



**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Number: PA/02411/2019 (P)**

**THE IMMIGRATION ACTS**

**Decided Under Rule 34  
On Monday 18 May 2020**

**Determination Promulgated  
On Thursday 21 May 2020**

**Before**

**UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**SANOOJAN [J]**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**DECISION AND REASONS**

1. This decision has been made on the papers, under Rule 34 of The Tribunal Procedure (Upper Tribunal) Rules 2008, further to directions issued by the President of the Upper Tribunal sent out on 7 April 2020. No objection was made to the decision being made on the papers and written submissions have been produced by both parties, which have been considered.

2. The appellant is a national of Sri Lanka born on 27 January 2001. He arrived in the United Kingdom in October 2013 and claimed asylum. His claim was refused but he was granted discretionary leave on 21 January 2015 as an unaccompanied minor until 20 July 2017, which was extended until 27 July 2018. He applied for further leave on 24 July 2018 but his application was refused on 11 February 2019.

3. The appellant claimed to fear return to Sri Lanka as a result of his father's prior membership of the LTTE, stating that he was detained and questioned

about his father whilst he was in Sri Lanka and was required to report to the authorities. He also claimed to be at risk on return to Sri Lanka as a result of his participation in Tamil Diaspora activities in the UK with the TGTE. The respondent did not accept that the appellant was at risk on either basis.

4. The appellant appealed against that decision. His appeal was heard by First-tier Tribunal Judge Chana on 13 November 2019. Judge Chana did not find the appellant's account to be credible. She did not accept his account of being arrested and required to report and did not accept that he was of adverse interest to the Sri Lankan authorities. Whilst Judge Chana accepted that the appellant had been participating in TGTE activities in the UK, she did not accept that he was at risk on return on that basis and concluded that he was an economic migrant who could safely return to Sri Lanka. She dismissed the appeal on all grounds, in a decision promulgated on 4 December 2019.

5. Permission to appeal to the Upper Tribunal was sought by the appellant on various, lengthy grounds which I do not propose to set out since these have not been challenged. Permission was granted on 7 February 2020 on all grounds in the First-tier Tribunal.

6. The matter was listed for hearing in the Upper Tribunal on 20 April 2020, but in light of the need to take precautions against the spread of Covid-19, the hearing was vacated and the case was then reviewed by the Upper Tribunal. In a Note and Directions sent out on 7 April 2020, the President of the Upper Tribunal indicated that he had reached the provisional view that the question of whether the First-tier Tribunal's decision involved the making of error of law and, if so, whether the decision should be set aside, could be made without a hearing. Submissions were invited from the parties.

7. Written submissions have been received from both parties. The appellant's submissions rely on the grounds of appeal which challenge the judge's assessment of future risk and her assessment of credibility and failure to give a reasonable assessment of the psychiatric report which was submitted for the appeal. The respondent filed submissions by way of a rule 24 response in which the appellant's appeal was not challenged. The respondent accepted that Judge Chana had failed to engage with the country information relating to events post GJ (post-civil war: returnees) Sri Lanka CG (Rev 1) [2013] UKUT 319, that she had failed to incorporate the psychiatric report into her assessment of credibility, that she had made contradictory findings on the appellant's efforts to trace his family and that she had failed to conduct a proper Article 3 and 8 assessment.

8. In light of the fact that the appellant's grounds of appeal are not challenged by the respondent, and for the reasons given by both parties, I find there to be material errors of law in the judge's decision and I set it aside in its entirety, with no findings preserved. The appropriate course, as both parties agree, is for the case to be remitted to the First-tier Tribunal to be heard *de novo* before a different judge.

## **DECISION**

9. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law and the decision is set aside. The appeal is remitted to the First-tier Tribunal pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), to be heard afresh before any judge aside from Judge Chana.

Signed: S Kebede  
Upper Tribunal Judge Kebede  
2020

Dated: 18 May