



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

Appeal Number: AA/04494/2014
AA/04497/2014
AA/04496/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30th March 2016**

**Decision & Reasons
Promulgated
On 11th April 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SHERIDAN

Between

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(ANONYMITY DIRECTION MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation

For the Appellants: Ms S Anzani, Counsel instructed by Nag Law Solicitors
For the Respondent: Mr T Wilding, Senior Home Office Presenting Officer

Anonymity

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellants. This direction applies

to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings.

DECISION AND REASONS

1. The first appellant (hereinafter “the appellant”) is a citizen of Sri Lanka born on 20 November 1980. The other appellants are his wife and child. The appellants are appealing against the decision of First-tier Tribunal (“FtT”) Judge Petherbridge, promulgated on 12 January 2016, whereby the FtT dismissed their appeal against the respondent’s decision to refuse to grant them asylum.
2. The basis of the appellant’s claim is that he would be at risk upon return to Sri Lanka because of his (a) involvement with the LTTE (both real and suspected) whilst in Sri Lanka which, *inter alia*, resulted in him being arrested on several occasions; and (b) his participation in Tamil activism whilst in the UK.
3. The respondent did not accept the claim and the appellant appealed to the FtT, where his appeal was dismissed. The FtT did not find the appellant credible or accept his evidence and found that, in any event, taking his claim at its highest, he would not fall within any of the risk categories identified in the Country Guidance case GJ and others [2013] UKUT 00319 (IAC).
4. At the error of law hearing, Mr Wilding, having heard Ms Anzani’s submissions, stated that he would not be defending the FtT’s decision. The parties were in agreement that the FtT had made a material error of law and that the proper course was for the appeal to be set aside and remade by the FtT. Given that there was agreement between the parties, I will give only brief reasons for my decision.
5. The first ground of appeal concerned the FtT’s analysis of the appellant’s visit to Sri Lanka in 2012, at a time when he was in the UK with Post Study Leave to Remain. The appellant claimed that whilst in Sri Lanka he was arrested. The FtT did not accept this. One of its reasons for not believing the appellant, as set out at paragraph [79] of the decision, was that the appellant had failed to explain why he was not questioned, when arrested, about his involvement in Tamil activities in the UK. It is apparent from paragraph [79] that the FtT attached significance to this. However, in the appellant’s witness statement he stated that he was subjected to questioning about his activities in the UK when arrested. The FtT’s finding at paragraph [79], which is premised on the appellant not claiming he was questioned about UK activity when arrested, cannot be reconciled with the evidence in the witness statement, where he clearly does refer to such questioning. I agree with the parties that this misdirection as to the evidence amounts to an error of law. The error is material because it relates to whether the appellant’s claim to have been arrested in 2012 is accepted,

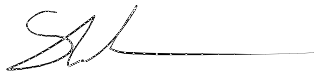
which is central to the issue of whether he is likely to risk persecution on return.

6. It was also accepted by Mr Wilding that the FtT failed to make findings in respect of the appellant's photographic evidence of participation in anti Sri Lankan government demonstrations.
7. Given the extent of further fact finding that will be required to remake the decision I agree with the parties that the appeal should be remitted to the FtT.

Decision

- a. The decision of the First-tier Tribunal contains a material error of law such that it should be set aside and the appeal heard afresh.
- b. The appeal is remitted to the First-tier Tribunal for hearing afresh before a judge other than First-tier Tribunal Judge Petherbridge.

Signed



Deputy Upper Tribunal Judge Sheridan

Dated: 4 April 2016