



IAC-TH-LW-V1

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

Appeal Number: AA/02554/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 25<sup>th</sup> January 2016**

**Decision & Reasons  
Promulgated  
On 6<sup>th</sup> April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

**MR R K  
(ANONYMITY DIRECTION MAINTAINED)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms J Rothwell (Counsel)

For the Respondent: Ms K Pal (Senior Home Office Presenting Officer)

**DECISION AND REASONS**

1. The appellant is a citizen of Sri Lanka. In a decision promulgated on 28<sup>th</sup> October 2015, his appeal against a decision to remove him from the United Kingdom (described as a decision to refuse his asylum claim) was dismissed by First-tier Tribunal Judge Parkes (“the judge”).

2. The appellant claimed to be at risk on return to Sri Lanka as a person of adverse interest to the authorities. Part of the evidence he relied on consisted of reports from a country expert, Dr Chris Smith, a medical expert, Professor C Katona and a statement made by Ms Frances Harrison, from the International Truth and Justice Project. All three reports were made in mid-September 2015 and were relevant to the extent of the risk that the appellant would face on return.
3. In an application for permission to appeal, it was contended that the judge erred in law by failing to refer to or assess this body of evidence. As a result, his adverse credibility findings were fatally undermined. It was also contended that the judge erred in several other respects, including his assessment of the weight to be given to the appellant's involvement in diaspora activities in the United Kingdom as a member of the British Tamil Forum ("BTF"), an organisation which is proscribed in Sri Lanka. In his decision, the judge merely referred to the appellant's attendance at BTF events and failed to take into account his membership. This failure undermined the finding at paragraph 39 of the decision that attending BTF events would not lead to the appellant being identified as a person of adverse interest on return.
4. Permission to appeal was granted on 25<sup>th</sup> November 2015. In a Rule 24 response made on 10<sup>th</sup> December 2015, the appeal was opposed.

### **Submissions on Error of Law**

5. Ms Rothwell said that the main ground of challenge was the judge's failure to take into account pertinent evidence in making his findings of fact. He accepted that the appellant worked for the LTTE but did not accept the appellant's claim to have been arrested on two occasions. The evidence before the judge included a report from Dr Chris Smith, which bore on several aspects of the appellant's case. These included his marriage to an LTTE commander's daughter, his work for the LTTE, the approach to him to become an informer and his diaspora activities in the United Kingdom.
6. Also before the judge was a report from Dr Katona regarding the appellant's ill-health and a report from Ms Frances Harrison regarding what emerged from a statement taken from the appellant.
7. The reports were not considered in the decision at all. There was no engagement with them.
8. Amongst other errors was the judge's decision to rely on an earlier decision made by a First-tier Tribunal Judge, dismissing the appellant's appeal, notwithstanding directions from the Upper Tribunal that the hearing was to be de novo. So far as diaspora activities were concerned, the judge erred in failing to take into account the appellant's membership of the BTF.

9. Ms Pal agreed that the judge had not mentioned the reports from the experts and made no findings in relation to them. The Secretary of State accepted that this was a material error. The decision was unsustainable.

**Conclusion on Error of Law**

10. The decision makes no mention of the three reports on which the appellant relied. The reports contained important evidence which bore on the particular features of the appellant's case and on the overall credibility of his claims. The representatives were agreed that in failing to engage with the reports, the judge materially erred in law. The decision must be set aside. Taking into account the Presidential Practice Statement and the extent of the fact-finding that will be required when the decision is remade, I find that the appropriate venue is the First-tier Tribunal. As the appellant has now moved to London and has solicitors here, I direct that the decision shall be remade at Taylor House.

**Notice of Decision**

11. The decision of the First-tier Tribunal contains material errors of law and is set aside. It will be remade in the First-tier Tribunal, at Taylor House, before a judge other than First-tier Tribunal Judge Parkes. Further case management may be made at Taylor House. Overall, three hours will be sufficient to dispose of the appeal.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell

**ANONYMITY**

The anonymity direction made by the First-tier Tribunal is maintained.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell