



IAC-FH-NL-V1

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

Appeal Number: AA/11049/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 April 2016  
Prepared 18 April 2016**

**Decision &  
Promulgated  
On 28 April 2016**

**Reasons**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**[V T]  
(~~ANONYMITY DIRECTION NOT MADE~~)**

**and**

Appellant

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

Respondent

**Representation:**

For the Appellant: Ms J Hassan Counsel instructed by S Satha & Co Solicitors  
For the Respondent: Mr E Tufan, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sri Lanka, date of birth [ ] 1982, appealed against the Respondent's, decision dated 29 November 2013, to refuse leave to remain based upon an asylum claim. His appeal came before First-tier Tribunal Judge A W Khan who on 10 July 2015 dismissed the

appeal on Refugee Convention, Humanitarian Protection and Article 3 ECHR grounds and with reference to a private life rights claim to remain.

2. Permission to appeal that decision was granted, following a High Court decision on 7 January 2016, by Vice President, Mr C M G Ockelton on 1 March 2016.

3. Provided at the hearing were the observations from the High Court which were as follows:

“There is no reference to the DVDs in the decision of the First-tier Tribunal Judge Khan if they were relied on and there was equipment to play them at an earlier hearing, which had to be adjourned, it may well be unfair to deprive the claimant of them at the effective hearing. This is especially so when the claimant bore the burden of demonstrating a well-founded fear of persecution and Judge Khan found against him on the basis that there was no evidence that he would be known to the authorities as anything other than a ‘hanger on’. If the DVD shows him being interviewed at a demonstration or taking to the stage as a speaker it may have helped him discharge the burden he bore.”

4. It would appear that in the evidence in support of the judicial review application which came before Cheema-Grubb J that the evidence had been proffered but refused by the judge Khan: The judge taking the view that the evidence in this form was not acceptable. Mr Tufan rightly accepted, in light of the High Court judge’s remarks, the judge’s actions opened the door to the conclusion that the credibility findings upon the Appellant’s claim both in relation to risk in Sri Lanka and *sur place* activities were unreliable. It also followed the assessment of the medical evidence provided may similarly be tainted by the judge’s conclusions on credibility and reliability of evidence; bearing in mind the evidence produced as to the Appellant’s mental and physical health.

5. I agreed with Mr Tufan, and it seemed to me that the judge has failed to provide a number of reasons for some of the issues raised, not least a shortage of any analysis of the photographs taken in the United Kingdom which identify the Appellant. As did the assessment of the activities potentially giving rise to risk. I express no view upon their likelihood of the Appellant succeeding in respect of a *sur place* claim but also the somewhat superficial assessment of the medical evidence being advanced, not least a psychiatric report from Dr Raj Persaud of 29 July 2014. Whatever may be the merits of the Persaud report, it did not seem to me that the report from a person qualified to give expert opinion could be broadly dismissed on the basis that it is largely related to the history which the Appellant had given the doctor. As to whether the report lacks substance and detail as to clinical findings is a matter of comment which ultimately was for the judge to determine but to do so with proper and adequate reasons. Accordingly, I find that those issues, together with some other complaints about the nature of the assessment of the evidence, raises the real doubt that there has been a proper assessment of the claims.
6. Even now there is neither a narrative nor description of the contents of the DVD item nor is there a comprehensive list of the photographs which were said to have identified the Appellant; which the judge dismissed.
7. I am satisfied the Original Tribunal decision cannot stand. The matter will have to be returned for a proper consideration in the First-tier Tribunal.
8. I also have considerable concerns in relation to the judge's assessment, not least in the light of the decision in Danian [1999] EWCA Civ 3000 as to the assessment of a real risk arising through the Appellant's claimed *sur place* activities.

## **NOTICE OF DECISION**

The appeal is allowed to the extent that the appeal is returned to the First-tier Tribunal to be remade.

**Directions**

- (1) List for hearing at Taylor House not before F-t TJ A.W.Khan.
- (2) Time estimate - 3 hours.
- (3) A Tamil interpreter required.
- (4) The Appellant to provide a narrative or other description of the contents of the DVD. Any other online matters relied upon and the Appellant to provide an analysis of the dates and places of each of his appearance in the photographs which he relies upon.
- (5) Any further documentation relied upon by other parties to be served on themselves and upon the IAC First-tier Tribunal not later than 10 working days before the date of further hearing.

No anonymity direction is made because none is required.

Signed

Date 25 April 2016

Deputy Upper Tribunal Judge Davey