



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/04607/2017**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 7 December 2017

Promulgated

On 4 January 2018

Before

**THE HONOURABLE LADY RAE
UPPER TRIBUNAL JUDGE LANE**

Between

**VV
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Haywood, instructed By Wilson Solicitors

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, VV, is a male citizen of Sri Lanka and was born in 1983. The appellant claimed asylum in January 2015 but his application was refused by the Secretary of State by a decision dated 3 February 2015. He appealed to the First-tier Tribunal (Judge M A Khan) which dismissed his appeal in a decision promulgated on 7 September 2017. The appellant now appeals, with permission, to the Upper Tribunal.
2. We find that the decision of the First-tier Tribunal falls to be set aside. We have reached that decision for the following reasons. First, this appellant

has made two previous appeals to the First-tier Tribunal. The initial decision had been set aside by the President of the First-tier Tribunal following the judgment in the Court of Appeal in *Detention Action* [2015] EWCA Civ 840. Judge Khan at [29] considered that the decision of the previous Tribunal had a “baring (*sic*) on the appellant’s credibility”. Judge Khan recorded that the decision had been set aside by the President of the First-tier Tribunal but he stated that, “credibility findings by Judge Howard remain unchallenged.” The matter was heard by First-tier Tribunal Judge Hussain on 28 January 2016. In his decision dated 5 April 2016 Judge Hussain at paragraph 9 reinstates Judge Howard’s findings and the same are reproduced here”. Judge Khan then proceeded to set out a number of paragraphs which contain Judge Howard’s findings of fact as “reinstated” by Judge Hussain.

3. Judge Khan’s approach is problematic. So far as we and the parties are aware, none of the findings of fact in either the decision of Judge Howard or Judge Hussain survived the setting aside of their decisions. It is not clear to us upon what basis Judge Khan considered it appropriate to rely on those previous findings of fact. Matters were further complicated by Judge Khan’s statement at [44]:

The appellant has already been found to be an untruthful witness by Judge Howard and he has continued to add evidence in his fresh claim and has exaggerated his claim in order to prolong his stay in the UK.

4. Whilst Judge Khan has made findings of fact on the “fresh” evidence of the appellant, it is also apparent that he has placed reliance upon the findings of the previous Tribunals which had been set aside. Ms Everett, who appeared for the Secretary of State, acknowledged that it was difficult, if not impossible, to determine to what extent Judge Khan had relied upon the previous (vitiating) findings of fact in concluding that the appellant’s appeal should be dismissed. In our opinion, Judge Khan fell into legal error by placing any reliance upon the previous findings of the earlier Tribunals. He should, instead, have conducted an assessment of the evidence *de novo*.
5. In the circumstances, we set aside Judge Khan’s decision. Given the nature of the legal error, there was no alternative but for there to be a new fact-finding exercise which is better conducted in the First-tier Tribunal to which the appeal is now returned.

Notice of Decision

6. The decision of the First-tier Tribunal which was promulgated on 7 September 2017 is set aside. None of the findings of fact shall stand. The appeal is returned to the First-tier Tribunal (not Judge M A Khan) for that Tribunal to remake the decision.

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.

Signed

Date 3 January 2018

Upper Tribunal Judge Lane