



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

Appeal Number: AA/08339/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 18 April 2016**

**Decision & Reasons  
On 29 July 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

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

Appellant

**and**

**MOHAMED RIFFKHAN AZOOK  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr E Tufan, Senior Presenting Officer

For the Respondent: Mr M Paramjorthy, Counsel, instructed by S Satha & Co  
Solicitors

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred as the Claimant.

2. The Claimant, a national of Sri Lanka, date of birth 20 April 1979, appealed against the Secretary of State's decisions dated 13 May 2015 to refuse to grant him leave to remain and to refuse him asylum with reference to paragraph 336 of the Immigration Rules HC 395 as amended (the Rules).
3. That appeal came before Designated Judge of the First-tier Tribunal J M Lewis (the judge) who, in a decision promulgated on 1 December 2015, allowed the appeal under the Refugee Convention and with reference to Article 3 ECHR.
4. The Secretary of State sought permission to appeal that decision which was refused by Miss C M Martin, Upper Tribunal Judge sitting as a Judge of the First-tier Tribunal on 5 February 2016. The application was renewed on 19 February 2016 and permission was given by Upper Tribunal Judge Freeman on 29 February 2016.
5. The issues can be divided into two. First, did the judge make an error of law in refusing an adjournment application for the purposes of the Secretary of State adducing, whenever it became available, a copy of a document verification report (DVR) which related to there being a warrant for arrest of the Claimant, dated 2 October 2009, and whether or not there was still an outstanding warrant.
6. The judge considered the application and decided for reasons given that there had been a significant period of time between the asylum interview and the Secretary of State's belated application, shortly before the hearing before the judge on 23 November 2015, for an adjournment in order to enable the Secretary of State to obtain that DVR. The judge's analysis of that issue is to be found at paragraphs, 4, 5 and 6 of the s decision. Essentially the criticism the judge made, in the light of the submissions on behalf of the Claimant, by Mr Paramjorthy, was that the matter that needed to be looked at in the round. The judge took into account the claimant's mental health, of which there was medical evidence, the

lengthy listing period and the absence of effort to obtain the DVR at an earlier stage. Not least when it had been open to the Secretary of State to obtain the DVR for about six or more months, yet had only recently done so. The judge concluded that justice would not be served by an adjournment and the case proceeded to the outcome identified.

7. Thus the issue is whether or not having regard to the overriding objective under the Tribunal Procedure Rules 2014 the case was fairly and justly considered. I conclude that the judge, although he does not say so plainly, had in mind the issue of the justice of proceeding and inevitably the fairness of doing so.
8. In considering this matter I fully take into account the decision of the Upper Tribunal in *Nwaige* [2014] UKUT 478 and I also take into account in the overriding objective paragraph 2(4) that the parties are expected to help the Tribunal to further the overriding objective and to cooperate with the Tribunal generally. There was ultimately, despite Mr Tufan's best efforts, a significant period when the Secretary of State was in the possession of the relevant documents, now said not to be genuine as a result of a DVR, dated 18 January 2016.
9. In the circumstances therefore I conclude that the public does have a significant interest in the effective performance of both the appeal system and to that extent there is nothing raised by the cases of *YD (Turkey)* [2006] EWCA Civ 52 or even in the light of *SS (Congo) and Others* [2015] EWCA Civ 387 which affects the procedural fairness issue. I therefore conclude that under the overriding objective, particularly 2(1) and (2) of the First-tier Tribunal Procedure Rules that the judge was entitled to reach his decision. I find there was no procedural error of law in him concluding that it was appropriate for the appeal hearing to continue.

10. I have some sympathy for the Secretary of State's position but ultimately, even if there are complications in checking documents, as Mr Tufan rightly submits, the fact is there was ample opportunity for such enquiries to be put in place between May 2015 and the hearing in November 2015. Furthermore there would have been nothing to prevent the Secretary of State in advance of the hearing seeking an adjournment by reference to enquiries in train but as yet unanswered, particularly if the DVR request had been made promptly after the documents had been provided. Ultimately it may well be the Secretary of State has at least one other route to address the circumstances of the Appellant, which no doubt is a matter solely for the Secretary of State at this stage. If there is recourse elsewhere that is likely to be before another court.
11. If DVR is established as correct that may affect whether the appellant is entitled to protection. The Secretary of State can still act reliant on misrepresentations or a claim of fraud to obtain refugee status. Given there was no procedural error of law in refusing the adjournment and the DVR did not exist at the date of hearing nor were its contents the Secretary of State does not establish the judge made any mistake of fact. The decision of the Original Tribunal discloses no material error on this issue and the decision stands.

### **Notice of Decision**

12. The Secretary of State's appeal is dismissed.
13. No anonymity order was previously made nor is one appropriate now.

Signed

Date 27 July 2016

Deputy Upper Tribunal Judge Davey

P.S. I regret the delay in promulgation which is due to the file being misplaced.