



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

Appeal Numbers: AA/04529/2014

THE IMMIGRATION ACTS

Heard at Field House

Decision and Reasons

On 9 December 2015

Promulgated

On 12 January 2016

Before

**MR C M G OCKELTON, VICE PRESIDENT
UPPER TRIBUNAL JUDGE DAWSON**

Between

K K

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. This appeal is, in substance and in procedural history, somewhat unusual. The appellant is a national of Sri Lanka. He has visited India at various times and has a life-long visit visa for India. He came to the United Kingdom in 2011 on the basis of entry clearance granted as a student. He undertook, so far as we are aware, his studies, but during the currency of his leave as a student, claimed asylum in the United Kingdom on the basis of a well-founded fear of persecution in his country of nationality, Sri Lanka. That claim was made on 9 April 2014. As we say, it was during the currency of his leave, and the Secretary of State has treated it as an application for further leave on the basis of asylum. The application was refused and the Secretary of State decided to remove him under s 47 (as amended), of the 2006 Act on a date which is not absolutely clear from the papers but was, at any event, in June 2014.
2. The appellant appealed to the First-tier Tribunal on asylum grounds. The appeal was heard by First-tier Tribunal Judge Callow in January 2015. He

determined as follows: first, that the appellant's account of his experiences in Sri Lanka was credible; second, that on the basis of the facts he found, the appellant would be at risk of being stopped and arrested on return to Sri Lanka and at risk of persecution; third, that the appellant could be safely returned to India because he had the right to visit and live in India; fourth, that the appellant's appeal should therefore be dismissed on asylum grounds, but fifth, that it should be allowed on article 3 grounds on the basis of the appellant's mental health.

3. The last part of that decision has always been unexplained. There was a reference in the Secretary of State's decision letter to mental health grounds but they were not advanced before the First-tier Tribunal Judge. The Secretary of State sought permission to appeal against the allowing of the appeal on mental health grounds and for that reason the First-tier Tribunal referred the matter to Judge Callow who determined to issue a new decision. That he did in July 2015. In it, he purported to use the slip rule (r 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008) to change his determination allowing the appeal to one dismissing the appeal on all grounds.
4. Although it is clear that an issue could have been raised as to whether the slip rule permitted a judge to do that, the appellant and those representing him have been content to treat the second determination of the judge as the effective determination of the appeal to him. Therefore the appeal stood as dismissed on all grounds, the asylum ground raised by the appellant failing not because the appellant had failed to show a well-founded fear of persecution in his country of nationality but because the judge considered that he could live in another country.
5. As all parties before us agree, that was an inappropriate process of reasoning. The Refugee Convention provides that a claim for refugee status is to be determined according to the country of nationality of the person claiming the status. The only country of nationality identified by the Secretary of State or by the appellant for these purposes in this appeal is Sri Lanka. The judge did not look in any detail into questions of internal relocation or sufficiency of protection but the brief finding of which we have made mention makes it clear that the judge's finding of fact was that the appellant would be at risk of persecution on arrival at Sri Lanka airport; and it follows from that that issues of internal relocation do not arise, and further that, because the risk was from the officials of the Sri Lankan state on his arrival in Sri Lanka, no issue as to sufficiency of protection arose. It is therefore we think necessarily implicit in the Tribunal judge's finding of fact that he was finding that the appellant is indeed a refugee by reference to Sri Lanka, his only asserted country of nationality.
6. It follows from that that the judge erred in law in regarding the appellant as not being a refugee; he is a refugee, and is entitled whilst he is in the United Kingdom, to the benefits of the Refugee Convention. That is not quite sufficient to deal with the matter because the appeal to the First-tier Tribunal was against the Secretary of State's removal decision: and the ground of appeal had to be that removal in accordance with that decision would breach the Refugee Convention. The decision was to remove the

appellant to Sri Lanka, not to India, nor to “India or Sri Lanka”, but to Sri Lanka. In those circumstances, it is, we have to say, rather difficult to understand why the judge thought that India was in the equation at all. In any event, bearing in mind his findings of fact and the clear terms of the decision under appeal, it is apparent that he should have concluded that removal in accordance with the direction would breach the appellant’s rights under the Refugee Convention: it would be removal to the very place where the judge had concluded he was at risk of persecution.

7. There is, however, more to this appeal even to that. As we have indicated in setting out the appellant’s history, he is a person who applied during the currency of existing leave for further leave; the Secretary of State did not, as she sometimes does, curtail the existing leave on the basis that the application for asylum demonstrated that the appellant no longer intended to apply with the terms of his leave as a student; instead she treated it throughout as an application for further leave. Under those circumstances, as it appears to us, s 3C of the Immigration Act 1971 continued the appellant’s leave until the Secretary of State made her decision, thereafter during the time when he could have appealed as he did, and thereafter during the time when the appeal was pending as indeed it still is.
8. The appellant is, therefore, even today, a person who has leave; he is, in the words of article 32 of the Refugee Convention, a refugee “lawfully in the territory of” the United Kingdom. Under those circumstances, the Secretary of State’s power to expel him is very limited. Article 32 protects a refugee lawfully in the territory of a State Party from expulsion, save on grounds of national security or public order. Under those circumstances, it is clear to us that given the findings of fact by the First-tier Tribunal Judge and the procedural circumstances of the treatment of the application by the Secretary of State, that the applicant is a person who has to be regarded as a refugee, and has to be regarded as a refugee lawfully in the territory of the United Kingdom. For those reasons we find that the First-tier Tribunal Judge erred in law in his assessment of the case, and we substitute a determination allowing the appellant’s appeal on Refugee Convention grounds.
9. We emphasise, however, two matters. The first is this: because the appellant is a person with a status of a refugee, he is entitled to be issued with documents recognising that status on the basis of this determination, whatever the Secretary of State may think about his entitlement. The position is that while he is in the country he is entitled to the benefits of the Refugee Convention.
10. The second issue is this: in the course of our hearing Mr Tarlow drew attention to a visa in the appellant’s Sri Lankan’s passport, describing the appellant as a “Citizen of India Overseas”. It may be that the Secretary of State wishes to make further investigation into that, but, as we see it, it is not open to her to undermine the effect of this decision by that investigation. The effect of this decision is that the Secretary of State is required to issue refugee status documents to the appellant and on this basis the appeal is allowed.

Appeal Numbers: AA/04529/2014

C. M. G. OCKELTON
VICE PRESIDENT OF THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER
Date: 6 January 2016