



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

Appeal Number: AA/01299/2008

THE IMMIGRATION ACTS

Heard at Field House

On 10 April 2014

**Oral determination given following the
hearing**

**Determination
Promulgated**

On 29 April 2014

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

SENTHILNATHAN KABILAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr S Anzani, Counsel, instructed by Nag Law Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The history of this appeal is unfortunate. Mr Kabilan, who is a citizen of Sri Lanka, who was born on 22 July 1987, first applied for asylum in

December 2007. That application was refused by the respondent in February 2008 and the appellant appealed against that decision.

2. His appeal was apparently heard by Immigration Judge Jones sitting at Hatton Cross but, following an application to the Asylum and Immigration Tribunal, a reconsideration was ordered by Senior Immigration Judge Perkins and the matter came back for rehearing at Hatton Cross.
3. The appeal was then reheard by Immigration Judge M A Khan who, again, dismissed the appellant's appeal.
4. Although this is not altogether clear from the papers, it appears that thereafter the appellant sought permission to appeal against this decision but permission to appeal was refused by Senior Immigration Judge Jarvis at some time later in November 2009.
5. The appellant then was granted permission to appeal to the Court of Appeal and, by consent, it was agreed that the matter be remitted to the Upper Tribunal for reconsideration, pursuant to paragraph 12 of Schedule 4 to the Transfer of the Asylum and Immigration Tribunal Order 2010 (SI2010/21) and Section 14 of the Tribunals, Courts and Enforcement Act 2007.
6. Thereafter, the file came before Senior Immigration Judge Perkins who directed, on 30 September 2010, that the appeal should be listed for mention. In the listing instructions which he gave, Judge Perkins said as follows:

"I have asked for a mention hearing as it is not clear what the Court of Appeal intend us to do and the decision is rather old."
7. Nothing has been done with this file since then. It is not clear why not. It should be noted that it would have been open to those representing the appellant at any time thereafter to have raised this matter and enquired as to the progress of this appeal but it does not appear that any such request was made. Ms Anzani, who appears on behalf of the appellant today, does not suggest that anyone made any enquiries on behalf of the appellant as to the progress of his case.
8. The appeal was then listed before me for hearing today so that directions could be given as to the progress of this appeal and I have heard submissions on behalf of both parties.
9. The position now is that it is common ground that the effect of the decision of the Court of Appeal, which had been agreed between the parties prior to the order, is that there will have to be a de novo hearing in which all issues will be open. Both parties agree that, given the lapse of time, and given also that the situation in Sri Lanka has undoubtedly altered since the initial hearings, although precisely what country guidance will be applicable is at the moment uncertain pending the decision of the Court of Appeal in *Gj & Others* which is anticipated shortly,

the appropriate course would be to remit this appeal for rehearing before the First-tier Tribunal sitting at Hatton Cross.

10. Having regard to paragraph 7 of the President's Guidance, I agree that this would be the appropriate course and so order.

Decision

The determination of Judge M A Khan is set aside as containing a material error of law and the Tribunal orders that this appeal be remitted for rehearing before the First-tier Tribunal sitting at Hatton Cross.

Signed:

Date: 22 April 2014

Upper Tribunal Judge Craig