



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: PA/10725/2017

THE IMMIGRATION ACTS

Heard at Field House
On 20 July 2018

Decision & Reasons Promulgated
On 21 August 2018

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**[T P]
(~~NO ANONYMITY DIRECTION MADE~~)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms B Jones, Counsel instructed by S Satha & Co

For the Respondent: Mr N Bramble, Home Office Presenting Officer

DECISION AND DIRECTIONS

1. The appellant, a national of Sri Lanka, has permission to challenge the decision of Judge Hetherington sent on 9 April 2018 dismissing his appeal against the decision made by the respondent dated 11 October 2017 refusing his protection claim.
2. It is unnecessary to set out the grounds or to analyse them in any great detail because the parties were in agreement with me that the judge's decision is vitiated by legal error requiring it to be set aside. Both parties agree that the judge failed to make

findings on the evidence given orally by the appellant's wife at the hearing or to examine to what extent her own (outstanding) asylum claim was relevant to the appellant's. They also agree that the judge failed to correctly apply Devaseelan principles. In a previous appeal the appellant had been unsuccessful but in the written decision of the judge dated 9 April 2003 it was accepted that the appellant had been detained in November 1999 as someone considered to have assisted the LTTE. Yet at paragraph 10.9 the judge said she had reached the conclusion that "the appellant should not be regarded as having given a truthful account about any part of the claim".

3. I should mention that the appellant's grounds also contended that the judge erred in refusing to adjourn the hearing to await the respondent making a decision on the appellant's wife's pending asylum application. I do not consider the judge erred in refusing to adjourn for that reason. The fact that a close family member has an outstanding asylum application is not, without more, a valid reason to adjourn the appeal of someone who has had a negative decision. The appellant was permitted to adduce evidence from his wife in the context of his appeal; he suffered no unfairness as a result.
4. However, I do not consider (despite Mr Bramble's submission to the contrary) that the judge erred in refusing to adjourn so that the respondent could comply with a Tribunal direction given earlier that she produce all the documents specified in paragraph 4 of the decision letter. It was the Secretary of State's own policy to produce such enclosures within 40 days. In December 2017 the Tribunal granted the appellant an adjournment in order, inter alia, for the respondent to produce precisely these enclosures. Prior to the date of the hearing reset for 28 March 2018 the appellant's new solicitors had written to his previous solicitors asking them to forward these enclosures, but by the date of the hearing they had still not received all of the specified documents. The lack of full documentation at the date of the hearing was not the fault of the appellant and the judge was wrong to portray it as such.
5. For the above reasons I set aside the decision of the FtT judge for material error of law.
6. Since none of the judge's findings of fact can be preserved, I remit the case to the FtT, not before Judge Hetherington.

Direction

I make these directions:

1. That the case be first set down for a CMR.
2. That the respondent produce to the appellant's solicitors with copies to the First tier Tribunal within 21 days of receipt of this decision the enclosures specified at paragraph 4 of her refusal decision.

In making this direction I do not necessarily accept that the appellant's solicitors are blameless as regards the lack of documentation – but I consider it the most sensible practical step likely to ensure there is no further issue regarding adjournment.

3. No anonymity direction is made.

Signed:

Date: 7 August 2018

A handwritten signature in black ink that reads "H H Storey". The letters are cursive and connected, with a long horizontal stroke underlining the name.

Dr H H Storey
Judge of the Upper Tribunal