



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2021-000737
First-tier Tribunal No: PA/12810/2018

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 9 August 2024

Before
UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between
MK
(ANONYMITY ORDER MADE)

Appellant

and
SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Decided without a hearing at Field House on 30 July 2024

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

Introduction

1. The appellant is a national of Sri Lanka. He was granted permission to appeal against the decision of First-tier Tribunal, which had dismissed his appeal against the respondent's refusal of protection and human rights claims. Following the grant of permission the respondent provided a rule 24 response on 25 November 2021, which accepted that the First-tier Tribunal had committed a material error of law. The response stated that the appeal should be remitted to the First-tier Tribunal for a complete re-hearing.
2. The case was listed for an error of law hearing in the Upper Tribunal on 21 February 2022. However, correspondence was found on the Tribunal's system which suggested that the appellant had apparently withdrawn his appeal in early February 2022, as a result of which the appellant's solicitors had stopped acting for him. On further consideration, the situation was not clear. The correspondence in question was dated at a time when the appeal was already in the Upper Tribunal's system and it appeared as though the First-tier Tribunal had no power to treat the appeal as being withdrawn. In the event, the error of law hearing was adjourned and directions were sent out. Those directions were sent to the appellant's residential address and to the email address on record. To date, there has been no response from the appellant.
3. This case has now been going on for a considerable period of time and there needs to be resolution. In all the circumstances, I have decided that the appropriate course of action is to make an error of law decision without a hearing, pursuant to rule 34 of the Tribunal Procedure (Upper Tribunal) Rules 2008. I regard this as being fair and in the interests of promoting the overriding objective. The appellant has challenged the First-tier Tribunal's decision and the respondent has accepted that there was an error and that the case should be remitted. Thus, the parties are, to all intents and purposes, agreed on what should happen.

4. I have considered whether the respondent's concession on the question of error of law is appropriate and have concluded that it is. The First-tier Tribunal clearly proceeded on a misapprehension of the undisputed facts as regards who held positions of power in Sri Lanka at the relevant time. This error undermined the entirety of the First-tier Tribunal's assessment of risk on return. The error of law requires a remittal to the First-tier Tribunal for a complete re-hearing with no preserved findings of fact.
5. At present, the appellant has not engaged with his case for a considerable period of time. Once this case goes back to the First-tier Tribunal, it is important that all appropriate efforts are made to contact the appellant in order to find out whether he wishes to pursue his appeal or whether he wishes to withdraw it. Whilst it is a matter for the First-tier Tribunal, it might be sensible to arrange for a case management review hearing at the first available opportunity in order to determine whether a substantive hearing is in fact required.
6. It is to be noted that the appellant is unrepresented.

Anonymity

7. The anonymity direction is maintained because this case concerns a protection claim.

Notice of Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I exercise my discretion under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007 and set aside the decision of the First-tier Tribunal.

I remit the case to the First-tier Tribunal.

Directions to the First-tier Tribunal

- 1. This appeal is remitted to the First-tier Tribunal (Taylor House hearing centre) for a complete re-hearing with no preserved findings of fact;**
- 2. The remitted hearing shall be conducted by a judge other than First-tier Tribunal Judge Abebrese;**
- 3. An anonymity direction remains in place.**

H Norton-Taylor
Judge of the Upper Tribunal
Immigration and Asylum Chamber
Dated: 30 July 2024