



**Upper Tribunal  
(Immigration and Asylum Chamber)      Appeal Number: AA/05568/2011**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On January 16, 2015**

**Determination  
Promulgated  
On January, 20 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ALIS**

**Between**

**MS NM  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Mr Palmer, Counsel, instructed by Simons Rodkin Solicitors

For the Respondent: Mr Walker (Home Office Presenting Officer)

**DETERMINATION AND REASONS**

1. The Appellant, citizen of Sri Lanka, was born on December 22, 1984. On September 15, 2007 the appellant entered the United Kingdom as a student using her own passport. This visa expired on October 31, 2010 but she made an application on August 21, 2009 for a certificate of approval for marriage and this was granted on September 24, 2009. On October 28, 2010 she submitted an application for further leave to remain as a Tier 4

student but this was refused on December 17, 2010. She appealed this decision but later withdrew this appeal on February 24, 2011 having applied for asylum on February 11, 2011. The respondent refused this application on April 7, 2011 and served her with a removal direction.

2. On May 10, 2013 the Appellant appealed to the First-tier Tribunal under Section 82(1) Nationality, Immigration and Asylum Act 2002 (hereinafter called the 2002 Act), as amended. The matter came before Judge of the First-tier Tribunal Hussain (hereinafter called "the FtTJ") on July 18, 2011 and he refused the appeal after an oral hearing in a determination promulgated on August 12, 2011.
3. The appellant lodged grounds of appeal on August 31, 2011. Permission to appeal was refused by former Judge of the First-tier Tribunal Kebede on September 12, 2011. The grounds of appeal were renewed to the Upper Tribunal but Senior Immigration Judge Warr refused permission. Permission was sought to judicially review that decision and on September 20, 2012 the Honourable Mr Justice Blake refused permission on the papers. A full hearing was sought and on January 31, 2013 HHJ Anthony Thornton QC granted permission to apply for judicial review on the basis there was some other compelling reason for a review of the Upper Tribunal decision. Upper Tribunal Judge Jordan considered the matter on March 14, 2014 and permission to appeal.
4. The matter came before me on the date set out above. The appellant was in attendance and represented by his counsel.

### **PRELIMINARY ISSUE**

5. Mr Walker acknowledged the decision of the Administrative Court and accepted the consultant's report had not been considered. Whilst there were other credibility findings he accepted that the FtTJ had not demonstrated he had considered this evidence and it may have made a difference to his overall assessment and findings.
6. In the circumstances I was left with no alternative but to find there had been an error in law on the basis that the FtTJ had failed to have regard to material evidence that may have affected his overall credibility assessments.
7. Having established there was an error in law I invited submissions on what should happen to the appeal. Both representatives agreed fresh oral evidence and findings would be necessary. I considered Part 3, Section 7.1 to 7.3 of the Practice Statement.
8. Part 3, Section 7.1 to 7.3 of the Practice Statement states:

"Where under section 12(1) of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) the Upper Tribunal finds that the making of the decision concerned involved the making of an error

on a point of law, the Upper Tribunal may set aside the decision and, if it does so, must either remit the case to the First-tier Tribunal under section 12(2)(b)(i) or proceed (in accordance with relevant Practice Directions) to re-make the decision under section 12(2)(b)(ii).

The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that:

- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
- (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Remaking rather than remitting will nevertheless constitute the normal approach to determining appeals where an error of law is found, even if some further fact finding is necessary."

9. In light of the Practice Direction I agreed the case should be remitted to the First-tier Tribunal to be reheard on all matters.
10. I informed Mr Palmer that his instructing solicitors should file a new bundle that would replace anything else that had hitherto been filed.
11. The parties should ensure compliance with any directions issued in light of the fact the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 would apply to this appeal from hereon.

### **Decision**

12. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law. I have set aside the decision.
13. The appeal is remitted back to the First-tier Tribunal for a fresh appeal hearing under Section 12 of the Tribunals, Courts and Enforcement Act 2007.
14. Under Rule 14(1) The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) the appellant can be granted anonymity throughout these proceedings, unless and until a tribunal or court directs otherwise. An order has been made and no application has been made to alter the position.

Date: **January 16, 2015**

DEPUTY UPPER TRIBUNAL JUDGE ALIS

IMMIGRATION AND ASYLUM CHAMBER