



IAC-FH-NL-V1

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

Appeal Number: AA/06870/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 10 November 2014**

**Determination issued  
On 12 November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M LEWIS**

**Between**

**MOHAMED SHAFRAS ABDUL RAZICK**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss A Seehra, Solicitor instructed by Nag Law Solicitors

For the Respondent: Mr T Wilding, Home Office Presenting Officer

**DECISION AND REASONS**

**The History of the Appeal**

1. The appeal of the Appellant, Mr Mohamed Shafras Abdul Razick, a citizen of Sri Lanka, was heard by Judge Wellesley-Cole sitting at Taylor House on 7 August 2014 and dismissed in a determination promulgated on 9 September 2014. Permission to appeal was granted on 1 October 2014, later followed by procedural directions, by Judge Macdonald in the following terms:

- “1. The grounds of application contend that the judge’s negative credibility findings flow from paragraph 16 of her decision. It is said that the judge’s assessment of the documents was flawed and fundamentally unfair in the absence of any challenge by the Presenting Officer. The judge’s finding that Mr Aneez’s letter was a recitation of instructions from the Appellant’s mother and uncle was plainly wrong. The judge had failed to consider **PJ (Sri Lanka)**. Furthermore the judge had engaged in speculation and had made findings inconsistent with country guidance case law.
2. It is arguably, for reasons given in the grounds that it was an arguable error for the judge to place limited weight on the lawyer’s letter for the reasons she gave. Furthermore it was arguably speculative for the judge to conclude that the court documents/arrest warrant could not be verified because the signatures were illegible. It is also arguable that the judge attached too much weight to the fact that he was able to depart the country without difficulty (paragraph 17).
3. Permission is granted on all grounds.”
2. On 9 October 2014 the Respondent served a Rule 24 Notice opposing the application for permission to appeal.
3. At the error of law hearing Mr Wilding for the Respondent, whilst not accepting other aspects of the grounds of application, accepted the existence of a material error of law on the grounds set out below and recognised that none of the findings of fact could stand. Without needing to hear Miss Seehra I said that this corresponded with my preliminary view of the application, which was that the appeal needed to be re-heard on all issues. However I declined the request by Miss Seehra to restrain the Respondent from challenging the genuineness of any documents or from doing so without reasons, on the basis that no party should be trammelled in a full re-hearing.

## **Determination**

4. The essential argument is that, in paragraphs 18 and 19 of the determination, the judge did not properly assess the evidence of the Appellant and placed only limited weight on the correspondence with a lawyer in Sri Lanka on the basis of the absence of any independent corroborative evidence. This reasoning is not logical. It relates to a matter going to the core of the appeal and renders the findings unsafe.
5. I accordingly set aside the determination. The effect is that the Appellant has effectively been deprived of a fair hearing. Pursuant to paragraph 7 of Part 3 of the Practice Directions of the Immigration and Asylum Chamber of the Upper Tribunal I accordingly remit the appeal for re-hearing in the First-tier Tribunal by any judge other than Judge Wellesley-Cole.

## **Decision**

6. The original determination contains a material error of law and is set aside.
7. The Appeal is to be reheard in the First-tier Tribunal by any judge other than Judge Wellesley-Cole.

Signed  
November 2014

Dated: 12

Deputy Upper Tribunal Judge J M Lewis