



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

Appeal Number: AA/02285/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 17 October 2014**

**Decision and Reasons
Promulgated
On 15 December 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MS (SRI LANKA)

and

Appellant

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Palmer, Counsel instructed by CK Law Solicitors

For the Respondent: Mr Duffy, Specialist Appeals Team

DECISION AND REASONS

1. The appellant has successfully appealed on error of law grounds to the Upper Tribunal from the determination of the First-tier Tribunal (Judge Barker sitting at Hatton Cross on 12 May 2014) dismissing the appellant's appeal against the decision of the respondent refusing to recognise him as a refugee, or as otherwise requiring international protection. This decision relates to the forum in which the appeal should be reheard.

The Error of Law Decision

2. On 4 September 2014 Upper Tribunal Judge Peter Lane found that the decision of the FTT was legally flawed and required to be set aside, with the result that a fresh hearing was required on all issues:

The respondent's rule 24 notice dated 18th July makes it plain that she conceded that the determination of the First-tier Tribunal is wrong in law for the reasons set out in the appellant's grounds of application for permission to appeal; namely, giving legally insufficient or otherwise flawed reasons for finding the appellant not credible and acting in a procedurally unfair way as regards the assessment of the medical evidence.

The Decision on Forum

3. Judge Lane directed that the appeal should be re-heard in the Upper Tribunal with a time estimate of 2 hours. Hence it came to be listed before me. However the parties were in agreement that it should be remitted to the First-tier Tribunal to be re-heard de novo by any FTT judge apart Judge Barker with a time estimate of 3 hours.
4. Having looked into the matter, I was satisfied that Judge Lane's direction was engendered by an ambiguous Rule 24 response and by confusion on the part of the appellant's solicitors; and that the more appropriate forum for remaking the decision was the First-tier Tribunal.
5. On behalf of the respondent, Mr Duffy explained that the Rule 24 response inviting the Tribunal "to determine the appeal with a fresh oral (continuance) hearing" was a standard and formulaic response which did not distinguish between appeals which were suitable for rehearing in the Upper Tribunal and appeals which were more suitable for rehearing in the First-tier Tribunal, such as an asylum appeal where credibility was in issue and none of the findings of fact in the previous determination were going to be preserved.
6. The directions sent to the appellant's solicitors told them to prepare for an error of law hearing only. Before Judge Lane made his decision, they misguidedly sought an adjournment of the hearing on the ground that a supporting witness would not be available to give oral evidence at the hearing. Judge Lane refers to this adjournment application in his directions of 4 September 2014. The implication of the misconceived adjournment request was that the appellant's solicitors were content for the appeal to be reheard de novo in the Upper Tribunal, when in truth they had not applied their minds to the question of whether the First-tier Tribunal was the more appropriate forum, if the error of law challenge resulted in the decision of the FTT being set aside in its entirety.
7. Accordingly, I directed that the appeal should be remitted to the First-tier Tribunal for rehearing by any judge apart from Judge Barker, with a time estimate of three hours; and that a Tamil language interpreter was

required. The agreed date, time and venue for the rehearing in the FTT was recorded in the Court file.

Summary

8. The decision of the First-tier Tribunal dismissing the appellant's appeal on asylum grounds was vitiated by material errors of law, and accordingly the decision of the First-tier Tribunal is set aside in its entirety, and this appeal is remitted to the First-tier Tribunal for a complete rehearing on all issues and none of the findings of fact of the previous Tribunal are preserved.

Signed

Date **15 December 2014**

Deputy Upper Tribunal Judge Monson