



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

Appeal Number: AA/10437/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 3rd June 2016**

**Decision & Reasons
Promulgated
On 4th July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RENTON

Between

**GUHANESWARAN KANTHASAMY
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Rai, Counsel, instructed by TTS Solicitors
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 14th September 1974. The Appellant arrived in the UK and applied for asylum on 1st January

2001. That application was eventually refused for the reasons given in a letter of the Respondent dated 12th November 2014. The Appellant appealed, and his appeal was heard by Judge of the First-tier Tribunal Ross (the Judge) sitting at Hatton Cross on 30th January 2015. He decided to dismiss the appeal on asylum, humanitarian protection, and human rights grounds for the reasons given in his Decision dated 16th February 2015. The Appellant sought leave to appeal that decision, and following an Order made in the High Court by Mr Justice Dove QC such permission was granted by the Upper Tribunal on 18th April 2016.

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 Appellant applied for asylum on the basis that he was at risk on return to Sri Lanka partly on the basis that his brother Ratheeswaran had been a second lieutenant in the LTTE. Whilst at school, the Appellant had been a member of the Student Organisation for the Liberation Tigers (SOLT), and for these reasons he had been arrested, detained, and physically abused in September 1996, July 1997, and March 1998.
4. The Judge dismissed the appeal because he found the Appellant's account of events in Sri Lanka lacking in credibility. Therefore the Appellant did not come within any of the categories of risk identified in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)**.
5. At the hearing, Mr Rai referred to the grounds of application and the Order of Mr Justice Dove QC and argued that the Judge had erred in coming to this conclusion. The Judge had made no finding in respect of the claim that the Appellant's brother had been a senior officer in the LTTE. This was a material error because having a family member connected to the LTTE was a risk category identified in **GJ and Others**.
6. In response, Mr Kandola referred to the Rule 24 response and submitted that there was no such error of law. The Judge had made an adverse credibility finding against the Appellant which implied that he did not believe that the Appellant's brother had held rank within the LTTE. The Judge gave adequate reasons for that finding in respect of credibility starting at paragraph 13 of the Decision.
7. I find an error of law in the decision of the Judge so that it should be set aside. It is true that the Judge made an adverse credibility finding against the Appellant and gave some reasons for that finding. However, the Judge was obliged to make a specific finding in respect of the Appellant's claims relating to his brother, and this the Judge failed to do. That amounts to an error of law. It amounts to a material error because as Mr Rai said, it was decided in **GJ and Others** that if a person is detained by the Sri Lankan security services on return there remains a real risk of ill-treatment or harm requiring international protection. Further, at the airport on return, a

forced returnee can expect to be asked about his own and his family's LTTE connections and sympathies. Therefore if it is true that the Appellant's brother held rank in the LTTE, there is a reasonable likelihood that the Appellant will face persecution on return. This is something the Judge should have decided.

8. Having set aside the decision of the Judge, I decided not to remake the decision of the First-tier Tribunal but instead to remit the appeal to that Tribunal for the decision to be remade there in accordance with paragraph 7.2(b) of the Practice Statements. The error of law relates to judicial fact-finding. At the rehearing in the First-tier Tribunal, the finding as to credibility and any findings of fact made by the Judge will not be preserved.

Notice of Decision

9. 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 in the appeal will be remade in the First-tier Tribunal.

Anonymity

10. 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: 4th July 2016

Deputy Upper Tribunal Judge Renton