



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

Appeal Number: PA/01186/2018

**THE IMMIGRATION ACTS**

**Heard at North Shields**

**On 12 April 2019**

**Decision & Reasons  
Promulgated  
On 18 April 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE J M HOLMES**

**Between**

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

Appellant

**and**

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

Respondent

**Representation:**

For the Appellants: Ms Jegarajah, Counsel for AASK Solicitors

For the Respondent: Ms Pettersen, Home Office Presenting Officer

**DECISION AND REASONS**

The Appellant, a citizen of Sri Lanka, entered the UK illegally and made a protection claim which was refused on 10 January 2018. The Appellant's appeal against that decision was heard, and dismissed, by First-tier Tribunal Judge Hands, in a decision promulgated on 20 August 2018.

The Appellant's application for permission to appeal was granted by Upper Tribunal Judge Chalkley on 3 December 2018 on all the grounds advanced. The Respondent did not reply to that grant with a Rule 24 response.

The Appellant's case was that he had come to the adverse attention of the Sri Lankan authorities, as a result of the activities of other family members, and

his own activities. He also argued that his activities in the UK had given rise to a separate sur place claim.

Before me the Respondent accepts that the Judge's approach to the expert evidence and to the evidence concerning other family members was flawed with the result that her findings of fact were unsafe, and, that a hearing afresh is required. For the Appellant Ms Jegarajah accepts that a fresh hearing is the only pragmatic course open. I agree. None of the findings of fact made by the Judge are safe, or can be preserved. In circumstances such as this, where it would appear that the relevant evidence has not properly been considered by the First Tier Tribunal, the effect of that error of law has been to deprive the parties of the opportunity for their case to be properly considered by the First Tier Tribunal; paragraph 7.2(a) of the Practice Statement of 13 November 2014. Moreover the extent of the judicial fact finding exercise required is such that having regard to the over-riding objective, it is appropriate that the appeal should be remitted to the First Tier Tribunal; paragraph 7.2(b) of the Practice Statement of 13 November 2014.

To that end I remit the appeal for a fresh hearing by a judge other than First tier Tribunal Judge Hands, at the North Shields Hearing Centre.

A Tamil interpreter is required.

The Appellant must file any further background evidence he wishes to place before the Tribunal by 5pm 3 May 2019.

The remitted appeal is suitable for the short warned list. The parties should expect the appeal to be called on for hearing at short notice after 7 May 2019.

#### Notice of decision

1. The decision did involve the making of an error of law sufficient to require the decision to be set aside on all grounds, and reheard. Accordingly the appeal is remitted to the First Tier Tribunal for rehearing de novo, with the directions set out above.

#### 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 his 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 15 April 2019

Deputy Upper Tribunal Judge J M Holmes