



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number:
AA/02950/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 11 November 2014**

**Determination Promulgated
On 19 November 2014**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

Anton Rajeevkumar Sebamalai
(No anonymity order made)

Appellant

and

Secretary of State for the Home Department
Respondent

Representation

For the Appellant: Ms. V. Laughton of Counsel instructed by Tamil Welfare Association.

For the Respondent: Mr. P. Duffy, Home Office Presenting Officer.

DECISION AND REASONS: ERROR OF LAW

1. This is an appeal against the decision of First-tier Tribunal Judge Handley promulgated on 3 July 2014 dismissing the Appellant's appeal against the decision of the Respondent dated 17 April 2014 (served on 23 April 2014) to remove him from the UK following the refusal of his application for asylum.

2. I am grateful for the helpful and realistic approach taken by the representatives before me - and in particular Mr Duffy who

readily acknowledged that there were difficulties in the written decision of the First-tier Tribunal such that he could not reasonably resist the challenge mounted by the Appellant. In such circumstances I do not propose to rehearse the basis of the Appellant's claim or the procedural history of the appeal - all of which are a matter of record on file and are known to the parties.

3. The salient matters are these:

- (i) The Appellant was supported in his appeal by the testimony of his brother, Anton Rajkumar Sebamalai, who provided both a written witness statement and oral evidence at the hearing before the First-tier Tribunal Judge.
- (ii) A key aspect of the Appellant's brother's testimony was that he had visited the family home in Sri Lanka in early 2014, and had been detained overnight in April 2014 by the CID and questioned concerning the whereabouts of the Appellant.
- (iii) The First-tier Tribunal Judge recorded the fact of this evidence at paragraph 29 of the Determination.
- (iv) However, the Judge made no further reference to this evidence, and in particular made no finding on it.
- (v) Notwithstanding that the Judge went on to identify that the Appellant did not fit into any of the risk categories identified in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319**, it is to be noted that this provides guidance only and does not inevitably exclude from protection any particular asylum applicant who does not fall into any such category if there are specific features revealed in the evidence supporting his/her application that suggest risk - perhaps, as is the Appellant's case here, evidenced by recent enquiry as to whereabouts.

4. Mr Duffy accepted that the failure to make any finding in respect of the witness's evidence was a material omission amounting to an error of law.

5. Mr Duffy also indicated that he accepted that there was substance to the challenge in respect of paragraph 39 of the Determination. The Judge's analysis that the Appellant would not likely have been released from detention on payment of a bribe if he was of significant interest to the authorities, ran contrary to the analysis in **GJ** - in particular at paragraph 275.

6. I accept the concessions made by Mr Duffy. In all such circumstances I find that the First-tier Tribunal Judge materially

erred and I conclude that the decision of the First-tier Tribunal must be set aside.

7. Both representatives acknowledged that in the circumstances the Appellant had in effect been deprived of a full and fair hearing, and it would be necessary for his appeal to be reheard afresh with all issues at large, with the most appropriate forum being the First-tier Tribunal. I accept this joint position.

8. Notwithstanding Mr Duffy's concessions, Ms Laughton sought to draw my attention to the challenge to the Judge's consideration of the Appellant's scars, and the issue of self-infliction (or self-infliction by proxy). The Appellant sought to complain on the basis that this matter had never been expressly raised as an issue before the First-tier Tribunal (and to this end a supporting witness statement was provided from Counsel who had appeared before the First-tier Tribunal). In the event - because I am setting aside the decision - it is unnecessary for me to engage further with this aspect of the challenge to the First-tier Tribunal's decision. Suffice to say that when the matter comes before the First-tier Tribunal for rehearing it will be necessary for the Tribunal and the parties to approach any such issue - if it is indeed a 'live' issue - in a manner that is in accordance with the law both procedurally and substantively. That, however, is a matter for the Judge rehearing the appeal.

9. Neither representative considered that any specific Directions were required in relisting the appeal, beyond the standard Directions.

Notice of Decision

10. The decision of the First-tier Tribunal Judge contained material errors of law and is set aside.

11. The decision in the appeal is to be re-made before the First-tier Tribunal, before any judge other than First-tier Tribunal Judge Handley.

Deputy Judge of the Upper Tribunal I. A. Lewis 18 November 2014