



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: PA/12810/2018**

THE IMMIGRATION ACTS

**Heard remotely at Field House
By UK Court Skype
On 4 March 2021**

**Decision & Reasons Promulgated

On 31 March 2021**

Before

UPPER TRIBUNAL JUDGE OWENS

Between

**MK
(ANONYMITY ORDER MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Anzani, Counsel

For the Respondent: Mr D Clark, Senior Home Office Presenting Officer

**DECISION MADE PURSUANT TO RULES 34, 39 & 40 (3) OF THE
TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Monson sent on 26 September 2019.
2. Both parties agreed that the decision of the First-tier Tribunal involved the making of an error of law for the reasons set out in the grant of permission. They were right to do so.

3. The judge has misdirected himself with regard to the Lessons Learnt and Reconciliation Commission Letter. The current country guidance case GJ and others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) states;

“(7) The current categories of persons at real risk of persecution or serious harm on return to Sri Lanka, whether in detention or otherwise, are:

(c) Individuals who have given evidence to the Lessons Learned and Reconciliation Commission implicating the Sri Lankan security forces, armed forces or the Sri Lankan authorities in alleged war crimes”.

4. The appellant provided evidence from the Commissioner of Enquiry on Lessons Learnt and Reconciliation dated 14 May 2010 acknowledging the appellant’s complaint about the abduction of Dishan Sithum. This is acknowledged at [69]. In the same paragraph the judge goes on to state;

“Those assisting the appellant in Sri Lanka have not provided a copy of the complaint, so this does not take matters very much further”. But in any event the abduction of Mr Sithum does not change the fact that the appellant was not himself abducted”.

5. Mr Clark for the respondent conceded that the judge has not made a concrete finding as to whether or not the appellant has submitted a genuine complaint to the Lessons Learnt and Reconciliation Commission which brings him within the ambit of GJ and further if the judge’s intention was to make a negative findings in this respect, he has failed to provide any nor adequate reasons as to why he rejected the letter from the Commissioner which was consistent with the appellant’s evidence in relation to this issue. No-where in the decision is it acknowledged that making such a complaint could bring an individual into a risk category identified by GJ. I am in agreement with Mr Clark that this is an error of law material to the outcome of the appeal because giving evidence to the Lessons Learnt and Reconciliation Commission is in itself a potential risk factor. Had the judge made a positive finding about this complaint, he may have come to a different conclusion about the risk to the appellant on entering Sri Lanka.

6. Mr Clark also conceded that the judge, when assessing credibility, misapplied the country guidance in relation to the ease or otherwise of leaving Sri Lanka and the significance of this factor when determining whether an individual is being sought. At [170] and [275] of GJ it is recognised that an individual may be able to leave Sri Lanka without being stopped even when that individual is wanted by the authorities.

7. I am satisfied that given the country guidance, the judge gave too much weight to the fact that the appellant was able to leave Sri Lanka without difficulty in 2011. Further, I am satisfied that the judge failed to recognise that at the time the appellant left Sri Lanka, he was not subject to an arrest warrant, his passport had not been impounded and he was not on a wanted list. The fact that he was not stopped by the authorities on exit

should have not been used to make negative credibility findings against him.

8. Much of the core of the appellant's claim was accepted by the judge after the appellant submitted a large amount of supporting documentation with his appeal. At [66] the judge accepted that the appellant was suspected by his employer of leaking confidential information to the media, thus causing embarrassment to the SLAF and government. However, the judge then states;

“However, given that on his own account, he remained at liberty in Sri Lanka until his departure in 2011 – and moreover, that he was able to leave the country without any difficulty, travelling on his own passport – it is not credible that he remained under suspicion”.

9. This is indicative of the judge's approach to credibility and infects the whole of the credibility findings which are material to the outcome of the appeal.
10. Both parties agreed that since the assessment of the appellant's credibility is flawed and because extensive new findings need to be made, the appropriate course of action is to set aside the decision in its entirety to be heard de novo by the First-tier Tribunal. While mindful of statement 7 of the Senior President's Practice Statements of 10 February 2010, it is the case that the appellant has yet to have an adequate consideration of his asylum appeal at the First-tier Tribunal and it would be unfair to deprive him of such consideration. I am therefore in agreement with this course of action.
11. Rule 40 (1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 provided that the Upper Tribunal may give a decision orally at a hearing which I did. Rule 40 (3) provides that the Upper Tribunal must provide written reasons for its decision with a decision notice unless the parties have consented to the Upper Tribunal not giving written reasons. I am satisfied that the parties have given such consent at the hearing.

Notice of Decision

12. The decision of the First-tier Tribunal involved the making of an error of law and is set aside.
13. I remit the appeal to the First-tier Tribunal for a fresh hearing in front of a judge other than First-tier tribunal judge Monson.

Anonymity Order

14. The First-tier Tribunal made an anonymity order pursuant to rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
15. I continue that order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed

Date: 23 March 2021

R J Owens
Upper Tribunal Judge Owens