



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

Appeal Number: AA/09489/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 13th April 2016**

**Decision & Reasons Promulgated
On 23rd May 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR RAMESH PERUMAL
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr A Jafar (Counsel)

For the Respondent: Ms Ashika Fijiwala (HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Davey, promulgated on 18th November 2015 following a hearing at Taylor House on 14th July 2015. In the determination, the judge allowed the appeal of the Appellant on refugee grounds and Article 8 ECHR, whereupon the Respondent Secretary of State, subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Sri Lanka, who was born on 4th August 1972. He appeals against the decision of the Respondent Secretary of State, dated 23rd September 2014, rejecting the Appellant's claim for asylum on the basis that if returned to Sri Lanka, he would face mistreatment due to his imputed political opinion, as he has been accused of being an LTTE supporter by the Sri Lankan authorities, and rejecting his claim for humanitarian protection for the same reasons.

The Judge's Findings

3. The judge had before him a situation whereby there was a Document Verification Report ("DVR"), which did not bear the name of the Appellant, but bore the name of someone else. This raised the issue before the Tribunal of a person, other than the Appellant himself, having been identified as having submitted a false claim. The judge held that the Secretary of State had previously given an undertaking to make a fresh decision with respect to the Appellant, given the circumstances of this case, by 13th October 2015, and that if this was not done by the specified date, then the judge would allow the appeal "on the basis that the Respondent was no longer interested in maintaining the decision of 23rd September 2014". At the hearing of 14th July 2015, the judge went on to observe that, "no new asylum decision has been made or served. This was confirmed by the Specialist Appeals Team by e-mail dated 19th October 2015 to the IAC" (see paragraph 1).
4. In the circumstances, the judge went on to say that, "as set out above there being no decision I am satisfied, on the errors of law and failures by the Respondent (noted in the ROP for 14th July 2015), that the Grounds of Refusal are not maintained by the Respondent" (paragraph 2).
5. Given that this was the case, the judge ended the determination with the words that, "the appeal on Refugee Convention grounds and Article 3 ECHR grounds is allowed" (see paragraph 2).

Grounds of Application

6. The grounds of application state that the judge did not have jurisdiction to allow the Respondent to withdraw the decision on a conditional basis (by consent), the conditions being that a fresh decision would be made by the immigration authorities by 13th October 2015, and that if the Respondent failed to make a fresh decision, that the appeal would be allowed on the basis of the Respondent "was no longer interested in maintaining the decision of 23rd September 2015".
7. Permission to appeal was granted on 8th December 2015 on the basis that it was arguable that "despite those errors and failures Judge Davey should have made substantive findings on the asylum and Article 3 issues and

that without doing so, the basis on which he allowed the appeal is unclear” (paragraph 4).

Submissions

8. At the hearing before me on 13th April 2016, Ms Fijiwala, appearing as Senior Home Office Presenting Officer on behalf of the Respondent, handed up a typed note from the Home Office Presenting Officer on the day in question before Judge Davey. This note stated that an adjournment request had been made by Mr Ayodele before Judge Davey after the Appellant’s representative, Mr Kumudusena of Lyon Legal, had come into court and claimed that the verification report had an incorrect name on it.
9. The judge had refused the adjournment request but advised that the decision could be withdrawn and a new decision made in the light of court documents which were provided after the interview. The Presenting Officer, Mr Ayodele, after taking instructions, informed the judge that a fresh decision would be made, with the decision of 23rd September 2014, being withdrawn. The judge, according to this note, proceeded to direct that he “would not allow the Respondent authority to withdraw the decision until 13th October 2015, which was three months after the date of this hearing, by which time he would expect that they file and serve a fresh decision, otherwise he would allow the appeal outright”.
10. Mr Ayodele states in this note that he had questioned the judge about the propriety of such a course of action because it resulted in both the refusal of an adjournment request by the Respondent Secretary of State, as well as a decision whereby the judge would “hold the withdrawal” for three months. Mr Ayodele maintains in the note that he did not agree that a fresh decision would be made by 13th October 2015. He also did not agree that if a new decision had not been filed and served, then the Secretary of State for the Home Department would no longer be interested in maintaining the decision of 23rd September 2015.
11. On the basis of this note, Ms Fijiwala submitted before me that the position was as it had always been, namely, that the decision of 23rd September 2014 was no longer being relied upon, and the Secretary of State would be making a fresh decision.
12. For his part, Mr Jafar submitted that he could not disagree with this proposition, and not least because the judge had ended his determination with the words, “the appeal on Refugee Convention grounds and Article 3 ECHR grounds is allowed” (paragraph 2) without making findings of fact in relation to why the appeal was allowed in this manner. On the other hand, it remained the case that the DVR was flawed and could not be relied upon, and this rendered nugatory the decision of 23rd September 2015, which had already been accepted by the Respondent Secretary of State as

a decision that could not presently be relied upon, and so the decision before the Secretary of State must remain outstanding.

Error of Law

13. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should allow this appeal. The reason is that the appeal could not have been allowed on Refugee Convention grounds and Article 8 ECHR grounds without proper findings of fact being made in relation to both these heads of claim.

Re-making the Decision

14. I re-make the decision on the basis of the original judge's determination, the evidence before the judge, and the submissions that I have heard today. I am allowing this appeal to the extent that the decision of the Secretary of State dated 23rd September 2014 is withdrawn, and a new decision remains outstanding, because as Judge Davey made clear, "as set out above there being no new decision, on the errors of law and the failures by the Respondent (noted in the ROP for 14th July 2015), that the Grounds of Refusal " cannot be sustained.
15. There is an error of law in the Grounds of Refusal insofar as reliance is placed upon a DVR that does not carry the name of the Appellant. I direct that a fresh decision be made in a fair and timeous manner as possible. This appeal is allowed to the extent that the decision by the Secretary of State remains outstanding.

Notice of Decision

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is allowed to the extent that this matter is remitted back to the Secretary of State for a decision with respect to this Appellant's claim because the decision of 23rd September 2014, was not in accordance with the law.
17. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21st May 2016