



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

Appeal Number: AA/03776/2014

THE IMMIGRATION ACTS

Heard at Field House
On 14th November 2014
Prepared 20th November 2014

Determination Promulgated
On 26th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

O P
(ANONYMITY DIRECTION MADE)

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

Respondent

Representation:

For the Appellant: Mr D Gibson-Lee (counsel, instructed by Lloyds PR Solicitors)
For the Respondent: Mr P Armstrong (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. For the sake of convenience and continuity of terminology the Secretary of State is referred to as the Respondent and O P is referred to as the Appellant. This is an appeal by the Secretary of State against the decision of First-tier Tribunal Judge Flynn promulgated on the 25th of July 2014 in which the Appellant's appeal against the refusal of his asylum claim was allowed. The initial application for permission to appeal, made to the First-tier Tribunal, was refused, the renewed application to the Upper Tribunal was granted by Upper Tribunal Judge Chalkley on the 13th of October 2014.

2. The Appellant arrived in the UK on the 25th of June 2004 on a visit visa, he overstayed and on the 12th of October 2011 he claimed asylum relying on events he said had taken place in Sri Lanka before he came to the UK and on his political affiliation. The claim was refused for the reasons given in the Refusal Letter of the 22nd of May 2014, there were a number of reasons given which included the Secretary of State questioning the Appellant's nationality and political party membership.
3. The Appellant appealed the decision. It appears that by the hearing the Home Office had lost original documentation that had been submitted by the Appellant in support of his application. At the hearing the Home Office representative accepted the Appellant's nationality, it does not appear that any concession was made in respect of any other aspect of the case. The submissions are set out in the Record of Proceedings and are referred to where relevant below.
4. For the reasons given below I am satisfied that the Judge made material errors of law such that the determination of Judge Flynn has to be set aside and the case remitted to the First-tier Tribunal for re-hearing on all matters. The relevant form was completed at the conclusion of the Upper Tribunal hearing on the 14th of November 2014.
5. The grounds relied on by the Secretary of State are to the effect that the Judge materially misdirected himself in relation to the risk categories set out in the country guidance case of GJ and others (Post Civil War: Returnees) Sri Lanka CG [2013] UKUT 00319 (IAC) and that the Appellant did not come into the category relied on. It was also argued that the Judge did not give proper reasons for making findings on material matters and related to this was a failure to taken into account and resolve issues on material matters.
6. The Judge was faced with the task of assessing evidence in the absence of originals which ought to have been produced by the Secretary of State but which had been lost. I accept that does cause difficulties for the Appellant although that does not apply to all of the documents, for example there was not an original of the press report from 2004 and apparently there never had been.
7. The Respondent had relied on the Refusal Letter which set out concerns over the lack of the Appellant's political knowledge and rejected his claimed membership of the UNP. There is a reference in paragraph 58 to the Appellant's membership of the UNP in the UK and a statement that the Respondent did not challenge his membership of the party. This is incorrect as the Refusal Letter clearly indicates that his party membership was not accepted and this point was not conceded in contrast to the position on his nationality.
8. In the course of the determination the Judge did not deal with matters that had been raised in the Refusal Letter and which remained relevant. There was the Appellant's lack of knowledge of the party that he had been a member of and that had to be considered in the light of his later evidence to the Tribunal. The Judge erred in assessing one set of copies against a different of copies and did not give reasons for finding that the first, accepted, copy was accepted as reliable.
9. The finding that the Appellant fell into one of the risk categories cannot be sustained. The principal factor placing an individual at risk is the threat they pose to the future territorial integrity of Sri Lanka as a single state. There is no sustainable finding that the Appellant poses such a threat. The finding that the Appellant falls into the risk category identified is not sustainable.

10. I find that the errors identified above have a cumulative effect and render the determination unsustainable. Accordingly the determination cannot stand and the matter will have to be re-heard in the First-tier Tribunal. Directions have already been provided.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The case is remitted to the First-tier Tribunal for re-hearing on all issues.

Anonymity

The First-tier Tribunal made an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 which is continued.

Fee Award

In remitting the decision to the First-tier Tribunal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 26th November 2014