



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

Appeal Number: PA/01334/2015

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 3<sup>rd</sup> January 2019**

**Decision & Reasons Promulgated  
On 14th June 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**D R S C  
(ANONYMITY DIRECTION MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Anzani (Counsel)

For the Respondent: Mr T Lindsay (Senior HOPO)

**DECISION AND REASONS**

1. This was an appeal against a determination of First-tier Tribunal Judge C A S O'Garro, promulgated on 26<sup>th</sup> October 2018, following a hearing at Hatton Cross on 27<sup>th</sup> September 2018. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant 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, and was born on 11<sup>th</sup> October 1970. He appealed against the decision of the Respondent dated 17<sup>th</sup> September 2015 refusing him (together with his wife and his son) asylum and humanitarian protection, pursuant to paragraph 339C of HC 395.

### **The Appellant's Claim**

3. The essence of the Appellant's claim is that if he is returned back to Sri Lanka he will be arrested and detained because he used to run a successful security business, supplying security guards to various businesses. In 2013 he was approached by the chairman of Avant Garde Security Services Ltd, which is a leading security provider, to the Government of Sri Lanka Security Services, to source for use by Avant Garde, security guards, ex-marines and ex-navy personnel. Many of the people that were recruited were young ex-servicemen, who may have been deserters, but he knew that he was not legally allowed to recruit deserters, and never actually knowingly did so himself. However, an investigation by the authorities led to the revelation that some of the ex-servicemen he recruited for Avant Garde may have been deserters. The CID visited him on three occasions in January 2015 and during this he was threatened. By March 2015 he had been questioned. Fearing that he may be arrested and detained he decided to leave Sri Lanka.

### **The Judge's Findings**

4. The judge rejected the Appellant's claim on the basis that the Appellant, whose claim was based upon running a security firm, which provided security personnel for the use by the government, had provided no evidence that he had ever done any business with Avant Garde. The judge also held that there was a general lack of documentation in support of the Appellant's claim (see paragraph 59).
5. The appeal was dismissed.

### **The Hearing**

6. At the hearing before me on 3<sup>rd</sup> January 2019, Mr Lindsay, appearing as Senior Home Office Presenting Officer on behalf of the Respondent Secretary of State, conceded that there was an error in the judge's determination, because documentation, which the judge held had not been provided, had indeed been provided by the Appellant and this being so, he would have to accept that there was an error. In this respect, he relied upon the Rule 24 response by the Respondent, which accepted that the judge had fallen into error on account of a mistake of fact, the Rule 24 response being dated 7<sup>th</sup> December 2018, which stated that the Tribunal Judge "has overlooked potentially material evidence in reaching their conclusions on the credibility of the Appellant's claim" (see paragraph 2).

7. On this basis, Ms Anzani stated that there was nothing further for her to add, save to say that, in remitting this matter back to the First-tier Tribunal, it should not go before Judge C A S O'Garro or before Judge Wylie, because both these judges had previously heard this appeal, which had a long history, but that this aside, there were no further directions that needed to be given.

### **Error of Law**

8. 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 set aside the decision and remake the decision. I remake the decision on the basis of Rule 7.2(b) of the Practice Directions, and direct that the matter be remitted back to the First-tier Tribunal, to be heard by a judge other than Judge O'Garro and Judge Wylie.

### **Notice of Decision**

This appeal is allowed.

An anonymity order is made.

### **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

Deputy Upper Tribunal Judge Juss

21<sup>st</sup> January 2019