



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

Appeal Number: AA/14405/2009

THE IMMIGRATION ACTS

**Heard at : Field House
On : 24 September 2013**

**Determination
Promulgated
On : 10 October 2013**

Before

**UPPER TRIBUNAL JUDGE ESHUN
UPPER TRIBUNAL JUDGE KEBEDE**

Between

**VS
(Anonymity Direction made)**

and

Appellant

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms S Anzani, instructed by Nag Freshlaw Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Sri Lanka born on 4 January 1984. She arrived in the United Kingdom on 15 August 2009, having left Sri Lanka the previous day,

and claimed asylum at the airport. Her claim was refused on 4 November 2009 and she was refused leave to enter.

2. The appellant's appeal against that decision was heard in the First-tier Tribunal on 12 April 2010 and was dismissed by Judge Blandy on 28 April 2010. Permission to appeal to the Upper Tribunal was granted on 17 May 2010 and on 16 December 2010 Deputy Upper Tribunal Judge Baird set aside the decision of the First-tier Tribunal on the basis that it contained errors of law. She directed that the decision be re-made with no findings preserved and adjourned the matter for a resumed hearing on another day.

3. As a result of new issues arising by way of Article 8 of the ECHR on the basis of the appellant's relationship with a Sri Lankan national and the birth of their daughter on 21 August 2011, the appeal was adjourned on several occasions for further evidence. Clarification was sought as to the appellant's partner's immigration status and further evidence sought in regard to his previous failed asylum claim and appeal and application as a dependent relative under the Immigration (European Economic Area) Regulations 2006 ("the EEA Regulations"). Following various adjournments on that basis the appeal was transferred by way of a Transfer Order, owing to Judge Baird's lack of availability and subsequently in order to await a copy of the papers in the appellant's partner's asylum claim, the decision in his application for permanent residence under the EEA Regulations and a copy of further written representations made on his behalf on 17 March 2004.

4. The appeal then came before us on 24 September 2013. Unfortunately, due to the last minute cancellation by the (female) Sri Lankan interpreter and the lack of availability of a replacement at short notice, the appeal had to be adjourned once again. All parties were in agreement with that course, given that the appellant did not feel comfortable proceeding with a male interpreter. Furthermore, all parties agreed that it was appropriate, in view of the new issues arising and the fact that there was to be a fresh hearing with no preserved findings, that the appeal be remitted to the First-tier Tribunal.

5. With regard to the outstanding representations made on behalf of the appellant's partner, Ms Everett accepted that there had been no response by the UKBA, but assumed that that was because he had been granted a residence permit in the meantime under the EEA Regulations (albeit that that had since expired and his application for permanent residence refused). She considered, however, that that was not a reason to prevent the appeal from proceeding. Ms Anzani was in agreement.

DECISION

6. The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision has been 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 Statement 7.2(b), on the grounds that the nature or extent of any judicial fact

finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005. However, in view of the issues involved in the appeal, we make such an order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Directions

1. The appeal is to be listed for half a day before an all-female court, with a female Tamil interpreter.
2. Any further documentary evidence relied upon by either party is to be filed with the Tribunal and served upon the other party no later than five days before the hearing date.

Signed
Date

Upper Tribunal Judge Kebede