



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

Appeal Number: AA/02854/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 11 November 2015**

**Decision & Reasons Promulgated
On 18 December 2015**

Before

UPPER TRIBUNAL JUDGE PERKINS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

VU

(ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr S Walker, Home Office Presenting Officer

For the Respondent: Mr N Paramjorthy, Counsel instructed by S Satha & Co

DECISION AND REASONS

1. Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI 2008/269) I make an anonymity order. Unless the Upper Tribunal or a Court directs otherwise, no report of these proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This direction applies to, amongst others, all parties. Any failure to comply with this direction could give rise to contempt of court proceedings. I make this order because the First-tier Tribunal made a similar order and, in unresolved asylum appeals such as this, there is always a possibility that

publicity could itself create a risk to an asylum seeker that could prevent his return.

2. This is an appeal brought by the Secretary of State against a decision of First-tier Tribunal Judge O’Keeffe, who dismissed the respondent’s appeal on asylum grounds but allowed the appeal on human rights grounds because of a concern about the mental health of the respondent.
3. The respondent, hereinafter “the claimant” cross-appealed. The application for permission was made late at the hearing before the Tribunal on an earlier occasion. Permission was granted and time given to the Secretary of State to consider her position. Both appeals are before me now and the representatives of the parties agree with the disposal set out below.
4. Dealing first with the Secretary of State’s appeal, it is agreed that the First-tier Tribunal’s reasons for allowing the appeal on human rights grounds are not explained sufficiently. The First-tier Tribunal Judge did not give a proper explanation for the decision that the claimant would not be assisted by his relatives in Sri Lanka. There is some evidence that the claimant could obtain support from his relatives in Sri Lanka. Whether that is established as a fact is unclear and if it is established as a fact whether it would defeat his claim is unclear. The problem is that the point has not been explained and it needs to be resolved.
5. Secondly, it is agreed by the Secretary of State that the decision of the Tribunal is deficient on asylum grounds because there are factors pointing towards the appeal being allowed which had not been properly considered or explained. This does not mean that the appeal would ultimately be successful. It means that there are points that ought to have been considered but had not been considered properly or at all.
6. The case is not suitable for disposal on submissions now, partly because there is general dissatisfaction and an element of uncertainty in the findings about whether or not the claimant has attempted suicide on earlier occasions. There is reference to this in the medical evidence but it is not clear what the doctor had in mind when making the observations that he did. It may be a reference to something said inconsequentially in interview; it may be that what was said in interview was very serious indeed or it may be that something else was recorded that does not appear in the paperwork, and that is something which the claimant’s solicitors have undertaken to investigate. Without in any way directing how another Tribunal should make a decision on an application to admit fresh evidence it seems to me that this is the kind of issue which it is in everybody’s interest to be resolved if that can be done properly.


7. For these reasons I have decided that the case needs to go back and it will go back to Hatton Cross (unless the First-tier Tribunal otherwise directs), not before First-tier Tribunal Judge O'Keeffe.

Notice of Decision

8. The appeals of both parties are allowed as indicated above.

Signed

Jonathan Perkins
Judge of the Upper Tribunal



Dated 16 December 2015

