



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

Appeal Number: AA/02970/2013

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 9 October 2013**

**Decision given orally at the hearing**

**Determination**

**Promulgated**

**On 22 October 2013**

**Before**

**THE HONOURABLE MR JUSTICE COLLINS  
SITTING AS JUDGE OF THE UPPER TRIBUNAL  
UPPER TRIBUNAL JUDGE LATTER**

**Between**

**SINGARASA RAJANIKANTH**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss S Jegarajah, Counsel, instructed by Linga & Co

For the Respondent: Miss H Horsley, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. It has been drawn to our attention that in the interview record the appellant stated that since he had come to this country and when he was in India, having left Sri Lanka, army personnel went twice to his parents' house asking about him and were searching for him and asked for his whereabouts. He had in fact, as the Immigration Judge accepted, been

forcibly, as many were, dragooned into the LTTE. In due course he had been arrested, he was tortured but he was released on payment of a bribe. The judge followed the approach in the country guidance case of GJ and notwithstanding that he found in favour of the appellant so far as the issues of fact were concerned as to what had happened to him in Sri Lanka (that being contrary to the view taken by the Secretary of State who rejected his account effectively completely, regarding him as not having told a truthful story) he decided that the appeal should be dismissed.

2. Unfortunately and it is difficult to follow why this happened, the allegation that the army had been round since he had left Sri Lanka was not dealt with by the judge. Miss Jegarajah submits that since the judge found that overall he was a credible witness we should allow the appeal on the basis that that is material evidence and it should be believed as well as the rest of his story, that there was still an ongoing interest in him.
3. The fact that there is a release on bribe and the fact that there was no difficulty in leaving the country openly can of course show that there is no real further interest in an individual. But it is not necessarily determinative. It was regarded in this case by the Immigration Judge as determinative. Had he dealt with and his attention been drawn to what was said in interview albeit it was not contained in the appellant's statement, we believe that he would have and should have heard evidence about it. There was therefore an error of law in that evidence relevant to the outcome of the appeal was left out of account. The appellant should have been asked for further details and it may be that there could have been cross-examination about that matter.
4. It is clearly capable of changing the view that was formed by the judge, which was that in all the circumstances despite believing his account of what had happened to him there was no reason to believe that he was at real risk of being, we put it this way, a target of the government forces if he were returned.
5. It seems to us that in those circumstances and particularly that this is a matter which is raised at the last moment, and Miss Horsley has not really had a proper opportunity of considering the matter and maybe seeking such information as she might be able to seek from Home Office sources, and since the judge of course would still be able to be aware of the matter and since he has made positive findings in the appellant's favour it cannot be a prejudice to him if we decide that the appropriate course is to send the matter back to the Immigration Judge to consider whether this additional material when properly looked at and properly analysed does change the decision that he made, and if it does not, to give reasons why that is the case.

6. Accordingly we allow the appeal to that extent and remit the matter to FtT Judge Timothy Thorne in the way that we have indicated.

Signed

Date

THE HON MR JUSTICE COLLINS