



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/05209/2013

**THE IMMIGRATION ACTS**

Heard at Field House  
On 2 October 2013

Determination Sent  
On 7 October 2013

Before

UPPER TRIBUNAL JUDGE ESHUN

Between

MR THAYANANTHAN KATHIRESAN

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr. F Shibli, Counsel  
For the Respondent: Mr. D Deller, HOPO

**DECISION ON ERROR OF LAW**

1. The appellant is a citizen of Sri Lanka, born on 9 February 1983. The appellant's asylum appeal was dismissed by First-tier Tribunal Judge Napthine in a determination dated 12 July 2013.

2. The brief facts of the appellant's case are set out at paragraphs 3 and 4 of the Grounds of Application submitted by Counsel on 24 July 2014.
3. The respondent refused the appellant's asylum application on 17 May 2013 and on the same date issued a reasons for refusal letter. At Annex E1 of the respondent's bundle is a letter from the appellant's solicitors to the Home Office dated 23 May 2013 enclosing documents from the Magistrates Court in Sri Lanka with translations for the respondent's attention. The documents formed part of the respondent's bundle at Annex E2 - E11. However, there was no consideration of these documents by the respondent in the RFRL. Indeed at page 2 of the respondent's bundle, under "Documents", it is stated that the further submissions were received too late.
4. At paragraph 27 of the determination that judge said that he placed no reliance upon the documents which were served by the appellant in disregard of the directions issued on 17 June 2013. At paragraph 28 he referred to two documents i.e. the letter from Muthusamy Pushparaj, a Sri Lankan lawyer and the sworn affidavit from the appellant's father. At paragraphs 29 and 30 the judge said he was in no position to assess the authenticity of these documents because the respondent had not had an opportunity to consider the genuineness or otherwise of the documents because of the late service of the documents.
5. At paragraph 33 the judge said the appellant produced what purported to be a translation of a photocopy Sri Lankan Magistrates' Court record. Again the judge said at paragraph 35 that he could not place any weight on the document because if it had been served on the respondent earlier, the respondent could have made investigations concerning the matters mentioned therein, which are said to have taken place in 2009 and 2013. As it is there has been no opportunity for anyone to test what is stated in the letter. The late production of the letter and the Magistrates Court record undermined their credibility.
5. Mr. Deller accepted that ground one of the grounds of appeal lodged by Counsel disclose an error of law. The error being that the Magistrates' Court record was not served late and that it formed part of the respondent's bundle, albeit it was not considered by the respondent.
6. I also find that the judge erred in law in not considering the documents because they were submitted late submission and/or because the respondent had not had an opportunity to verify the authenticity or otherwise of the documents. The judge was required to consider the documents and come to his own conclusions. His failure to do so was an error of law.

7. As the documents form part of the appellant's core claim and they have not been considered by the judge, I find that it is appropriate in light of paragraph 7.2 of the Practice Directions to remit the appellant's appeal to the First-tier Tribunal for rehearing by a judge other than FtTJ Napthine.

### **DIRECTIONS**

1. The agreed date for the listing of this appeal is **6 December 2013** at **Hatton Cross.**
2. The appellant is required to submit 7 days before the hearing any further documents he wishes to rely on at the hearing.

Signed  
Upper Tribunal Judge Eshun

Date: 2 October 2013