



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: PA/01022/2017**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On December 21, 2018**

**Decision      &      Reasons  
Promulgated  
On January 21, 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**NAVATHEESAN [Y]  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr P J Lewis, Counsel, instructed by Jein Solicitors  
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant claimed to have entered the United Kingdom on June 12, 2009 as a Tier 4 (General) Student. His leave was extended until August 30, 2014 but on April 3, 2014 the respondent curtailed his leave with effect from June 4, 2014. The appellant lodged an application for an EEA residence card which was refused on July 24, 2014. He then lodged a further EEA residence card application but this was refused again by the respondent on November 4, 2014. He lodged an appeal against that decision but the First-tier Tribunal dismissed his appeal in a decision

promulgated on June 16, 2015 and permission to appeal that decision was refused.

2. The appellant remained in the United Kingdom and claimed asylum on July 26, 2016 having notified the respondent of his intention on July 19, 2016. The respondent refused his application on January 18, 2017.
3. The appellant appealed this decision on February 1, 2017 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 and his appeal came before a panel of Judges on March 2, 2017 and they dismissed his appeal in a decision promulgated on April 3, 2018. The Upper Tribunal set the decision aside on the grounds of procedural unfairness and remitted the appeal back to the First-tier Tribunal. The matter then came before Designated Judge of the First-tier Tribunal Manuell and Judge of the First-tier Tribunal Smith who sat as a panel and they dismissed the appellant's appeal in a decision promulgated on July 20, 2018. Permission to appeal was initially refused by Designated Judge of the First-tier Tribunal Macdonald on August 22, 2018 but Upper Tribunal Judge Gill subsequently granted permission to appeal on November 16, 2018 on grounds 4-7 of the original grounds of appeal. In particular, she found the Judges may have erred by failing to take into account the appellant's evidence that he was taking a high level LTTE person from LTTE controlled Vanni to Columbo in assessing his credibility.
4. No anonymity order was made.

### **SUBMISSIONS**

5. Mr Lewis submitted that there was a clear error of law and that there had been a failure to have regard to the account provided by the appellant and a failure to consider the claim in the overall context of what was happening and had been happening in Sri Lanka at that time. His claim was that he had escaped from the north and travelled with a high level member of the LTTE and that this had come to the attention of the authorities and he was suspected of helping this person to escape. This was the issue highlighted by Upper Tribunal Judge Gill in granting permission. Mr Lewis went on to point out that findings made within the decision were inconsistent with objective evidence and in particular he made reference to the ability to leave the country and he also made reference to the fact that an ability to leave did not mean there would be no interest. Reference was made to the country guidance decision of GJ and Others (Post-Civil war: returnees) Sri Lanka CG [2013] UKUT 00319. In short, he submitted that the Judges failed when considering the appellant's account to consider the findings in GJ and the objective evidence that was before the Tribunal.
6. Mr Duffy had originally indicated that the application was opposed but having considered the submissions put forward by Mr Lewis in support of the grounds of appeal he conceded that there was an error in law for the reasons outlined by Mr Lewis.

7. Having considered the decision, the grounds of appeal and the submissions advanced I accepted that there was an error in law in the assessment of credibility for the reason set out above.
8. I therefore gave consideration as to whether this matter could properly be dealt with in this Tribunal but in light of the fact that the credibility findings would need to be made afresh I was satisfied that Section 12(1) of the Tribunals, Courts and Enforcement Act 2007 applied and this was a case that would have to be remitted back to the First-tier Tribunal to be heard by a Judge other than Designated Judge of the First-tier Tribunal Woodcraft, Designated Judge of the First-tier Tribunal Manuell, Designated Judge of the First-tier Tribunal Macdonald., Judge of the First-tier Tribunal Craft and Judge of the First-tier Tribunal Smith.

**NOTICE OF DECISION**

9. There is an error of law.
10. I set aside the original decision and I remit the matter back to the First-tier Tribunal under Section 12(1) of the Tribunals, Courts and Enforcement Act 2007.

No anonymity direction is made.

Signed \_\_\_\_\_ Date 10/01/2019



Deputy Upper Tribunal Judge Alis

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

No fee is paid or payable and therefore there can be no fee award.

Signed \_\_\_\_\_ Date 10/01/2019



Deputy Upper Tribunal Judge Alis