



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

Appeal Number: AA/10357/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 29<sup>th</sup> June 2015**

**Determination  
Promulgated  
On 30<sup>th</sup> June 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE MANUELL  
DEPUTY UPPER TRIBUNAL JUDGE MANDALIA**

**Between**

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

Appellant

**and**

**MR. KHANAYA THAYAKARAN**

Respondent

**Representation:**

For the Appellant: Miss Carine Patry, Counsel

For the Respondent: Ms Isherwood; Senior Home Office Presenting Officer.

**DECISION AND REASONS**

1. This is an appeal against a determination by First-tier Tribunal Judge Asjad promulgated on 11<sup>th</sup> March 2015, in which she dismissed an appeal against a decision made by the Secretary of State to refuse an application for asylum, and to remove the appellant from the UK by way of directions under **s10 Immigration and Asylum Act 1999**.
2. Permission to appeal was granted by First-tier Tribunal Judge levins on 9<sup>th</sup> April 2015. The matter comes before us to consider whether or not the

determination by First-tier Tribunal Judge Morris involved the making of a material error of law.

### **Background**

3. The appellant is a Sri Lankan national who claimed asylum on account of his imputed political opinion, namely that he was a member of the LTTE.
4. Five days before the hearing of the appeal before the First-tier Tribunal, the appellant's former representatives, Messrs. Jein Solicitors wrote to the Tribunal requesting an adjournment of the hearing on the basis that the appellant's brother-in-law was scheduled to have an asylum interview on 13 February 2015. It was said that this was potentially relevant to the appellant's claim. That application was refused on 12<sup>th</sup> February 2015.
5. The appellant attended the hearing of his appeal on 16<sup>th</sup> February 2015 alone. Enquiries made by the Tribunal of Messrs. Jein Solicitors established that although the firm still represented at the appellant, no one from that firm could attend the hearing of the appeal because no caseworker was available. The Tribunal was asked to adjourn the hearing to another date to enable the firm to represent the appellant. The First-tier Tribunal Judge put the matter back to the afternoon, to allow the appellant to speak to his representatives and to arrange representation. When the matter was called on again at 2pm, the appellant renewed his application for an adjournment on the basis that he was not feeling well and that he had 'lost his head'. The appellant was concerned that not only had he been let down by his legal representatives but that his witnesses had also not attended. First-tier Tribunal Judge Asjad refused the application for an adjournment, and proceeded to hear the appeal.
6. In her determination, First-tier Tribunal Judge Asjad records;

"... Fairness in this case meant fairness in the proceedings and not simply to the appellant. I took into account that the unsuccessful application for an adjournment had been for the purpose of awaiting the outcome of the brother-in-law's case and not on the basis that the expert report or other evidence was not ready. I explained my decision to the appellant who indicated that he would not answer any questions because he was not in a state of mind to do so.."; [11]
7. In the absence of any further evidence, First-tier Tribunal Judge went on to make findings as to the appellant's membership of the LTTE, his arrest and detention and his Article 8 claim. The appeal was dismissed on all grounds.

### **The Grounds of appeal**

8. The grounds of appeal relied upon by the appellant are two-fold. First, the First-tier Tribunal Judge acted unfairly in all the circumstances in failing to grant the appellant an adjournment. Second, the First-tier Tribunal Judge failed to take into account two material factors in reaching her decision. That is, the risk faced by the appellant, namely that he

continued to be of interest to the Sri Lankan authorities because of his involvement with his brother-in-law and second, the First-tier Tribunal Judge failed to deal with the separate risk category arising from the appellant's diaspora activities.

## **Discussion**

9. We have a considerable degree of sympathy with the position that the First-tier Tribunal Judge found herself in, at the hearing of the appeal. The matters that are set out at paragraphs [2] to [9] of the determination raise serious concerns about the conduct of the appellant's former representatives and the unfortunate predicament that they left both the Tribunal and the appellant in. It is readily understandable in light of the background set out, that the First-tier Tribunal Judge may have considered that a deliberate attempt was being made to delay the hearing of the appeal after an unsuccessful application for an adjournment had been made.
10. **Rule 2 The Tribunal Procedure Rules (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014** sets out the overriding objective and the parties' obligation to cooperate with the Tribunal. Unfortunately the appellant's former representatives failed to have any regard at all to their professional obligations. The overriding objective of the rules is to enable the Tribunal to deal with cases fairly and justly. Dealing with a case fairly and justly includes dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal. It also requires the Tribunal to ensure, so far as practicable that the parties are able to participate fully in the proceedings.
11. The conduct of the appellant's former representatives left the appellant who was seeking to appeal a decision that refused a claim for asylum, in a position where he had no choice but to attend the hearing of the appeal on his own. Neither the importance of the appeal for the appellant, nor the fact that the appellant felt unable to take part in the hearing of the appeal can be underestimated. We also note that the appellants witnesses had failed to attend the hearing and that the First-tier Tribunal Judge records at [9] that;
 

"... in answer to my question of why the appellant thought his witnesses would attend the future hearing when they had not attended today's hearing, the appellants could give no reply. This led me to conclude that they had been told not to attend hearing because it would not be going ahead."
12. If it is correct that the appellant's witnesses had been informed by the appellant's former representatives that they need not attend the hearing of the appeal because it would not be going ahead, that placed the appellant at a particular disadvantage. The appellant's case is that he continues to be of interest to the Sri Lankan authorities because of his

involvement with his brother-in-law. One might reasonably therefore expect that the appellant's brother-in-law would be called to give evidence. We note that the appellant's brother-in-law had attended the hearing before us today.

13. We were informed by counsel for the appellant that he has now instructed Messrs Kanaga Solicitors to act on his behalf and we were shown a letter dated 9<sup>th</sup> March 2015 sent by the appellant to his solicitors, in which he states "...I am making a formal complaint about Jein Solicitors to the Solicitors Regulation Authority."
14. It seems to us that the conduct of the appellant's former representatives placed the appellant at a particular disadvantage. The Tribunal should not be railroaded into granting an adjournment unless the interest of justice and the demands of fairness require an adjournment in the particular circumstances. We do however consider that the background to the application for an adjournment that is set out in the determination, suggests that it was the conduct of the appellant's former representatives that placed the Tribunal and the appellant in particular difficulty. Their conduct is now the subject of a complaint to the Solicitors Regulation Authority. It seems to us that against the particular background set out, the First-tier Tribunal Judge erred in law in failing to grant an adjournment.
15. We allow the appeal accordingly on the grounds of procedural unfairness. In the circumstances we do not need to consider the second of the appellants grounds of appeal.

Decision:

16. The making of the decision of the First-tier Tribunal did involve the making of an error of law capable of affecting the outcome of the decision.
17. We have carefully considered the appropriate course to take. Because of the procedural unfairness, the matter should be remitted back to the First-tier Tribunal for hearing afresh.
18. During the course of the hearing before us we were informed that the Secretary of State has made a decision upon the claim for asylum made by the appellant's brother-in-law, Mr Sivarupan Markandu (born 30.03.76). The claim for asylum has been refused, and is the subject of an appeal before the First-tier Tribunal that is to be heard at Taylor House on 21<sup>st</sup> August 2015 (AA/04962/2015). We were informed by counsel for the appellant that the appeal is ready for hearing. In the circumstances we direct that the hearing of the appellant's appeal before the First-tier Tribunal, be heard together with the appeal of his brother-in-law.

Signed:

Date:

Deputy Upper Tribunal Judge Mandalia