



**Upper Tribunal
(Immigration and Asylum Chamber)
PA/13372/2017**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at North Shields
On 14 September 2018**

**Decision & Reasons
Promulgated
On 01 October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPLEYARD

Between

**S S
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Jegarajah, Counsel.

For the Respondent: Mr Diwnyz, Home Office Presenting Officer.

DECISION AND REASONS

1. The Appellant is a citizen of Sri Lanka who appealed against a decision of the Respondent refusing his application for international protection. The Appellant's application had been refused as the Respondent was not satisfied as to his credibility. The Appellant appealed and following a hearing, and in a decision promulgated on 13 February 2018, Judge of the First-Tier Tribunal Cope dismissed the Appellant's appeal.
2. The Appellant sought permission to appeal which, on 7 March 2018, was granted by Judge Adio. His reasons for so granting were: -

"1. The Applicant seeks permission to appeal in time against a decision of the First-Tier Tribunal (Judge Cope) who in a decision

promulgated on 13th February 2018 dismissed the Appellant's appeal on asylum, humanitarian protection and human rights grounds. The very long Grounds of Appeal mostly state that the Judge failed to take account of relevant considerations. However, the important ground which has a bearing on most of the other grounds is Ground 8 in which Counsel argues that the Judge failed to apply the Presidential Guidance.

2. At paragraph 5 of the decision the Judge noted that the representatives had included a copy of the joint Presidential Guidance Note No 2 of 2010 for the Immigration and Asylum Chambers of the First-Tier Tribunal and the Upper Tribunal. The Judge at paragraph 6 stated that the matter would be dealt with below, referring to matters pointed out at paragraph 5. It is not clear from the Judge's decision whether the Joint Presidential Guidance was correctly applied. There is no finding as to whether or not the Applicant was a vulnerable witness. I accept that the absence of this finding is that there has been no distinction between evidence which can be regarded as unreliable because of his mental health disorder and evidence which is incredible because he is lying, as rightly pointed out at paragraph 42 of the grounds of application for permission to appeal. I find that all grounds are arguable, but more importantly based on the grounds at paragraph 40 to 42. There is an arguable error of law due to the failure to apply correctly the Presidential Guidance Note and the effect that would have had on the findings of fact of the Judge."

3. Thus, the appeal came before me today.
4. At the outset both representatives referred me to ground 5 of the Appellant's application for permission to appeal where it is argued that the Judge materially erred in making findings contrary to country guidance and with particular reference to paragraphs 82 to 83 of his decision. There he considers it "highly implausible" that the Appellant's agent would help him in his release from the authorities and was able to assist in the Appellant's departure through the airport on his own passport and that the Appellant's release had been achieved through bribery and departure through the airport without apprehension does not indicate lack of State interest. I was referred to paragraph 146 of the authority in **GJ and Others (post-civil war: returnees) Sri Lanka CG [2013] UKUT 00319 (IAC)** where there is reference to the use of bribery in these circumstances.
5. Both representatives urged me to accept that not only was this a material error but also others existed within the grounds. That said ground 5 alone was such that it was conceded that the Judge's decision could not stand and that fresh findings of fact were needed.
6. I share that analysis.
7. The decision contains a material error of law.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Cope.

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
2018
Deputy Upper Tribunal Judge Appleyard

Date: 24 September