



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

Appeal Number: PA/00662/2017

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 5<sup>th</sup> December 2017**

**Decision & Reasons  
Promulgated  
On 10 January 2018**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**C. P.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Mr J Martin of Counsel*

*For the Respondent: Mr Tarlow, Home Office Presenting Officer*

**REASONS FOR FINDING AN ERROR OF LAW**

1. The appellant was born on [ ] 1980 and is a citizen of Sri Lanka. On 16<sup>th</sup> January 2017, the respondent refused to grant him asylum or, in the alternative, humanitarian protection under paragraphs 336 and 339F of Statement of Changes in Immigration Rules HC 395 as amended (“the Immigration Rules”).
2. The appellant entered the United Kingdom on 20<sup>th</sup> April, 2010, as the dependant of a Tier 4 Student Migrant, his wife. His leave was due to

expire on 1<sup>st</sup> August 2011. On 30<sup>th</sup> July 2011 an application was made for leave for him to remain in the United Kingdom on the basis of his Article 8 rights. This application was refused by the respondent on 20<sup>th</sup> September 2011. The appellant appealed that decision to the First-tier Tribunal and his appeal was allowed. The appellant was granted discretionary leave until 22<sup>nd</sup> March, 2014.

3. On 20<sup>th</sup> March 2014, the appellant applied for leave as the dependant of a Tier 4 Migrant Student and this leave was due to expire on 30<sup>th</sup> April 2016. Leave was granted, but unfortunately was subsequently curtailed to expire on 5<sup>th</sup> February 2015. On 29<sup>th</sup> July 2016 the appellant claimed asylum. The appellant appealed the Secretary of State's refusal to the First-tier Tribunal and his appeal was heard by Judge O'Garro at Hatton Cross on 16<sup>th</sup> May 2017. Judge O'Garro dismissed the appellant's appeal on asylum grounds, dismissed the appellant's appeal on humanitarian protection grounds and dismissed his appeal on human rights grounds.
4. The appellant sought and obtained permission to appeal to the First-tier Tribunal and in doing so asserted that the judge had materially erred in law by failing to consider up-to-date background evidence. It was asserted that the judge had erred at paragraph 36 of her determination where she noted that the appellant's arrest warrant was issued in 2010 and that the appellant would have been aware of it at the time based on evidence she quoted from procedures which took place in Sri Lanka in 2001 and 2002. The evidence which applied in 2010 was set out in the Country of Origin Report for 2012 and which the judge failed to consider.
5. Mr Tarlow accepted that the determination was flawed and could not be sustained. I agree with him and was grateful to Mr Tarlow.
6. The judge did not accept that the arrest warrant was genuine and for this reason found that the appellant had not established that there was a real risk or that it was reasonably likely that the authorities in Sri Lanka would regard him as a threat to the integrity of Sri Lanka and take an interest in him. The judge claimed that an employee of his was abducted and that the appellant was also abducted.
7. I set aside the judge's determination. Given the lengthy delays which would inevitably occur, were I to adjourn this appeal for hearing afresh in the Upper Tribunal before me, I have concluded that the interests of justice requires that I remit the appeal for hearing afresh by a judge other than Judge O'Garro in the First-tier Tribunal. A Sinhalese interpreter will be required and two hours should be allowed for the hearing of the appeal.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify

him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

***Richard Chalkley***

**A Judge of the Upper Tribunal**

**Date 4 January 2018**