



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/04442/2013

THE IMMIGRATION ACTS

Heard at Glasgow
on 7 October 2013

Determination issued
On 11 October 2013

Before

UPPER TRIBUNAL JUDGE MACLEMAN

Between

RJ

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr T Ruddy, of Jain, Neil & Ruddy, Solicitors
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

- 1) The appellant, a citizen of Sri Lanka, appeals against a determination by First-tier Tribunal Judge Boyd, dated 24 January 2013, dismissing his appeal on all available grounds.
- 2) In course of submissions the respondent conceded that the determination contains contradictory findings, fails to deal with certain explanations tendered by the appellant, overlooks aspects of the evidence, and takes novel points which ought fairly to have been put to the appellant; and that taking these matters together, the credibility findings require to be set aside.
- 3) Without exploring every point of the lengthy grounds, the following matters were accepted. The judge contradicted himself between paragraphs 27 and 33 over the sense of the appellant's evidence that his parents either did or did not know that he was joining the LTTE. Evidence that the LTTE forcibly deployed child soldiers in combat was not evidence that this must be the case for every child in the service of the LTTE.

The judge rejected the possibility that the appellant's parents were able to approach the LTTE about his situation. While the LTTE was a brutal organisation, it was conceivable that a family with an LTTE background might be able to speak to the appellant's Commander. It was difficult to see why the judge concluded that the appellant could not have known that there would be LTTE snipers in a certain area. The appellant's explanation of that matter was one of the features of his statement overlooked in the determination. The appellant had not been on fair notice that the judge might draw an adverse inference from the absence of medical evidence regarding his father's injuries, a point not previously taken, and not one on which an appellant might obviously be expected to produce evidence.

- 4) It having been resolved between the parties that the credibility findings were not to stand, I directed attention to GJ and Others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319 (IAC), promulgated after the refusal letter and First-tier Tribunal determination. GJ replaces all previous country guidance on Sri Lanka, and is crucial to the eventual disposal of this appeal.
- 5) Mr Ruddy submitted that on entirely favourable credibility findings the appellant's case might succeed within the terms of GJ. Mr Mullen for the respondent was not prepared to have the case decided on the basis of taking the appellant's case "at its highest", and said that fresh credibility findings were required.
- 6) In terms of section 12(1) of the 2007 Act and of paragraph 7 of the Practice Statements for the Immigration and Asylum Chambers of the First-tier Tribunal and the Upper Tribunal, this decision requires to be made entirely afresh. No findings of the First-tier Tribunal can stand. The determination is **set aside**, other than as a record of what was put in evidence.
- 7) The nature and extent of judicial fact finding necessary to remake the decision are such that it is appropriate for the case to be **remitted to the First-tier Tribunal**.
- 8) The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Boyd.
- 9) An anonymity order was made in the First-tier Tribunal, although there appears to be no particular reason for one. This matter was not addressed in the Upper Tribunal, but should be considered when the case comes back before the First-tier Tribunal.



8 October 2013
Judge of the Upper Tribunal