



IAC-AH-KRL-V1

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

Appeal Number: IA/53188/2013

**THE IMMIGRATION ACTS**

**Heard at City Centre Tower, Birmingham  
On 10<sup>th</sup> March 2016**

**Decision & Reasons Promulgated  
On 15<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE RENTON**

**Between**

**JBA  
(ANONYMITY DIRECTION MADE)**

**Appellant**

**and**

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

**Respondent**

**Representation:**

For the Appellant: Mr M Azmi, Counsel, instructed by the Tamil Welfare Association  
For the Respondent: Mr D Mills, Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The Appellant is a male citizen of Pakistan born on 22<sup>nd</sup> February 1991. He first arrived in the UK on 17<sup>th</sup> October 2010 when he was given leave to enter as a Tier 4

(General) Student until 28<sup>th</sup> February 2011. Later the Appellant was granted discretionary leave to remain until 2<sup>nd</sup> November 2012. On 20<sup>th</sup> October 2012 the Appellant applied for a variation of that leave. That application was refused for the reasons given in the Respondent's letter of 27<sup>th</sup> November 2013. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Behan (the Judge) sitting at Richmond on 2<sup>nd</sup> March 2015. He decided to dismiss the appeal on asylum grounds but to allow it under the provisions of paragraph 276ADE(vi) of HC 395 for the reasons given in his Decision dated 20<sup>th</sup> May 2015. Both parties sought leave to appeal that decision, and such permission was granted to both parties on 12<sup>th</sup> August 2015.

### **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. I need only to concern myself with the dismissal of the appeal on asylum grounds for reasons which will become apparent later in this Decision.
4. The Judge found the Appellant to be credible. He found as fact that the Appellant left Sri Lanka at the age of 8 years after which he lived with his family in India where they were recognised as refugees. Since coming to the UK, the Appellant became a member of the British Tamils Forum (BTF) in November 2014. As such the Appellant attended four demonstrations protesting about the actions of the Sri Lankan government. The BTF is an organisation proscribed by the Sri Lankan Government since the spring of 2014 when it was announced that members of the BTF travelling to Sri Lanka would be arrested under anti-terrorism legislation. Nevertheless, the Judge found that the Appellant would not be at risk on return because the Sri Lankan Government had not arrested any returning members of the BTF, and using its sophisticated intelligence measures would know that the Appellant's involvement with that group was slight. The Appellant did not therefore come within any of the risk categories identified in **GJ and Others** (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC).
5. At the hearing, Mr Azmi argued that the Judge had made an error of law in coming to this conclusion. The Judge had failed to apply properly the relevant Country Guidance case.
6. In a brief submission in response, Mr Mills said that the Judge's decision was sustainable upon the facts found by the Judge. It was for the Judge to interpret the decision in **GJ and Others**.
7. I do find an error of law in the decision of the Judge to dismiss the appeal on asylum grounds. There is no dispute as to the facts which are that the Appellant is a member of an organisation proscribed as a terrorist group by the Sri Lankan authorities because its purpose is to "mobilise British Tamils to propagate, defend, promote and accomplish the Tamils' cause for an independent homeland and self-determination". The Appellant has been active within that organisation to the extent of attending four

demonstrations. The Sri Lankan Government have made it clear that any member of the BTF returning to Sri Lanka will be arrested. It is optimistic in the extreme and for that reason a perversion for the Judge to decide that the Sri Lankan authorities will take a lenient view of the Appellant on the basis that his political activities in the UK have amounted to little. The Appellant's circumstances come squarely within those identified as placing returnees at risk in paragraph (7) of the head note to **GJ and Others**.

8. For these reasons I find a material error of law in the decision of the Judge to dismiss the appeal on asylum grounds and that part of his decision I set aside.

### **Remade Decision**

9. At the hearing I proceeded to remake the decision of the First-tier Tribunal. For that purpose it was not necessary for me to hear again from the representatives.
10. The remade decision is that the appeal is allowed on asylum grounds. For the reasons given above, I find that on his return to Sri Lanka the Appellant would be arrested on account of his political activities in the UK. This would lead to his persecution.
11. Having made that decision, it is unnecessary for me to consider the Appellant's position under paragraph 276ADE of HC 395.

### **Notice of Decision**

12. The making of the decision of the First-tier Tribunal to dismiss the Appellant's appeal on asylum grounds did involve the making of an error on a point of law.

I set aside that decision.

I remake the decision in the appeal by allowing it on asylum grounds.

### **Anonymity**

The First-tier Tribunal made an order for anonymity which I continue.

Signed

Dated

Deputy Upper Tribunal Judge Renton

**TO THE RESPONDENT**  
**FEE AWARD**

The appeal has been allowed on asylum grounds on the basis of the Appellant's original case. In that event I make a fee award in favour of the Appellant for the full amount of £140.

Signed

Dated

Deputy Upper Tribunal Judge Renton