



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/03338/2014**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Field House
On 4 October 2017**

**Decision and Reasons
Promulgated
On 07 November 2017**

Before

Deputy Upper Tribunal Judge MANUELL

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**Mr R K
(ANONYMITY DIRECTION MADE)**

Respondent

Representation:

For the Appellant: Mr L Tarlow, Home Office Presenting Officer
For the Respondent: Ms C Robinson, Counsel
(instructed by Wilson Solicitors LLP)

DETERMINATION AND REASONS

Introduction

1. The Appellant appealed with permission granted by First-tier Tribunal Judge Grimmett on 4 August 2017 against the decision and reasons of First-tier Tribunal Judge Heatherington who had allowed the Appellant's protection and human rights appeal. The decision and reasons was promulgated on 25 January 2017.
2. The Appellant is a national of Sri Lanka, born on [] 1969, of Tamil ethnicity, who had claimed asylum on his arrival in the United Kingdom on 3 May 2009. His asylum claim (that he was suspected of LTTE membership and had been tortured when detained) was refused and dismissed on appeal, following a reconsideration order. The Appellant failed to leave the United Kingdom and made a fresh claim, which was refused 10 January 2014. The Appellant's appeal was allowed but material error(s) of law were found by the Upper Tribunal and thus the appeal came before Judge Heatherington.
3. Judge Heatherington accepted the Appellant as a credible witness and felt able to depart from the earlier dismissal determination on that basis, having taken into account the medical evidence now provided. The Appellant would be unable to obtain adequate mental health care in Sri Lanka and there was some stigmatisation as explained in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). The judge thus allowed the appeal.
4. Permission to appeal was granted because it was considered arguable that the judge had failed to consider the risk categories set out in GJ (above) and had failed to apply paragraph 276ADE of the Immigration Rules properly and to apply J [2005] EWCA (Civ) 629 at all.
5. Standard directions were made by the tribunal. A rule 24 notice was filed by the Respondent, dated 7 September 2017, opposing the on wards appeal.

Submissions

6. Mr Tarlow for the Appellant submitted that the determination was inadequately reasoned, as the grant of permission to appeal indicated. GJ had not been addressed. The findings reached were not clearly stated and it was not possible for the Secretary of State to understand why the appeal had been lost. There was no alternative to the appeal's being reheard in the First-tier Tribunal before another judge.
7. Ms Robinson for the Respondent submitted that the error(s) of law were not material. It was true that the judge had only mentioned GJ in the context of the Respondent's mental health, but elsewhere a GJ risk had been identified: see, e.g., [12.6]. The judge must have had GJ in mind when considering the appeal. He had departed from the First-tier Tribunal's previous findings. The judge had dealt sufficiently with paragraph 276ADE, which had turned on the findings about the Respondent's mental health. The onwards appeal should be dismissed.

Discussion - error of law

8. The tribunal must agree with Mr Tarlow's submissions. No doubt the judge had considered the appeal with care, and had directed himself correctly as to Devaseelan* [2002] UKIAT 00702, but his actual findings are not clearly recorded, which is of particular concern when the Respondent's claims had been considered inconsistent and there were previous judicial findings to such effect. Indeed, it was rightly accepted on the Respondent's behalf that there were errors of law, albeit not material.
9. The tribunal finds that the errors of law complained of were material. Attempting to make sense of [12.1] onwards of the decision and reasons is not straightforward. The losing party is entitled to plain and logical reasons, the more so where the winning party had previously been disbelieved, and was now reliant on expert evidence dealing with largely stale matters when seeking to combat past findings. It is not clear exactly what general risk the Respondent was found to be facing on return many years after the end of the civil war on 18 May 2009. There was, for example, no finding about the significance of the Respondent's claimed *sur place* activities.

10. J (above) was not considered in the mental health context, and it certainly ought to have been. The judge seems to have thought that it was enough for the Respondent to threaten suicide if he feared removal.
11. The tribunal considers that the Respondent's allegedly fresh claims were insufficiently analysed and solid reasons for accepting them largely at face value were not supplied. It must also be said that the judge's treatment of the current country background materials for Sri Lanka was somewhat scant. No findings can safely be preserved.
12. The onwards appeal is accordingly allowed. The appeal must be reheard in the First-tier Tribunal before a judge other than First-tier Tribunal Judge Heatherington.

DECISION

The onwards appeal is allowed

The decision and reasons is set aside because of material error of law

The appeal will be reheard in the First-tier Tribunal at Taylor House, not before First-tier Tribunal Judge Heatherington, on the first available date

Signed

Dated 6 November 2017

Deputy Upper Tribunal Judge Manuell