



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

Appeal Number: PA/08645/2017

**THE IMMIGRATION ACTS**

**Determined at Field House without a Decision & Reasons  
hearing Promulgated  
On 11 December 2019 On 16 December 2019**

**Before**

**UPPER TRIBUNAL JUDGE KAMARA**

**Between**

**VW**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

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

Respondent

**DECISION AND REASONS**

Introduction

1. This is an appeal against the decision of First-tier Tribunal Judge Eldridge, promulgated on 4 September 2019. Permission to appeal was granted by Upper Tribunal Judge Jackson on 14 November 2019.

Anonymity

2. An anonymity direction was made previously and is reiterated below primarily because of the appellant's vulnerability, owing to poor mental health.

### Background

3. The appellant entered the United Kingdom during 2010 with leave to enter as a Tier 4 migrant, valid until 30 October 2011. He applied for asylum on 2 November 2011. That claim was unsuccessful, as was the appellant's appeal against that decision, which was dismissed by a judge in a determination promulgated on 5 April 2012. On 21 July 2014, the appellant made further submissions, which led to a decision to refuse his asylum claim in a letter dated 25 August 2017. The appellant's appeal against that decision was dismissed by a First-tier Tribunal judge, following a hearing on 19 April 2018. That decision was set aside by the Upper Tribunal, with no preserved findings.
4. The basis of the appellant's protection claim is that he has been detained and ill-treated in Sri Lanka, owing to his association with the LTTE and that he fears further maltreatment. The appellant also raises mental health issues. In the decision letter, the respondent referred to a supplementary decision letter dated 23 January 2014, which in turn referred to the findings of the Upper Tribunal which upheld Judge Grant who heard the appeal in 2012. The respondent also concluded that the psychiatric report of Professor Katona dated 16 July 2014 did not enhance his claim. The appellant's claim that the case of SS, his brother-in-law was relevant to and assisted his claim was rejected, as were the conclusions of Professor Good in a country report dating March 2014 which did not counter Judge Grant's findings.

### The decision of the First-tier Tribunal

5. Judge Eldridge accepted that the appellant was detained and ill-treated in Sri Lanka for a considerable period following his visits to his sister and her family in an IDP camp during 2009. The respondent further accepted that the appellant's brother-in-law was working for the LTTE between 2005 and 2009. It was also accepted that the appellant had mental health problems in Sri Lanka and continued to have them thereafter, which included a current diagnosis of PTSD. The judge considered that the appellant did not come within any of the categories identified in *GJ and others* and was not liable to being of any adverse interest to the Sri Lankan authorities. There was no stand-alone Article 3 claim argued on the appellant's behalf and no submissions were made in respect of Article 8.

### The grounds of appeal

6. The grounds of appeal made the core submission that the appellant had attracted the adverse attention of the Sri Lankan authorities over a longer period of time including after the May 2009 ceasefire. This along with the fact that he had secured his release through the payment of bribes meant

that he was at a current risk of persecution, following *GJ* and with reference to *RS (Sri Lanka)* [2019] EWCA Civ 1796 and *ME (Sri Lanka)* [2018] EWCA 1486.

7. Permission to appeal was granted on the basis sought.
8. The respondent's Rule 24 response, received on 10 December 2019, states that the respondent considered that the grounds reveal a material error of law in the First-tier Tribunal judge's consideration of the appellant's protection appeal. The response further states that given the positive credibility findings and the authorities on post-conflict risk, the respondent invites the Upper Tribunal to set aside the decision of the First-tier Tribunal and to remake the decision by allowing the appellant's protection appeal outright, without the need for a hearing.
9. In the circumstances, I am satisfied that the decision of the First-tier Tribunal did involve the making of an error of law for the reasons set out in the grounds and I set it aside. I remake the decision by allowing the appeal on protection grounds.

#### Summary of Conclusions

The decision of the First-tier Tribunal did involve the making of an error of law.

I set aside the decision to be re-made.

I remake the decision by allowing the appeal on protection grounds.

#### **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: 11 December 2019

Upper Tribunal Judge Kamara