



IAC-FH-CK-V2

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

Appeal Number: AA/00522/2015

THE IMMIGRATION ACTS

Heard at Birmingham

**Decision &
Promulgated**

Reasons

On 27 January 2016

On 7 March 2016

Prepared 27 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

**MR DINESHKUMAR SANNATHIRAJAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood, Counsel instructed by Islington Law Centre
For the Respondent: Mr D Mills, Senior Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of Sri Lanka, date of birth 18 November 1988, appealed against the Respondent's decision dated 11 November 2014 to

refuse asylum under paragraph 336 of the Immigration Rules HC 395 and essentially under the Refugee Convention.

2. The matter came before First-tier Tribunal Judge Ghani (the Judge), who on 22 April 2015 allowed the appeal with reference to Appendix FM of the Immigration Rules but dismissed the appeal on the asylum basis. Permission to appeal was given by F-t Judge Bird on 13 May 2015. The Secretary of State made a rule 24 response on 16 June 2015.
3. The appropriate required notice under Section 104 (4A) NIAA 2002 and Upper Tribunal Procedural Rules 17A(reference to be added) was not served to notify the Tribunal the Appellant had leave to remain but he wished to appeal his appeal. In an affidavit from Stephane Gentili, a solicitor, he explained the circumstances in which it came to pass that an error arose in terms of giving the appropriate notice. In the circumstances Mr Mills very fairly accepted that it was appropriate for the matter still to be considered. Therefore, as the parties are agreed and I with them, it is necessary for the judge's decision in relation to the asylum claim to be returned to the First-tier Tribunal and to be considered afresh. The parties are similarly agreed that no findings of fact relating to the asylum claim should stand: In particular it is clear that the judge failed to take into account all the evidence, including a second medical report, and weigh it with other medical evidence in the round in the context of the facts claimed. Thus the assessment the judge made of the risk of proscribed ill-treatment contrary to the Refugee Convention was not properly considered. The Original Tribunal's decision on the asylum issue cannot stand.
4. For these reasons therefore I am fully satisfied that this is an appropriate case having regard to the Presidential Statement in relation to the remaking of decisions in the First-tier Tribunal. The appeal is allowed to the extent it is to be returned to the Tribunal for the Refugee Convention asylum claim to be properly considered.

LISTING

- (1) Relist in the First-tier Tribunal, Birmingham, not before First-tier Tribunal Judge Ghani.
- (2) List for two and a half hours.
- (3) No findings of fact relating to the asylum claim are to stand.
- (4) Any further documents to be served shall be served not less than ten working days before the listed hearing for remaking the decision.

Signed

Date 27 February 2016

Deputy Upper Tribunal Judge Davey