



IAC-BH-PMP-V2

**Upper Tribunal  
(Immigration and Asylum Chamber) Appeal Numbers: HU/01534/2020  
(V)**

**THE IMMIGRATION ACTS**

**Heard at by Skype for business  
On the 5 May 2021**

**Decision & Reasons Promulgated  
On the 17 May 2021**

**Before**

**UPPER TRIBUNAL JUDGE REEDS**

**Between**

**PRAKASH SUTHARSHAN  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**AND**

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

Respondent

**Representation:**

For the Appellant: Mr P. Georget, Counsel instructed on behalf of the appellant.

For the Respondent: Mr Diwnycz, Senior Presenting Officer

**DECISION OF THE UPPER TRIBUNAL PURSUANT TO RULE 40(3)(a) and  
(b) OF THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008**

1. The appellant appeals with permission from the decision of the First-tier Tribunal (Judge Wyman) dismissing his appeal against the respondent's decision to refuse him leave to remain on human rights grounds.

2. The hearing took place on 5 May 2021, by means of *Skype for Business*. The advocates attended remotely via video. There were no issues regarding sound, or any technical issues and I am satisfied both advocates were able to make their respective cases by the chosen means.
3. Permission to appeal was granted by Upper Tribunal Judge Martin on 18 January 2021 on the basis that the First-tier Judge arguably erred in law by failing to consider at all the considerable procedural history regarding the appellant's attempts to register his marriage and that he may meet the requirements of Paragraph 319C of the Immigration Rules.
4. By a Rule 24 Reply dated 22 January 2021, the respondent indicated that he does not oppose the application for permission to appeal and invited the Upper Tribunal to set aside the decision and to determine the appeal by with a fresh continuance hearing. This had not been received by the appellant's solicitors.
5. When invited to make submissions on the further disposal of the hearing, Mr Georget submitted that the appropriate course was for a remittal to the FtT for the Article 8 appeal to be reheard afresh and to include any updating evidence. Mr Diwnycz agreed that given the issues a remittal would be the proper course to take. Both parties indicated their consent to the decision under the Procedure Rules.
6. Pursuant to rule 40(3) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended), the Upper Tribunal is not required to provide written reasons for its decision under paragraph 40(2)(a) of the Rules, where the decision is made with the consent of the parties (rule 40(3)(a)), or the parties have consented to the Upper Tribunal not giving written reasons (rule 40(3)(b)).
7. The requirements of sub-paragraphs 40(3)(a) and 40(3)(b) of the Rules are met. I am satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.
8. I therefore set aside the decision of the First-tier Tribunal, with no findings of fact preserved and a fresh hearing upon his human rights appeal shall take place. The decision in this appeal will be remitted to the First-tier Tribunal on a date to be fixed in accordance with the following directions:
  - (1) It is directed that the appeal shall be listed for a hearing on a date to be fixed before the First-tier Tribunal (Hatton Cross), London).
  - (2) Counsel's availability should be taken account of when listing the appeal.

- (3) A Sinhalese interpreter may be required (the appellant's solicitors to confirm in writing).

**Notice of Decision.**

The decision of the First-tier Tribunal involves the making of an error on a point of law and therefore the decision is set aside and is remitted to the First-tier Tribunal in accordance with the directions set out above.

Signed Upper Tribunal Judge Reeds  
Dated 5 May 2021