



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/06856/2014**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> August 2015**

**Decision & Reasons Promulgated  
On 3<sup>rd</sup> September 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DOYLE**

**Between**

**NIROSAN SELVARATHINAM**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr N Paramjorthy (counsel), instructed by Ravi solicitors  
For the Respondent: Mr P Nath, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Andrew promulgated on 20 October 2014, which dismissed the Appellant's appeal on all grounds.

**Background**

3. The appellant was born on 18 May 1986. He is a citizen of Sri Lanka.
4. On 28 August 2014, the respondent refused the appellant's claim for asylum. The appellant appealed against that decision to the First Tier Tribunal.

### **The Judge's Decision**

5. First Tier Tribunal Judge Andrew ("the Judge") dismissed the appellant's appeal against the respondent's decision on all grounds. The Judge relied on the case of GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and found that the appellant is not active within the Diaspora and so would not be of interest to the authorities in Sri Lanka.

6. Grounds of appeal were lodged and on 15 June 2015, Upper Tribunal Judge Eshun gave permission to appeal, stating *inter alia*:

"There are eight grounds of appeal. While some are weaker than others, it is appropriate to grant permission for all the grounds to be argued. "

### **The Hearing**

7. Mr Paramjorthy, Counsel for the appellant, adopted the terms of the grounds of appeal as his principal submission and told me that the determination contains a clear error of law. Mr Paramjorthy focused on the Judge's refusal to grant an adjournment and said that the Judge's reasoning was influenced by the paucity of evidence of the appellant's family removing to India, and that, if an adjournment had been granted, evidence which has come to the appellant's hands since the decision was promulgated could have been produced which could have altered the judge's findings in fact.

8. Mr Nath, for the respondent, referred me to the respondent's Rule 24 response dated 15 July 2015 and adopted the terms of that Rule 24 response. He told me that the respondent's position is that if the appellant has fresh evidence, his remedy is to submit a fresh claim for asylum and that, in any event, the determination does not contain a material error of law and the findings within the determination are findings which were open to the Judge; that, in reality, the appellant's appeal is simply a disagreement with the findings of the Judge.

### **Analysis**

9. There are eight grounds of appeal. Rather than making detailed submissions in relation to each of the eight grounds of appeal, counsel for the appellant focused on the first ground relating to the refusal to a request to adjourn the hearing and obtain further evidence (Ground 1 in the grounds of appeal).

10. This case was heard on 17 October 2014, so that the procedure for the hearing is governed by the Asylum and Immigration Tribunal (Procedure) Rules 2005. Rule 21 of those Procedure Rules deals with adjournments at appeals. Rule 21(3) of the 2005 Rules is in the following terms:

“21. (3) The Tribunal must not, in particular, adjourn a hearing on the application of a party in order to allow the party more time to produce evidence, unless satisfied that—

- (a) the evidence relates to a matter in dispute in the appeal;
- (b) it would be unjust to determine the appeal without permitting the party a further opportunity to produce the evidence; and
- (c) where the party has failed to comply with directions for the production of the evidence, he has provided a satisfactory explanation for that failure.”

11 The Judge dealt with the adjournment request at [13] of the determination and referred to the “*overriding objective*” which is found at Paragraph 4 of the 2005 Rules and is in the following terms:

“Overriding objective

4. The overriding objective of these Rules is to secure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible; and, where appropriate, that members of the Tribunal have responsibility for ensuring this, in the interests of the parties to the proceedings and in the wider public interest.”

12. In Nwaigwe (adjournment: fairness) [2014] UKUT 00418 (IAC) it was held that if a Tribunal refuses to accede to an adjournment request, such decision could, in principle, be erroneous in law in several respects: these include a failure to take into account all material considerations; permitting immaterial considerations to intrude; denying the party concerned a fair hearing; failing to apply the correct test; and acting irrationally.

13. In R (on the application of AM (Cameroon) v AIT [2007] EWCA Civ 131 the Court of Appeal said that unfair decisions on interlocutory matters, such as adjournments or the admission of evidence, can amount to errors of law. Such decisions will have to be grounds for arguing that they display gross procedural unfairness or a complete denial of natural justice. The Court of Appeal thought that was the case because the Immigration Judge refused to adjourn when the appellant was medically unfit to give evidence; because he listed the case for a day when counsel was not available; and because he refused permission for evidence to be taken on the phone.

14 The question for me is therefore whether or not the refusal of the application to adjourn deprived the appellant of his right to a fair hearing. I am told that since the determination was promulgated, the appellant has obtained documentary evidence that his family left Sri Lanka and entered India early in 2014 and that his parents are treated as refugees in India.

15 At [13], the judge refused to grant an adjournment, stating “*I was satisfied that I would be able to hear oral evidence relating to this*”, referring to the appellant’s contention that his family removed to India in February 2014. The judge commences [27] by stating “*The only other evidence that I have that the*

*appellant's parents and brothers are in India is the affidavit...*" The judge does not, however, reach a conclusion about the appellant's family's whereabouts. The judge does not determine whether the appellant's family have remained in Sri Lanka or have removed to India.

16. The Judge refused the application to adjourn, finding that the appellant had sufficient time to obtain documentary evidence because his solicitors were acting for him when the grounds of appeal were filed on 15 September 2014. The appeal was heard on 17 October 2014. The judge does not explain why she believed that one month and two days was sufficient time to obtain the documentary evidence.

17. The location and circumstances of the appellant's family is a matter which is capable of determining whether or not the appellant falls within one of the risk factors set out in GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC). I therefore find that there was an unfairness in refusing to allow the appellant further time to produce documentary evidence to support what is set out by the appellant in the witness statement relied on before the First Tier Tribunal.

## **Conclusion**

18 I therefore find that the determination promulgated on 20 October 2014 is tainted by a material error of law.

## **Remittal to the First tier Tribunal**

19. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 25<sup>th</sup> of September 2012 the case may be remitted to the First Tier Tribunal if the Upper Tribunal is satisfied that:

'(a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

(b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.'

20. In this case none of the findings of fact are to stand and the matter will be a complete re hearing.

21. I consequently remit the matter back to the First-tier Tribunal, before any First-tier Tribunal Judge (IAC) other than First Tier Tribunal Judge Andrew.

## **Decision**

**22. The making of the decision of the First-tier tribunal is tainted by a material error of law.**

**23. I set aside the decision.**

**24. I remit the case to the First-tier Tribunal for determination of new.**

Signed

Date 1<sup>st</sup> September 2015

Deputy Upper Tribunal Judge Doyle