



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: AA/09289/2011

**THE IMMIGRATION ACTS**

Heard at Field House  
14 March 2014

Determination promulgated  
2 April 2014

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

R M  
(ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Ms A Walker, Counsel, instructed by D V Solicitors  
For the Respondent: Ms A Everett, Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant was born on 2 March 1983 and is a citizen of Sri Lanka. He appeals, with permission, against the determination of First-tier Tribunal Judge Boyd, dated 24 November 2011, dismissing his appeal against the respondent's decision to refuse his claim for asylum and to remove him from the United Kingdom.
2. The appellant applied for permission to appeal and the matter then came before Deputy Upper Tribunal Judge Peart on 30 May 2012. For the reasons set out in his

decision of that date, Judge Peart found an error of law in Judge Boyd's determination and set it aside, directing that it was to be remade.

3. Although the matter should then have been relisted within the Upper Tier for a further hearing so that the appeal could be remade, this did not occur, owing to an administrative error.
4. It appears that the decision of Judge Peart was interpreted by the respondent as a direction to remake their decision which she then did, issuing both a fresh refusal notice and refusal letter on 25 August 2013. That triggered a fresh appeal heard, reference AA/10033/2013, which was heard by First-tier Tribunal Judge Thanki who dismissed the appeal on asylum grounds but allowed it on article 8 grounds. The respondent was then granted permission to appeal to the Upper Tier against that decision.
5. The grant of permission in the later appeal appears to have breathed new life into this appeal, and both were listed before me.
6. It was agreed by the parties that this matter needs to be determined. I indicated that it was my understanding that the effect of the issue of the new notice of decision was to withdraw the decision made on 28 July 2011 giving rise to this appeal. There cannot be two live decisions relating to the same issue. Neither party disputed this analysis; it was agreed that I should proceed on the basis that the underlying decision had been withdrawn and in line with **SM (withdrawal of appealed decision: effect) Pakistan** [2014] UKUT 00064 (IAC). In any event, as the appellant's case was considered afresh by the respondent and the First-tier Tribunal, it is difficult to see what prejudice, if any, he has suffered.
7. The effect of the withdrawal of the underlying decision in before the Upper Tribunal is that the Tribunal continues to have jurisdiction under the Tribunals, Courts and Enforcement Act 2007 to decide whether the determination of the First-tier Tribunal should be set aside for error of law and, if so, to re-make the decision in the appeal, notwithstanding the withdrawal of the appealed decision.
8. As noted above, there has been a decision that the decision of the First-tier Tribunal did involve the making of an error of law and it was set aside. I must therefore decide whether to proceed formally to dismiss or allow the appeal; or, consider whether it should be considered substantively. In doing so I bear in mind the factors identified in SM ( Pakistan):

*(4) In deciding between (i) and (ii) above, the Upper Tribunal will apply the overriding objective in rule 2 of the 2008 Rules, having regard to all relevant matters, including:-*

*(a) the principle that the Secretary of State should, ordinarily, be the primary decision-maker in the immigration field;*

*(b) whether the matters potentially in issue are such as to require the Tribunal to give general legal or procedural guidance, including country guidance;*

*(c) the reasons underlying the Secretary of State's withdrawal of the appealed decision;*

*(d) the appeal history, including the timing of the withdrawal; and*

*(e) the views of the parties.*

9. In this case, the appeal has been determined again, both by the Secretary of State and the First-tier Tribunal. This is not a case in which issues of general legal or procedural guidance are likely to arise, and neither party has put forward cogent reasons why the matter should proceed. In reality, the appeal has been superseded by events, and there is no useful purpose to be served in proceeding substantively to determine the appeal.
10. Accordingly, I formally dismiss the appeal

#### **SUMMARY OF CONCLUSIONS AND DECISIONS**

1. The determination of the First-tier Tribunal did involve the making of an error of law. It is set aside.
2. The determination is remade by dismissing the appeal on all grounds
3. The parties are reminded of the anonymity order made.

Signed

Date

Upper Tribunal Judge Rintoul

**31 March 2014**