



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

Appeal Number: AA/04931/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 14<sup>th</sup> November 2014**

**Determination  
Promulgated  
On 19<sup>th</sup> November 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE LINDSLEY**

**Between**

**MR CHARMIN BALASINGHAM  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr S Muquit, Counsel, instructed by Kanaga Solicitors  
For the Respondent: Mr I Jarvis, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

*Introduction*

1. The appellant is a citizen of Sri Lanka born on 10<sup>th</sup> July 1989. He arrived in the UK on 15<sup>th</sup> February 2012 with a valid student visa. He then returned to Sri Lanka on 5<sup>th</sup> July 2013 and says he was kidnapped, tortured and detained. He returned to the UK on 22<sup>nd</sup> July 2013 and claimed asylum on arrival. This application was refused on 3<sup>rd</sup> July 2014 and he appealed. His appeal against the decision was dismissed by

First-tier Tribunal Judge Carroll in a determination following a hearing on the 18<sup>th</sup> August 2014.

2. Permission to appeal was granted by Judge of the First-tier Tribunal Nicholson on the 29<sup>th</sup> September 2014 on the basis it was arguable that the First-tier Tribunal had erred in law in accordance with E and R v SSHD [2004] EWCA Civ 49 due to factual mistakes made by Judge Carroll which then materially and unfairly affected the assessment of the appellant's credibility.
3. The matter came before me to determine whether the First-tier Tribunal had erred in law.

### *Submissions*

4. Mr Jarvis conceded that Judge Carroll had made factual mistakes in his determination and that it was clear from the asylum interview that Judge Carroll had blended two friends (one called Kanthan and one who was not named) which had then caused him to assess the appellant's credibility negatively in an unfair way.
5. Mr Jarvis accepted that in these circumstances it would be appropriate for me to set the determination of Judge Carroll aside
6. Both parties were in agreement that given the extent of remaking required that it would be appropriate to remit the appeal to the First-tier Tribunal.
7. I informed the parties that I found the First-tier Tribunal had erred in law for the reasons set out below and that the determination was therefore set aside with no findings preserved.

### *Conclusions*

8. Judge Carroll's determination contained a number of factual misunderstandings and statements which were not correct (three examples of which are set out below). These amount to errors of law as they were not the fault of the appellant and have impacted materially and unfairly on his assessment of the credibility of the appellant's, which in turn had a central role in the determination of his asylum claim.
9. As Mr Jarvis has stated one such error relates to whether the appellant's friend who gave information about him to the authorities in 2008 was the same person who gave information in 2013. They clearly were not the same person but Judge Carroll had assumed that they were both the person called Kanthan, see paragraph 18(a) of the determination. It is also clear that the appellant did mention his kidnap at paragraph 4.1 of his screening interview, contrary to what is said at paragraph 18(b) of the determination. I also have grave concerns about the treatment of the medical evidence of Mr Andres Martin consultant in emergency

medicine by Judge Carroll. This did not find that self-infliction by proxy was a possible cause for the appellant's scaring as was said at paragraphs 19 and 20 of the determination of Judge Carroll, but that it was only a remote possibility given the significant number of scars and the severity of the injuries, and that there was a high likelihood that the injuries were caused by a third party as described by the appellant (see pages 5 & 6 of the report).

10. In the circumstances I find that the determination must be set aside in its entirety and remade de novo.
11. I find it appropriate to remit the matter to the First-tier Tribunal for rehearing given the extent of judicial fact-finding required in this case. I have had regard to the Senior President's Practice Statement at paragraph 7.2 and the views of the parties that this was the correct and fair course.

### Decision

12. The decision of the First-tier Tribunal involved the making of an error on a point of law.
13. The decision of the First-tier Tribunal is set aside.
14. The appeal is remitted for hearing de novo by the First-tier Tribunal by a Judge other than Judge of the First-tier Tribunal Carroll on 11<sup>th</sup> March 2015.
15. The estimated length of hearing is two hours and a Tamil interpreter is required.

Deputy Upper Tribunal Judge Lindsley  
17<sup>th</sup> November 2014

### FEE AWARD:

It is not appropriate to make a fee award at this stage in the proceedings and in any case no fee was paid.

Deputy Upper Tribunal Judge Lindsley  
17<sup>th</sup> November 2014