



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

Appeal Number: AA/12467/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 5 December 2017**

**Corrected, signed and sent to  
Promulgation on 4<sup>th</sup> January 2018.**

**Decision &  
Promulgated  
On 8 January 2018**

**Reasons**

**Before**

**Upper Tribunal Judge Chalkley**

**Between**

**T. W.  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

*For the Appellant: Mr R Spurling, Counsel instructed by David Benson Solicitors*

*For the Respondent: Mr Tarlow, Home Office Presenting Officer*

**REASONS FOR FINDING AN ERROR OF LAW**

1. The appellant is a citizen of Sri Lanka who was born on 23<sup>rd</sup> June 1983. He made application to the Secretary of State for recognition as a refugee and on 14<sup>th</sup> September 2015 the respondent refused his application.

## **Immigration History**

2. On 7<sup>th</sup> January 2010 the appellant applied for a Tier 4 Student General visa. This was refused in the same month and a further application was made on 30<sup>th</sup> May, 2010. This was granted. On 14<sup>th</sup> August 2010, the appellant arrived in the United Kingdom. The appellant's leave was curtailed on 24<sup>th</sup> May, 2012 when his college stopped sponsoring him because of his poor attendance. On 30<sup>th</sup> September 2014, the appellant made a further Tier 4 Student application, which was refused on 8<sup>th</sup> January 2015. The appellant appealed, but this appeal was dismissed by the First-tier Tribunal on 28<sup>th</sup> August 2015.
3. On 14<sup>th</sup> February 2015 the appellant left the United Kingdom apparently intending to travel to Canada. Whilst in Martinique in France, he was detained by the French authorities in possession of a forged passport as a result of which he was then, after several days, deported to Sri Lanka. On 8<sup>th</sup> March, 2015, the appellant then left Sri Lanka and travelled to Dohar before travelling on to Amsterdam and then to the United Kingdom in possession of a false Dutch passport in the name of someone else. He arrived in the United Kingdom on 10<sup>th</sup> March 2015 and made his claim for asylum on 12<sup>th</sup> March 2015. His application was refused.
4. The appellant appealed and was heard by the First-tier Tribunal by Judge Lucas on 23<sup>rd</sup> March 2016.
5. That appeal determination was subsequently set aside by the Upper Tribunal with the matter remitted back to the First-tier for a de novo hearing.

## **The decision of the First Tier Tribunal**

6. The matter came for hearing on 22<sup>nd</sup> June, 2017 at Taylor House before First-tier Tribunal Judge N M Paul. Judge Paul heard the appeal and dismissed it. Unfortunately, in doing so he fell into serious error of law.
7. The grounds asserted that in four paragraphs the judge dismissed the appellant's appeal focusing on the appellant's immigration history and his failure in the past to claim asylum when he was earlier in the United Kingdom. It also urged that he committed further errors of law in:-
  - a. failing to engage with the expert evidence, relating to claims by the appellant that he had on two occasions been tortured by burning;
  - b. and failing to make a finding in respect of a claim that the appellant's brother was said to have been beaten to death.
8. At the hearing before me, Mr Harlow indicated that he agreed that the determination could not stand and should be set aside. Having read the determination, I agreed with him.

- 9 Mr Spurling pointed out the matter had previously been remitted by the Upper Tribunal to the First-tier Tribunal and, yet here we are again with a determination which has to be set aside.
10. I have given consideration to retaining this appeal in the Upper Tribunal, but given the inevitable lengthy delays which will occur if I were to adjourn the matter for hearing myself (sit I now only sit part-time), I believe it to be in the interests of justice that I should remit this to the First-tier Tribunal for a hearing de novo before a fresh judge other than Judge Lucas or Judge Nicholas M Paul. Two hours should be allowed for the hearing of the appeal and a Sinhalese interpreter should be available.

**Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

***Richard Chalkley***  
**A Judge of the Upper Tribunal**