



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

Appeal Number: PA/02721/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18<sup>th</sup> December 2018**

**Decision & Reasons  
Promulgated  
On 21<sup>st</sup> January 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**[N A]  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss Patyna (Counsel)

For the Respondent: Mr S Kandola (Senior HOPO)

**DECISION AND REASONS**

1. This is an appeal against the decision of the First-tier Tribunal, promulgated by IJ Abebrese, on 5<sup>th</sup> September 2018, following a hearing at Taylor House on 20<sup>th</sup> August 2018. In the decision, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

## **The Appellant**

2. The Appellant is a male, a citizen of Sri Lanka, and was born on 12<sup>th</sup> April 1986. He appealed against the decision of the Respondent dated 12<sup>th</sup> October 2016, refusing his application for asylum and for humanitarian protection, pursuant to paragraph 339C of HC 395.

## **The Appellant's Claim**

3. The essence of the Appellant's claim is that he worked for the LTTE in Sri Lanka, was arrested, detained, and interrogated and tortured, so that if he were to be returned back to Sri Lanka, he would be targeted by the authorities on his return and this would constitute a breach of Articles 2 and 3 of the ECHR, and a violation of the United Kingdom's international obligations under the Refugee Convention.

## **The Judge's Findings**

4. A feature of this appeal before Judge Abebrese, was that there had been a previous decision by the First-tier Tribunal in 2011, where the Appellant had not been found to be credible. The judge on this occasion properly began by drawing attention to this previous decision under the principles applicable under **Devaseelan**, and taking the previous 2011 decision as the starting point. However, the Appellant had now submitted further evidence (see paragraphs 9 to 11 of the decision), and claimed to have been engaged in sur place activities in the United Kingdom. The judge concluded that the Appellant could not succeed, given the previous findings on his credibility, and also applying the latest country guidance case of **GJ** (see paragraph 23 of the decision).
5. The appeal was dismissed.

## **The Hearing**

6. At the hearing before me on 18<sup>th</sup> December 2018, Mr Kandola, appearing on behalf of the Respondent Secretary of State, began by stating that, although this was not the Home Secretary's appeal, he would have to concede, that there was an error in the decision of Judge Abebrese. Permission to appeal had been granted on 23<sup>rd</sup> October 2018, on the basis that the judge had not given proper attention to a letter from the Appellant's attorney in Sri Lanka that had been forwarded to him by his mother, had failed to attach proper weight to the son's arrest warrant, and had given insufficient regard to the medical evidence in failing to acknowledge that Professor Lingam had sought to explain discrepancies in his report from 2011 and in his dismissal of the report from Dr Ali, because he did not adopt the Istanbul Protocol terminology.
7. Mr Kandola submitted that there had been no findings on the Appellant being at risk of return and no findings in relation to him being a vulnerable witness. The judge had failed to properly engage with the additional material, having started off on the correct basis that he had to take into

account the previous 2011 decision, on the basis of the **Devaseelan** principles. Miss Patyna agreed.

**Error of Law**

8. Given the agreement before me between the two parties, I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007), such that I should set aside the decision.

**Notice of Decision**

9. The decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. I remake the decision as follows. This decision is remitted back to the First-tier Tribunal, to be determined by a judge other than Judge Abebrese, pursuant to Practice Statement 7.2(b) of the Practice Directions.
10. An anonymity direction is made.
11. The appeal is allowed.

**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 his 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

Deputy Upper Tribunal Judge Juss

10<sup>th</sup> January 2019