



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

Appeal Number: AA 07247 2013

THE IMMIGRATION ACTS

Heard at Field House

**Determination
Promulgated**

On 3 April 2014

Before

**THE HONOURABLE MR JUSTICE BAKER
(SITTING AS A JUDGE OF THE UPPER TRIBUNAL)
UPPER TRIBUNAL JUDGE PERKINS**

Between

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Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Spurling, Counsel, instructed by Theva Solicitors
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

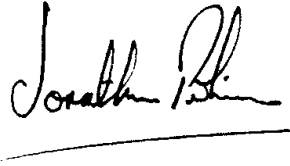
1. As the appellant is an asylum seeker whose anonymity was preserved by the First-tier Tribunal we have made an order pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008. No report of these proceedings shall directly or indirectly identify the appellant. Failure to comply with this direction could lead to contempt of court proceedings.
2. This is an appeal by a citizen of Sri Lanka against the decision of the First-tier Tribunal to dismiss his appeal against the decision of the Secretary of State to return him to Sri Lanka. It is his case that he is a refugee or otherwise entitled to international protection.
3. In very simple terms it is the appellant's case that he was a low level LTTE activist. He left Sri Lanka, having escaped from custody irregularly under payment of a bribe, but he remains of interest to the authorities in Sri Lanka and the evidence is that his family home was visited in 2012 by

officers looking for him and they beat his family because they could not find him, and that therefore, although a low level activist, he cannot be returned safely.

4. It is the Secretary of State's case that the appellant has not told the truth about what has happened to him but in any event his level of activity is such that he is not at risk in the event of his return now.
5. We are aware of the country guidance case of **CJ** which identified categories of people who are at risk and categories of people who are not going to be at risk in Sri Lanka. The Court of Appeal had indicated that that determination of the Tribunal in country guidance was unsatisfactory. Although the people who are identified as being at risk in **CJ** are indeed at risk people, not recognised in **CJ** as being at risk might still be entitled to international protection. Whilst the Court of Appeal is deliberating on the matter the Tribunal must not dismiss appeals against people just because they are not in a category of people recognised as at risk in the case of **CJ**. It follows that we are quite satisfied that it is at least possible that the appellant is in a category of people who are at risk.
6. There are two features of the determination that have been criticised in argument before us that particularly concern us.
7. The first, and the less serious, point is the consideration of the appellant's claim to have been released on the payment of a bribe. This claim is often made in Sri Lankan cases. It is something which appears to have happened at least on some occasions when people were released by the authorities. It is relevant because if in fact the appellant was released on payment of a bribe it may be the records do not show that he was released at all and he may have to explain himself in the event of his return.
8. It would have been very much better if this point had been raised specifically with the appellant in cross-examination so given him an opportunity to explain himself when he was dealing with the evidence given. However it does not follow that the determination is necessarily wrong in law, particularly as similar points were raised in the Reasons for Refusal letter.
9. The greater concern is about the appellant's claim that his family were beaten by officers looking for him in the early part of 2012. This claim was made clearly. It was just not addressed by the First-tier Tribunal Judge. We do not know the reason for this. We recognise it is possible that if we were at the hearing it would have been apparent that there was no need to take the point but we cannot understand from the determination how that can be right. It seems to us that this is an important part of the appellant's case which has just not been resolved. Although it is clear that this is a case where the First-tier Tribunal Judge has gone about the task carefully, somehow this point has been overlooked and this is not something that can be remedied easily. It goes to the very core of the case and means that the determination is unsatisfactory to the point we have to set it aside and rule that the case has to be heard again.

10. We therefore set aside the decision and allow the appeal to that extent.
11. Certain points were resolved in the favour of the appellant and not everything in the determination has been discredited.
12. When the case is reconsidered the principles of **Devaseelan** (*Secretary of State for the Home Department v D (Tamil) [2002] UKIAT 00702* (formerly known as Devaseelan)*) will apply and the existing findings should stand as a starting point but it is not our intention to tie the hands of the First-tier Tribunal. It must decide the case on the totality of the evidence before it taking as a starting point the favourable findings that have already been made.

Signed
Jonathan Perkins
Judge of the Upper Tribunal

A handwritten signature in black ink, appearing to read 'Jonathan Perkins', written over a horizontal line.

Dated 19 May 2014