



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: AA/01052/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 22nd December 2014**

**Decision and Reasons
Promulgated
On 13th January 2015**

Before

**Deputy Upper Tribunal Judge Rimington
(Immigration and Asylum Chamber)**

Between

**R R
(Anonymity Direction made)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Professor Rees instructed by Vasuki Solicitors

For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

The Appellant

1. The appellant is a citizen of Sri Lanka and claimed to have been born on 27th September 1986. He appealed against a decision by the respondent dated 21st January 2013 to remove him from the United Kingdom following a refusal to grant him asylum, humanitarian protection and protection under the European Convention on Human Rights. His appeal against that

decision was refused by Judge of the First Tier Tribunal Stott on 4th October 2014.

2. The appellant is a Tamil from North of Sri Lanka and claimed that he had assisted the LTTE between 2002 and 2010 when he was arrested in Trincomalee and was detained by the government authorities. He claims he was tortured in detention and produced a medical report from Dr Sam Lingam dated 17th February 2013 (although there appears to be another examination on 7th May 2013) to evidence scarring. The appellant left Sri Lanka on 29th September 2010 on a student visa and arrived in the UK. He claimed asylum one day short of the expiry of his Tier 4 Student visa in December 2012.
3. An application for permission to appeal was refused by the First Tier Tribunal but renewed to the Upper Tribunal whereupon Upper Tribunal Judge Allen granted permission to appeal on the basis that the judge failed to make a careful application of **GJ and Others (post civil war: returnees) Sri Lanka CG** [2013] UKUT 0039 (IAC) in the light of his findings.
4. The judge found the appellant to be lacking in credibility in his account and dismissed the appeal. However the judge found that the appellant had been [18] detained by the Sri Lankan authorities and that the injuries could not have been self inflicted and thus it was 'likely that the injuries were inflicted whilst he was in detention'.
5. Thus although the Judge found the appellant had been detained and thus received injuries during his time in detention [17] he did not take this into account when applying **GJ** and in particular whether the appellant would be viewed as a threat to the Sri Lankan unitary state. The detention which took place in 2010 was post the cessation of the conflict in May 2009.
6. The judge made adverse credibility findings against the appellant in part because his mother had not sent a statement or letter regarding a visit from the Sri Lankan authorities, but the judge failed to address the appellant explanation in his witness statement [43]. Nor did the judge make reference to the appellant's explanation of why he delayed in claiming asylum.
7. There is some reference in **GJ** where the need for protection depended 'on the specifics of the individual case' but the judge appeared to make no individual assessment bearing in mind his findings. In view of the findings in relation to credibility both Mr Tufan and Professor Rees agreed that the matter should be remitted to the First Tier Tribunal.

DECISION

8. I find an error of law in the determination of Judge Stott and that determination must be set aside.

9. The Judge erred materially for the reasons identified. I set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed

Date 22nd December 2014

Deputy Judge of the Upper Tribunal Rimington

Direction regarding anonymity - rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed

Date 22nd December 2014

Deputy Judge of the Upper Tribunal Rimington

Direction to the appellant

If he has not already done so, the appellant is to submit to the Upper Tribunal and the Respondent no later than 7 days prior to the hearing on 16th September 2013, information regarding evidence of his relationship with his spouse, income, accommodation and copies of documentation in relation to the children's education and their welfare.