



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

Appeal Number: PA/03442/2019

THE IMMIGRATION ACTS

**Heard at Field House
On 17th October 2019**

**Decision & Reasons Promulgated
On 23rd October 2019**

Before

UPPER TRIBUNAL JUDGE MANDALIA

Between

**TK
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr B Hawkin, Counsel instructed by AASK Solicitors
For the Respondent: Mr S Walker, Home Office Presenting Officer

DECISION AND REASONS

1. It appears that an anonymity direction was made by the First-tier Tribunal ("FtT"), and as this a protection claim, it is appropriate that a direction is made. Unless and until a Tribunal or Court directs otherwise, TK is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies amongst

others to all parties. Failure to comply with this direction could lead to contempt of court proceedings.

2. The appellant is a national of Sri Lanka. He arrived in the UK on 7th September 2010 as a student with leave valid until 3rd February 2012. On 12th January 2012 he made a claim for asylum. The claim was refused by the respondent for the reasons set out in a decision dated 3rd February 2012 and an appeal against that decision was dismissed by First-tier Tribunal Judges Blandy and Fox, for the reasons set out in a decision promulgated on 8th May 2012. Adverse credibility findings were made by the First-tier Tribunal judge's and they concluded that the appellant is not at any real risk of serious ill-treatment upon his return to Sri Lanka. The appellant was granted permission to appeal to the Upper Tribunal, and the appeal was heard by Upper Tribunal Judge Spencer and Deputy Upper Tribunal Judge Pickup. Although expressing some concerns about some of the findings made, the Upper Tribunal judges took the view that the First-tier Tribunal judges did not make a material error of law in their decision, and the appeal to the Upper Tribunal was dismissed for the reasons set out in a decision promulgated on 3rd October 2012.
3. In February 2019, the appellant made further submissions to the respondent. The appellant maintained that he fears return to Sri Lanka on account of his previous connections to the LTTE, and claimed that the authorities in Sri Lanka have an on-going interest in him. He claimed that he has been involved in *sur place* political activities in the UK, attending demonstrations on behalf of the TGTE and the BTF, and his *sur place* activities will heighten the risk on return. In a decision dated 26th March 2019, the respondent accepted that the appellant is now a member of the TGTE and the BTF and accepted that the appellant actively participates in various Tamil events and demonstrations in the UK. However, the respondent concluded that there is no evidence that the Sri Lankan authorities are aware of the appellant's *sur place* activities, and that he would not be at risk upon return.

4. The respondent's decision of 26th March 2019 gave rise to an appeal that was heard by FtT Judge Geraint-Jones QC ("the judge") on 7th June 2019. The appeal was dismissed for the reasons set out in a decision promulgated on 19th June 2019. It is that decision that is the subject of the appeal before me. Permission to appeal was granted by First-tier Tribunal Judge Andrew on 19th August 2019.
5. At the hearing before me, Mr Walker accepted that the judge found that the appellant has been involved with and carries a card as a member of the TGTE. He accepts that in addressing the risk upon return, the judge failed to have any regard to the decision of the Court of Appeal in UB (Sri Lanka) -v- SSHD [2017] EWCA Civ 85. He accepts, rightly in my judgment, that the failure to have regard to material that demonstrates that the TGTE and BTF are proscribed organizations in the assessment of the risk upon return, amounts to a material error of law capable of affecting the outcome of the decision.
6. It is material because the evidence referred to by the Court of Appeal in UB (Sri Lanka) included letters to the British High Commission in Sri Lanka that are intended to be read with the Home Office Policy Guidance dated 28th August 2014 entitled "Tamil Separatism". The letters indicate that individuals belonging to these proscribed organisations would face arrest under anti-terrorism laws. In GJ, the guidance points to a risk of mistreatment, if detained.
7. That is sufficient to establish a material error of law in the decision of the FtT judge such that the decision should be set aside, without any detailed consideration of the other grounds relied upon by the appellant. It simply say that there is also merit in the claim that the judge failed to properly apply the Devaseelan guidelines. The decisions of the First-tier Tribunal and the Upper Tribunal previously in 2012, were the starting point, but appear to have been treated by the judge as determinative of the appellant's credibility. A careful consideration of the findings made by the FtT in 2012 was necessary in light of the observations made by the Upper

Tribunal regarding some of the findings, albeit the Upper Tribunal in the end concluded that there was no material error of law in the decision of the FtT.

8. As to disposal of the appeal, both Mr Hawkin and Mr Walker submit that in view of the nature of the errors, and the need for the appeal to be reconsidered afresh, the appropriate course is for the matter to be remitted to the FtT for hearing afresh. I have decided that it is appropriate to remit this appeal back to the First-tier Tribunal, having considered paragraph 7.2 of the Senior President's Practice Statement of 25th September 2012. In my view, in determining the appeal, the nature and extent of any judicial fact-finding necessary will be extensive.
9. The decision of First-tier Tribunal Judge Geraint-Jones QC promulgated on 19th June 2019 is therefore set aside, and the appeal is remitted for rehearing before the First-tier Tribunal afresh, with no findings preserved. The parties will be notified of a hearing date in due course.

Notice of Decision

10. The appeal against the decision of FtT Judge Geraint-Jones QC is allowed, and the decision of FtT Judge Geraint-Jones QC is set aside.
11. The appeal is remitted for rehearing before the First-tier Tribunal, with no findings preserved.

Signed

Date

17th October 2019

Upper Tribunal Judge Mandalia

FEE AWARD

No fee is payable and there can be no fee award

Signed

Date

17th October 2019

Upper Tribunal Judge Mandalia