



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

Appeal Number: AA/06136/2013

THE IMMIGRATION ACTS

Heard at : IAC Stoke

**Decision and Reasons
Promulgated**

On 6 July 2015

On 10 July 2015

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

VIJAYARASA KANAPATHEPILLAI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms E Harris, instructed by Nag Law Solicitors

For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 10 March 1965. He arrived in the United Kingdom on 28 April 2013 and claimed asylum on 20 May 2013. His claim was refused on 13 June 2013 and a decision was made to remove him to Sri Lanka.

2. The appellant appealed against that decision and his appeal was heard in the First-tier Tribunal on 13 September 2013 and was dismissed by First-tier Tribunal Judge Coates in a determination issued on 24 September 2013. Following a grant of permission to the Upper Tribunal, Upper Tribunal Judge Hanson upheld that decision in a determination promulgated on 13 March

2014. However on 20 February 2015 the Court of Appeal ordered, by consent, that UTJ Hanson's decision be quashed and the case remitted to the Upper Tribunal. Thus the appeal came before me.

3. The relevant error of law identified by the Court of Appeal concerned four documents which had been before FTTJ Coates, consisting of magistrates' court records from Sri Lanka setting out court proceedings from 24 May 2002 to 25 March 2013, a magistrates' court summons dated 24 March 2002, an arrest warrant dated 18 February 2013 and an open arrest warrant dated 25 March 2013. The documents were said by the appellant to corroborate his account and to demonstrate that he remained of adverse interest to the Sri Lankan authorities and at risk on return to Sri Lanka. The Court of Appeal found that UTJ Hanson had erred by concluding that there was no error in FTTJ's Coates' consideration of the documents.

4. At the hearing before me, Mr McVeety accepted that the Court of Appeal's decision, whilst stating that the UTJ had erred in law, was also in fact a statement that the FTTJ had erred in law in his failure properly to address the documentary evidence. He therefore conceded that FTTJ Coates' decision had to be set aside. Accordingly I set aside Judge Coates' decision.

5. It was noted that directions issued by the Upper Tribunal on 9 June 2015 indicated that in the event of the First-tier Tribunal's decision being set aside, the matter could proceed to a re-hearing immediately. However Mr McVeety was in some difficulty in that he had not been provided with all relevant papers and, furthermore, indicated the respondent's intention to seek verification of the documents. Ms Harris was also in some difficulty given my indication of apparent discrepancies in the documentation. I pointed out to her that the documents referred to proceedings instigated in 2002 when the appellant was stated to have been arrested and detained and placed on reporting conditions, whereas he had never claimed, in his own account, to have been arrested at that time and had referred only to a period of detention in 1992. In those circumstances, and given also the lack of adequate court time to hear the case *de novo*, as was plainly required, all parties agreed that the appropriate course would be for the matter to be remitted to the First-tier Tribunal to be heard afresh.

DECISION

6. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal, to be dealt with afresh, pursuant to section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Statement 7.2(b), before any judge aside from Judge Coates.

Signed:
Upper Tribunal Judge Kebede

Dated: