



**Upper Tribunal
(Immigration and Asylum Chamber)
AA/06897/2015**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

On 5th April 2016

**Decision &
Promulgated**

On 22nd April 2016

Reasons

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**RAJENDRAN THUSHANDEV
(ANONYMITY DIRECTION NOT MADE)**

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Paramjorthy, Counsel, instructed by Loshana & Co Limited

For the Respondent: Mr S Kandola, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The Appellant is a male citizen of Sri Lanka born on 1st December 1994. The Appellant first arrived in the UK on 23rd September 2014 when he was given leave to enter as a student. The Appellant applied for asylum on 22nd October 2014. That application was refused on 9th April 2015 for the reasons given in the Respondent's letter of that date. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Devittie (the Judge) sitting at Taylor House on 13th October 2015. He decided to dismiss the appeal on asylum grounds for the reasons given in his Decision dated 25th November 2015. The Appellant sought leave to appeal that decision, and on 24th February 2016 such permission was granted.

Error of Law

2. I must first decide if the decision of the Judge contained an error on a point of law so that it should be set aside.
3. The Judge dismissed the appeal because he found the evidence of the Appellant lacking in credibility and therefore he was not satisfied that the Appellant had been involved in any LTTE activity in Sri Lanka. The Judge also found that even taking the Appellant's case at its highest, the Appellant did not come within any of the risk categories identified in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 319 (IAC)**.
4. At the hearing, it was agreed between the representatives that the decision of the Judge contained material errors of law and should therefore be set aside for the reasons given in the grounds of application. I find accordingly. The Judge in assessing credibility had failed to give due weight to the expert medical report of Professor Lingham particularly as it complied with the Istanbul Protocol. Further, the Judge had taken as his starting point the Appellant's delay in seeking asylum and had therefore given too much weight to his finding that the Appellant's credibility was damaged in accordance with Section 8, Asylum and Immigration (Treatment of Claimants, etc.) Act 2004. Finally, the Judge had failed to consider the evidence of the Appellant in the light of the background country information. In my view all these factors amount to material errors of law and I set aside the decision of the Judge.
5. I did not proceed to remake the decision of the Judge. I agreed with the submission of both representatives that that decision should be remade in the First-tier Tribunal in accordance with paragraph 7.2(b) of the Practice Statements as the Judge's errors of law relate to his fact-finding. At the remake hearing in the First-tier Tribunal, none of the Judge's findings as to credibility and fact are to be preserved.

Notice of Decision

6. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside that decision.

The decision is to be remade in the First-tier Tribunal.

Anonymity

7. The First-tier Tribunal did not make an order for anonymity. I was not asked to do so, and indeed I find no reason to do so.

Signed

Dated

Deputy Upper Tribunal Judge Renton