



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

Appeal Number: AA/07971/2013

THE IMMIGRATION ACTS

Heard at Field House

On 22nd June 2017

**Decision & Reasons
Promulgated
On 03 July 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MP
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Paramjorthy, Counsel

For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION BY CONSENT AND DIRECTIONS

1. This matter last appeared before Deputy Upper Tribunal Judge Saini on 4th April 2017. In a determination promulgated on 11th May 2017 Judge Saini found that there were material errors of law and gave directions. Those

directions included that the matter be retained within the Upper Tribunal to be listed with an ELH of three hours.

2. It is on that basis that the appeal comes before me today. Mr Jarvis appears on behalf of the Respondent, Mr Paramjorthy on behalf of the Appellant. Mr Jarvis points out:-
 - (1) That this is a case which is listed for three hours for re-hearing but it has never been provided to him for preparation.
 - (2) That he in such circumstances asks for an adjournment on the basis that he is not in a position to proceed, and
 - (3) that if I do grant the adjournment that the correct procedure would be to remit the matter back to the First-tier Tribunal on the basis that none of the findings of fact were to stand and that that would have been the correct and proper approach for Judge Saini to have adopted when the matter last appeared before him in April.
3. Mr Paramjorthy, who has considerable experience of this matter and who advises that he has discussed the matter with his client indicates that he consents to the request for an adjournment and for transfer by way of remit back to the First-tier Tribunal. He indicates that the only reason that the matter was kept within the Upper Tribunal by Judge Saini was because of the length of time that the case had been going on and that it was felt that it would be quicker to get a listing in the UT. He is however of the view that as none of the findings of fact were, or are, to be preserved then a level of appeal has been lost and that it is not an appropriate argument (and indeed not one that Mr Jarvis seeks to put forward) that there is a level of appeal still maintained to the Court of Appeal from an Upper Tribunal, particularly bearing in mind that there is a different test to be applied in such appeals.

Decision and Directions

4. In the light of the circumstances and it remains unclear as to whether the administrative failure to provide papers to Mr Jarvis were the responsibility of the Secretary of State or the administration of the Tribunal and on hearing the consent submissions made by Counsel for the Appellant I find:-
 - (1) That the request made by the Secretary of State for an adjournment be allowed.
 - (2) That the appeal be remitted to the First-tier Tribunal to be heard at Hatton Cross on the first available date 28 days hence with an ELH of three hours before any judge of the First-tier Tribunal excluding Immigration Judge Woolf.
 - (3) That none of the findings of fact are to stand.

- (4) That there be leave to either party to file and serve an up-to-date bundle of objective and/or subjective evidence upon which they seek to rely at least seven days prior to the restored hearing.
- (5) That in the event of either party seeking to rely on skeleton arguments, such skeleton arguments be lodged at the Tribunal and served on the other party at least seven days prior to the restored hearing.
- (6) That a Tamil interpreter do attend.

Anonymity

5. That on the directions hearing of 11th May 2017 anonymity was granted to the Appellant. That anonymity direction is to continue.

Signed D N Harris

Dated: 22nd June 2017

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT
FEE AWARD**

No application is made for a fee award and none is made.

Signed D N Harris

Dated: 22nd June 2017

Deputy Upper Tribunal Judge D N Harris