



**Upper Tribunal  
(Immigration and Asylum Chamber)  
PA/01330/2017**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons**

**On 31 May 2017**

**Promulgated**

**On 19 June 2017**

**Prepared 31 May 2017**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**WA**

**(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr D Kumudusena of Liyon Legal Limited

For the Respondent: Mr S Whitwell, Senior Presenting Officer

**DECISION AND REASONS**

1. The Appellant, a national of Sri Lanka, date of birth 8 September 1986, appealed against the Respondent's decision dated 26 January 2017 to refuse an asylum protection claim as well as a claim in relation to Appendix FM of the Immigration Rules and paragraph 276ADE of the

Rules. In addition the Secretary of State concluded that Article 8 ECHR had not been engaged outside of the Immigration Rules.

2. The matter came before First-tier Tribunal Judge B Morris (the Judge) who, on 22 March 2017, promulgated her decision and dismissed the Appellant's appeals on all grounds.
3. An anonymity order was made and whilst no reference has been made to that fact for these proceedings today I continue the anonymity order.
4. Permission to appeal the Judge's decision was granted by First-tier Tribunal Judge Grant-Hutchison on 20 April 2017. On 26 April 2017 the Respondent made a Rule 24 response.
5. The substance of the grounds are that there was procedural unfairness in failing to grant the Appellant, who for the purposes of the proceedings before the Judge was acting in person, an adjournment because he was awaiting documents to be produced from abroad and awaiting a medical report in respect of which he attended for an examination on 7 March 2017 before a doctor, Mr Mason. The Appellant attended the hearing before the Judge in person. The Appellant's representatives, Lyon Legal Limited, had written a letter, seeking an adjournment of the hearing on 9<sup>th</sup> March 2017, sent by fax late in the afternoon on 7 March 2017.
6. The letter explained what evidence it was hoped to be produced but quite simply really never got to the heart of why the evidence had not been sought in advance either so as to be dealt with, with the PHR/CMR, or alternatively in advance of the listed hearing date which had been given as early as 9 February 2017. In any event a pre-hearing review took place on 23 February 2017: At that stage it is clear that it was not intended by the Appellant to obtain medical evidence and there was no indication that court documents were being sought or were awaited so as to cause the delay in the listing of the case. As a result the directions sent out by the

Tribunal on 23 February 2017 so far as the Tribunal was aware the appeal was ready for hearing.

7. The Judge considered the adjournment application and, for reasons properly set out in the decision at paragraphs 15-17, the Judge rejected the application and proceeded with the hearing.
8. The argument essentially run by Mr Kumudusena is that if the documents had been before the Judge a different decision 'might have been' forthcoming: He might even say 'would have been'. It seems to me that the benefit of hindsight which may have a bearing on how the matter progresses hereafter does not establish that there was procedural unfairness in the way in which the decision was made or the reasons given for the decision by the Judge. What the documents may show is that a different decision is possible and it is a matter of evidence which has yet to be considered by the Secretary of State. There had not been an opportunity for the Secretary of State before the hearing to have taken a view on the genuineness of the documents and whether or not it was accepted they were reliable. It does not inevitably follow that the Secretary of State would take the view they were not reliable. The question is to what extent they might impact on the real risk on return and the extent to which, if they are reliable, they may feature in the sense of putting the Appellant into one of the GJ categories.
9. It seemed to me that the Judge on the material which she had, explained why she found aspects of the Appellant's evidence unreliable and affected his credibility. Those matters she reasonably explained and it seems to me that they are not shown to be flawed simply by the existence of those other documents or indeed the medical evidence. It may be that in other circumstances, looked at as a whole with all the evidence, could have led to a different conclusion. It seems to me therefore that what is essentially being argued is that within this appeal there ought to effectively be a re-hearing of the case on different basis to that which had previously been advanced.

10. I quite understand why that course may be preferred but the fact is that that evidence has not been considered by the Secretary of State and it could be a different outcome is reached. I do not second guess that and I express no views on the merits of the case.
11. In the circumstances therefore the Judge, it seems to me, correctly addressed the overriding objective found within the Tribunal Procedure Rules 2014, in particular Rule 2, which indicates that the parties must help the Tribunal to further the overriding objective and co-operate with the Tribunal generally. That is an often understated objective to which the parties, by being parties to such procedures, commit themselves. I conclude this is a case where there was unjustified delay in production and preparation of the case: Whether it is simply to do with funding or other matters I do not speculate. It is open to the Appellant on this later arising material to argue the matter before the Secretary of State on the basis of a change in circumstances because they have not been considered. That must be for another application and for a later date. In the circumstances I conclude the Judge's decision does not disclose any material error of law.

### **NOTICE OF DECISION**

12. The Original Tribunal's decision stands and the appeal is dismissed.

### **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.

Signed

Date 5 June 2017

Deputy Upper Tribunal Judge Davey

**TO THE RESPONDENT**

**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award

Signed

Date 5 June 2017

Deputy Upper Tribunal Judge Davey