellant's favour then it is arguable that, to the low standard of proof, and as Ms Patyna suggested, he has proved there is a real risk to him on return. Furthermore, the second Ground of Appeal, namely that the Appellant would be kept in detention and suffer the risk of ill-treatment when he returned has not been dealt with at all.
13. In these circumstances it seems to me that the decision cannot safely stand. Unfortunately, it seems to me that further fact-finding is necessary and the matter will have to be heard again by the First-tier Tribunal.
14. The decision of the First-tier Tribunal is therefore set aside in its entirety. No findings of the First-tier Tribunal are to stand. Under Section 12(2)(b)(i) of the 2007 Act and of Practice Statement 7.2 the nature and extent of the judicial fact-finding necessary for the decision to be re-made is such that it is appropriate to remit the case to the First-tier Tribunal.

### **Notice of Decision**

15. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.
16. I set aside the decision.

17. I remit the appeal to the First-tier Tribunal.

**Order 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 order applies both to the Appellant and to the Respondent. Failure to comply with this order could lead to contempt of court proceedings.

Signed *JG Macdonald*

Date 14<sup>th</sup> June 2018

Deputy Upper Tribunal Judge J G Macdonald